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ABOUT MDDP TRANSFER PRICING TEAM

MDDP Transfer Pricing Team – with about 30 experts – is one of the biggest on the Polish market and one of the most awarded. MDDP team received International Tax Review prize for The Best Transfer Pricing Team four times (2006, 2008, 2012, 2013) and its leader – Magdalena Marciniak has been awarded in 2018 in the TP category as one of the best experts in Poland in the ranking of Tax Advisory Firms prepared by Polish Journal – The Dziennik Gazeta Prawna. The MDDP Transfer Pricing team has been also distinguished in 2018 in the category of “Innovations” in the Ranking of Tax Advisory Companies the Rzeczpospolita daily for an IT solution that accelerates and facilitates the process of preparation of transfer pricing documentation”.

The Team is composed of economists and lawyers who have many years of experience in providing advisory services in the field of Transfer Pricing. Our team is comprised of experienced professionals, who advise Polish and foreign clients, among others with regard to the development and implementation of effective intra-group cooperation models and ensuring and justifying the arm’s length conditions of business restructuring transactions, taking into consideration not only legal and tax regulations, but primarily business purposes.

We assist our clients not only in the preparation of transfer pricing documentation and benchmarking studies, but also in the process of negotiations with the Ministry of Finance of Advance Pricing Agreements, Mutual Agreement Procedure and in tax audits/tax proceedings.

We also support our clients in the implementation of our solutions and adaptation of internal procedures in compliance with transfer pricing regulations, providing transfer pricing trainings and workshops dedicated to management staff or finance and accounting teams.

The MDDP’s Transfer Pricing Team was established to assist our Clients in managing the transfer pricing risks in their business operations. We have provided services to many international and domestic enterprises, developing and optimizing transfer pricing policies for transactions conducted in Poland as well as coordinating a number of transfer pricing projects at the global level.

Our work includes advising on the biggest deals in Poland especially in the following industries: retail, telecommunication, construction, automotive, clothing, furniture, pharmaceuticals, IT, finance / insurance.

Our projects cover inter alia: preparation of Master Files and Local Files compliant with transfer pricing requirements, implementation of transfer pricing models for the multinational groups, redesign/reorganisation of core business activities, preparation of transfer pricing policies for the capital groups, valuation of royalty rates and restructuring transfers, creation of IP/service centres, advisory on cost sharing agreements, preparation of benchmarking analysis for many intra-company transactions including financial transactions.

Furthermore, our team works not only on the local level but also in the international setup, advising foreign and Polish companies in respect to their international transfer pricing strategies.

MDDP is working on the development or verification of business structures and models developed by foreign headquarters in order to ensure that they are safe from Polish transfer pricing perspective in case of tax dispute with Polish tax authorities. Due to the in-depth knowledge of local tax law and requirements of the Polish tax authorities, MDDP takes a leading role in the development of the transfer pricing models implemented within multinational capital groups.
Dear Readers,

The revolution in the transfer pricing world has been continuing for many years. The BEPS works initiated by the OECD, to develop common rules to protect the tax systems of OECD member countries are gradually implemented in many jurisdictions in Europe. The high scrutiny of the tax authorities is still focused on transfer prices, and the number of tax audits of related parties are focused on transfer pricing aspects.

For many companies amendments to local transfer pricing regulations mean a huge challenge resulting in practice in the introduction of significant changes to transfer pricing policy regulating the intercompany transactions. These changes apply both to the subjective scope – the list of entities that are subject to the documentation obligations, and the objective scope – the scope of the documentation has been broadened considerably. Taxpayers are required to provide tax authorities with much more detailed information, which involves increased administrative effort from compliance perspective and the need to develop specialized knowledge of transfer pricing concepts.

To help our clients – especially those who conduct business operations within multinational capital groups – prepare for these transfer pricing changes, we have prepared our second edition of “Transfer Pricing Guide”, which has been created in collaboration with the leading European advisory companies. We have focused on jurisdictions which are located mainly in Central and Eastern Europe and have gathered not only the most important information on the transfer pricing law effective in a given jurisdiction, but also a set of practical information that many of you may find useful while struggling with the new challenges during preparation of transfer pricing documentation.

We wish you a pleasant read!

Renata Dłuska  
Tax advisor, legal counsel  
Partner responsible for transfer pricing issues  
MDDP

Magdalena Marciniak  
Tax advisor  
Partner, Head of the Transfer Pricing Team, MDDP
Regulations and rulings

- **Regulations:**
  - Income Tax Act; Corporate Income Tax Act,
  - Transfer Pricing Documentation Act; Regulation for the implementation of the Transfer Pricing Documentation Act,
  - Transfer Pricing Guidelines (ministerial decree).

- **Arm's length principle and definition of related party**
  - Section 6/6 Austrian Income Tax Act and Section 8 Corporate Income Tax Act in connection with Article 9 OECD Model Tax Convention ("OECD MTC"),
  - Transfer Pricing Guidelines issued by the Austrian Ministry of Finance in October 2010 ("The Austrian TPG"),
  - OECD Guidelines.

OECD guidelines treatment

- Austria generally **follows the OECD Guidelines**.

- The OECD Report on the Attribution of Profits to Permanent Establishment (AOA) is applicable only to the extent that does not contradict Article 7 of the OECD MTC issued in 2008.

Definition of related parties

- Article 9 of the OECD MTC.

- Section 2 of the VPDG provides for Country-by-Country Reporting purposes the definition of related parties as stipulated in the BEPS Action 13 Report.

Transfer pricing methods

- Generally, all TP methods as stipulated in the OECD Guidelines are accepted, i.e. (i) comparable uncontrolled price method, (ii) resale price method, (iii) cost plus method, (iv) profit split method, (v) transactional net margin method.

- There is no statutory priority of methods but the most appropriate method has to be chosen in a particular case. However, according to the tax authorities **if possible the CUP method should preferably be applied**.

Transfer pricing documentation requirements

- The VPDG provides that an Austrian member of a MNE group with a revenue exceeding **EUR 50 million in both of the two preceding financial years** has to prepare a documentation consisting of (i) a **Master File** and (ii) a **Local File** based on the BEPS Action 13 Report. This obligation regarding the documentation applies for financial years starting as of 1.1.2016.

- Filing: After the tax return of the respective year has been filed, the **Master File and Local File must be provided to the tax authorities upon request within a period of 30 days**.
MNE groups with consolidated revenue of **EUR 750 million or more in the last financial year** are additionally obliged to prepare a **CbC Reporting**, provided that the ultimate parent entity of the MNE group is resident in Austria.

- **Filing**: The CbC Reporting must be submitted by the Austrian ultimate parent company to the competent tax authority at the latest 12 months after the end of the respective financial year.

- If the above thresholds are not met, the tax authorities may potentially claim the preparation of a transfer pricing documentation based on the Sections 124–132 of the Austrian Federal Fiscal Code (i.e. taxpayer needs to provide the tax administration with the information and documents required for the tax assessment).

- The documentation can generally be either prepared in **German or in English**.

- According to the Austrian TPG the direct-charge method is the preferred method and has to be used if the services form a main business activity and/or are provided not only to associated enterprises, but also to independent parties.

- However, for reasons of simplification an indirect-charge method is permitted if a direct charge method would be economically unreasonable, especially because of cost allocation problems (e.g. where a separate recording and analysis of the relevant services for each beneficiary would involve an unreasonable burden of work that would be disproportionately high in relation to scope of services to be charged).

- No safe-harbour is stipulated in Austrian provisions (e.g. with regard to a certain mark-up).

- No. As a general guidance, a profit margin between 5-15% may be applied with respect to services of a routine character.
Penalties with respect to CbC Reporting:
- Up to **EUR 50,000** for intentionally late or incorrect filing,
- Up to **EUR 25,000** for late or incorrect filing in gross negligence.

There are no specific penalties in case of late filing of the Master File and Local File. Nevertheless, the late filing **could be qualified as an infringement of a financial diligence** and could be a subject to a penalty of up to **EUR 5,000**.

Late payment of additional corporate income tax liabilities triggered by a transfer pricing adjustment is subject to the **late payment interest**.

Both **increase and decrease of the tax base are available** based on the respective DTT and/or domestic tax law (Sec 6/6 of the Income Tax Act). Austria has also chosen Article 17 in respect to Corresponding Adjustments regarding transfer pricing in the MLI.

Requirement for the tax base decrease: documentation confirming that arm's length increase was implemented in other country (Austrian TPG, para 324).

Year-end-adjustment: Generally, transfer prices have to be determined based on an ex-ante approach. Nevertheless, **year-end-adjustments** are accepted if such adjustments would have been **undertaken by unrelated parties** as well.

**CCAs are generally accepted**, but need to be concluded in advance in writing (Austrian TPG, Section 1.3.5 as well as OECD Guidelines).

**Unilateral APA:**
- Sec 118 of the Federal Fiscal Code,
- Term 3-5 years (prolongation is generally possible),
- Fees: **EUR 1,500 – EUR 20,000** depending on the revenues of the applicant in the last 12 months.

**Bilateral/Multilateral APA:**
- Article 25 of the OECD MTC,
- Term: on discretional basis (prolongation is generally possible),
- Fees: **currently no fees**.

**BEPS Action 13 Report has been implemented** in the Transfer Pricing Documentation Act (VPDG).
Austria | Application practice

1. Is the CUP method preferred (should the CUP method be rejected if another method is applied)?

There is no statutory priority of methods but the most appropriate method has to be chosen in a particular case. However, according to the tax authorities if possible the CUP method should preferably be applied (but: no requirement to explicitly reject the CUP method if another method is chosen).

2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?

No, but it should be explained why the chosen method was the most appropriate one in a particular case.

3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?

Local benchmarks are preferred but Pan-European analysis is also accepted (especially if no appropriate local benchmarks are available).

4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?

Austrian TPG generally provides for the application of the interquartile range. All data determined by the database analysis (i.e. no application of the interquartile range) can only be applied if it is ensured by all appropriate information available that the terms and conditions of the business are comparable without any restrictions.

5. Are there any preferences as for the point from which the interquartile range should be applied, i.e. is median preferred or is any point from IQR acceptable?

Do the tax authorities accept any level of mark-up for services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?

Generally, all points within the arm's length (IQ) range are accepted. However, if the transfer price is outside this arm's length (IQ) range, the adjustment needs to be made to the median.

For services no specific level of mark-up is provided. Thus, any level of mark-up within an arm’s length (IQ) range is accepted. (Please note: Austrian TPG only stipulate that for routine services a mark-up of 5%-15% could be regarded as first guideline).

6. Does your tax administration use secret comparables for transfer pricing assessment purposes?

No.

7. How do tax authorities approach accepting entities with loss (aggregated or incurred in particular years) in the benchmarking study?

Generally, loss making entities should be rejected in the database analysis. If they are nevertheless included, reasoning should be provided.
8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?

Austrian TPG only stipulate that the application of multi-year data is accepted as it may make the comparability analysis more reliable. In practice, generally a 3 year period is applied.

9. Are there any requirements for updating a benchmarking analysis?

No statutory requirements, but in practice updating is strongly recommended (with regard to the identified comparables yearly, with regard to the benchmark study as such every 3 years).

10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?

No specific provisions available. In practice an independence test is applied particularly strictly with a 25% limit used regularly for shareholders (unless individuals); entities owning shares in subsidiaries themselves shall be rejected.

11. Does burden of proof (that the transaction is arm’s length) lie with the taxpayer or tax administration?

In general, the burden of proof lies with the tax administration. However, the taxpayer is obliged to provide the tax administration with the information and documents necessary for the tax assessment. If the taxpayer infringes this cooperation obligation, the burden of proof may be shifted to the taxpayer.

In 2017 an increased cooperation obligation for taxpayers with regard to international tax issues has been implemented in Sec 115 of the Austrian Federal Fiscal Code. Breach of the increased cooperation by the taxpayer may lead to a decreased cooperation obligation of the finance authority to assess the facts of the underlying case or may enable the finance authorities to appraise the tax base.

The transfer pricing documentation can be prepared in local language (German) or in English.

12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?

Generally yes, if these adjustments are necessary in order to adjust prices that are not at arm’s length.

13. Do the tax authorities accept self-initiated adjustments?

Generally yes, if these adjustments are necessary in order to adjust prices that are not at arm’s length.
14. Has your country enacted legislation implementing the new structure of TP Documentation indicated in Action 13 of BEPS (Local File, Master File, country-by-country reporting) or is it considering enacting such legislation?

BEPS Action 13 was implemented by the Transfer Pricing Documentation Act ("Verrechnungspreisdokumentationsgesetz – VPDG") and the corresponding Regulation for the implementation of the Transfer Pricing Documentation Act ("Verrechnungspreisdokumentationsgesetz-Durchführungsverordnung").

15. If your legislation provides for exemption from transfer pricing documentation obligations, please explain.

Master File / Local File:
– The only exemption available from transfer pricing documentation applies to Constituent Entities of an MNE group that do not reach respective turnover threshold of EUR 50 million during the two preceding fiscal years.

Country-by-country-Reporting:
– Requirements are fully in line with the BEPS Action 13 minimum standard and the respective EU Directive. No further exemptions.

16. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?

Yes.

17. What are the penalties for not having TP Documentation (for the tax payer and the Board)? Are there any penalties if the terms of transactions are not arm’s length?

Penalties with respect to CbC Reporting:
– up to EUR 50,000.00 for intentionally late or incorrect filing;
– up to EUR 25,000.00 for late or incorrect filing in gross negligence.

No specific penalties in case of late filing of the Master File and Local File. But: late filing could be qualified as an infringement of a financial diligence subject to a penalty of up to EUR 5,000.00.

Late payment of additional corporate income tax liabilities triggered by a transfer pricing adjustment is subject to late payment interest.
18. Is the transfer pricing of interest to the tax authorities in your country? If yes, please indicate what type of transactions / taxpayers / years, etc. are usually controlled?

Yes, transfer pricing issues are dealt with in audits regularly. Moreover, based on the new Transfer Pricing Documentation Act enacted in 2016 the tax authorities increasingly deal with transfer pricing issues. The transfer pricing documentation is forwarded upon commencing a tax audit by the tax authorities. In general all types of intracompany transactions are controlled (subject to a risk assessment on a case by case basis).

19. Are APAs popular in your country? How many APAs have been issued?

APAs become more and more popular in Austria, as they provide security for taxpayers in transfer pricing issues. The number of issued APAs is not officially published in Austria.
Bosnia and Herzegovina comprises of two main entities: Federation of Bosnia and Herzegovina "FBiH" and Republic of Srpska. Brcko District is part of both the FBiH and Republika Srpska. The district remains under international supervision.

**Regulations**
- Articles 44 to 46 of FBiH Corporate Profit Tax Act,
- Transfer Pricing Regulations of FBiH,
- Articles 31 to 35 of Republic of Srpska Corporate Profit Tax Act,
- Transfer Pricing Regulations of Republic of Srpska,
- Article 9 of Brcko District Corporate Profit Tax Act,
- Articles 34 and 35 of Brcko District Corporate Profit Tax Regulations.

**Arm's length principle and definition of related party**
- Article 44 of FBiH Corporate Profit Tax Act,
- Transfer Pricing Regulations of FBiH,
- Articles 31 and 32 of Republic of Srpska Corporate Profit Tax Act,
- Articles 2 and 4 of Transfer Pricing Regulations of Republic of Srpska,
- Articles 34 and 35 of Brcko District Corporate Profit Tax Regulations.

**Transfer pricing documentation**
- Article 46 of FBiH Corporate Profit Tax Act,
- Transfer Pricing Regulations of FBiH,
- Article 34 of Republic of Srpska Corporate Profit Tax Act,
- Article 12 of Transfer Pricing Regulations of Republic of Srpska,
- Article 35 of Brcko District Corporate Profit Tax Regulations.

The Bosnian transfer pricing regulations do not refer to the OECD Guidelines directly, the guidelines are not the source of domestic law. Nevertheless, the tax authorities sometimes refer to the OECD Guidelines when applying transfer pricing principles.

**Definition of related parties**
Definition of related parties is very broad and includes a physical or legal entity which:
- holds more than 10% (Brcko District) or 25% (FBiH, Republic of Srpska) of entity's share capital both directly or indirectly,
- holds more than the above mentioned shares in two or more entities both directly or indirectly, or
- has significant influence or has control on business decisions.

Abovementioned definition applies to transactions between residents and non-residents.
Transfer pricing methods

The transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are:

- comparable uncontrolled price method;
- resale price method;
- cost plus method;
- transactional net margin method,
- profit split method.

However, depending on the geographical region different methods are preferred:

- in Federation of Bosnia and Herzegovina it is best to use traditional transactional methods,
- in Brcko District the CUP method is preferred and
- in Republic of Srpska there is no preferred method.

When prioritised methods are not used, in practice, it should be explained why these methods are not applicable.

Transfer pricing documentation requirements

There is a legal obligation that requires preparation of the transfer pricing documentation. All transactions should be documented – no transactional/ materiality threshold exists.

There is a legal obligation to disclose information in the annual tax return when there is a difference between market and transfer prices and adjust tax base accordingly.

The taxpayer should submit the transfer pricing documentation based on the tax authorities’ request in 45 (FBiH) or 30 (Republic of Srpska) days. Brcko District and Republic of Srpska prescribe additional disclosure of related party transactions under certain requirements.

Failing to submit the disclosures might result in the tax authorities challenging the transaction and set price between related parties.

Documentations should be prepared in local language.

Republic of Srpska has enacted CbC reporting.

No exemptions from transfer pricing documentation obligations exist.

A shortened TP documentation can be submitted for 3 types of transactions:

- loans,
- low value-adding services if applying 5% mark up and
- one-off purchase and sales of assets.

Simplified approach for certain types of transactions
Benchmarking analysis requirements

- Depending on the region, there are different approaches to benchmarking analysis – in Republic of Srpska and FBiH the local benchmark is preferred and in Brcko District there are no specified rules by the legislation.

- In practice, there is a preference regarding statistical methods applied in benchmarking studies, i.e. the interquartile range of comparable results is prescribed than single figures, except if applying CUP method.

- Moreover, the tax authorities accept any point in the range. If transfer price is outside the range, the tax authorities will conduct adjustment to median (Republic of Srpska).

- The tax authorities accept any level of mark-up for services as long as it falls within the interquartile range but a specific level of mark-up is also applied. There is a guidance for low value-adding services (supporting services) and appliance of a 5% mark-up.

- Bosnia and Herzegovina uses publicly available databases.

- What is worth underling, in FBiH, entities with loss (on total base in the 3-5 year period) are excluded from the benchmark analysis.

- There is no preference by the tax authorities regarding the duration of the tested period – 3 or 5 years.

- However, in Republic of Srpska there is a requirement that the most recent data should be used.

Specific guidance to intra-group services transactions

- There is guidance for low value-adding services and application of a 5% mark-up. Additionally, a list of services which are considered as low value-adding in the Transfer pricing Regulations of FBiH exists.

Transfer pricing audit procedures and penalties

- After successfully challenging the transaction by the tax authorities, the adjustment of the tax base is proposed.

- Additional taxable income disclosed during the tax audit is subject to basic corporate profit tax rate increased by penalty interest for every day of delay in payment.

- The penalties settled in each territory are as follows:

  FBiH
  - penalties for taxpayers: EUR 1,500 – 50,000; penalties for responsible person: EUR 500 – 1,500.

  Republic of Srpska
  - penalties for taxpayers: EUR 10,000 – 30,000; penalties for responsible person: EUR 2,500 – 7,500.
Transfer pricing adjustments

Bračko District:
- Penalties for taxpayers: 10% of non-assessed tax liability or 50% of assessed tax liability which is assessed in the lower than prescribed amount; penalties for responsible person: EUR 100 – 1,000.

Adjustment of the tax base should be made in the tax return.
- The taxpayer is obliged to elaborate/describe the calculation and include total amount of the adjustment in the conclusion of TP documentation.

Cost Contribution Agreements (CCAs)
- CCA is prescribed by Articles 57 and 58 of Transfer Pricing Regulations of FBiH.

Advanced Pricing Agreements (APAs)
- Rules for transfer pricing in Bosnia and Herzegovina do not provide an option to obtain an Advanced Pricing Agreement.

Implementation of BEPS
- Republic of Srpska has introduced CBC reporting as obligatory element of the transfer pricing documentation.
- Low value-adding intra-group services concept is included in FBiH legislation.
- The MCAA to enable automatic sharing of country-by-country information has not been signed.

Signature of Multilateral Competent Authority Agreement (MCAA)
<table>
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<tr>
<th>Question</th>
<th>Answer</th>
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| 1. Is the CUP method preferred (should the CUP method be rejected if another method is applied?)? | Federation of Bosnia and Herzegovina: traditional transactional methods are preferred.  
Brcko District: CUP method is preferred.  
Republic of Srpska: no preferred method. |
| 2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable? | In practice, this should be explained.                                                                                                   |
| 3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one? | Republic of Srpska and FBiH: local benchmark is preferred. Brcko District: not specified by the legislation. |
| 4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures? | In practice, the interquartile range of comparable results is prescribed, except if applying CUP. |
| 5. Are there any preferences as for the point from which the interquartile range should be applied, i.e. is median preferred or is any point from IQR acceptable? | The tax authorities accept any point in the range. If transfer price is outside the range, the tax authorities will conduct adjustment to median (Republic of Srpska). |
| Do the tax authorities accept any level of mark-up for services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%? | Yes, there is a guidance for low value-adding services (supporting services) and appliance of a 5% mark-up. Also, there is a list of supporting services which are considered low value in the Transfer pricing Regulations of FBiH, Article 55. |
| 6. Does your tax administration use secret comparables for transfer pricing assessment purposes? | No, Bosnia and Herzegovina uses publicly available databases. |
| 7. How do tax authorities approach accepting entities with loss (aggregated or incurred in particular years) in the benchmarking study? | In FBiH, entities with loss (on total base in the 3-5 year period) are excluded from the benchmark analysis. |
| 8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years? | No preferences. |
9. Are there any requirements for updating a benchmarking analysis?

Republic of Srpska: there is a requirement that the most recent data should be used. Other entities: not specified by the legislation.

n/a

10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?

n/a

11. Does burden of proof (that the transaction is arm's length) lie with the taxpayer or tax administration?

The burden of proof lies with the taxpayer until the TP documentation is submitted, after that it lies with the tax administration.

12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?

The tax authorities prefer it prepared in local language.

13. Do the tax authorities accept self-initiated adjustments?

No practice in this area.

14. Has your country enacted legislation implementing the new structure of TP Documentation indicated in Action 13 of BEPS (Local File, Master File, country-by-country reporting) or is it considering enacting such legislation?

Republic of Srpska has enacted CbC reporting. No developments in this respect in other territories.

15. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?

No.

16. If your legislation provides for exemption from transfer pricing documentation obligations, please explain.

No.
17. **What are the penalties for not having TP Documentation (for the tax payer and the Board)? Are there any penalties if the terms of transactions are not arm's length?**

FBiH: penalties for taxpayers: EUR 1,500 – 50,000; penalties for responsible person: EUR 500 – 1,500.


Brcko District: penalties for taxpayers: 10% of non-assessed tax liability or 50% of assessed tax liability which is assessed in the lower than prescribed amount; penalties for responsible person: EUR 100 – 1,000.

18. **Is the transfer pricing of interest to the tax authorities in your country? If yes, please indicate what type of transactions / taxpayers / years, etc. are usually controlled?**

The comprehensive TP legislation has been enacted recently and this is becoming relevant tax planning issue in BiH.

For now, only VAT legislation is valid for the entire BiH. Other taxes are separately enacted by each territory.

19. **Are APAs popular in your country? How many APAs have been issued?**

FBiH does not apply APAs.
Regulations and rulings

- Regulations
  - Corporate Income Tax Act [CITA],
  - The Tax and Social Security Procedures,
  - Ordinance H-9/14,
- Arm’s length principle and definition of related party
  - Statutory transfer pricing rules are provided in Corporate Income Tax Act [CITA]. CITA sets out the arm’s length provisions and cases where the prices are allowed not to comply with the general principle.
  - The Tax and Social Security Procedures Code provides a definition of related parties and priority and permissibility of transfer pricing methods.
  - Ordinance H-9/14 that covers the procedure for application of transfer pricing methods.
- Transfer pricing documentation
  - Transfer Pricing Manual covers the transfer pricing documentation requirements and sets the rules for tax auditors on the documentation that can be requested during the audit procedure.

Bulgaria is not a member of OECD. However, in general principles of the OECD Guidelines are implemented in the Bulgarian transfer pricing rules and followed by the Bulgarian tax authorities.

- Moreover, Bulgarian transfer pricing rules do not cover business restructuring.

OECD guidelines treatment

Definition of related parties

- Bulgarian’s Tax and Social Security Procedures Code sets a definition of “related parties”. Criteria considered in evaluation of “relatedness” are:
  - family ties (spouses, relatives of the direct descent without restrictions and relatives of the collateral descent up to the third degree included, and in-law lineage, up to and including the second degree); or
  - employment relationship; or
  - entity owns more than 5% of direct voting shares; or
  - entity directly or indirectly participates in management or in control of other entity.

- Control is defined in Bulgarian legislation as:
  - owns directly or indirectly, or under an agreement with another person, more than half of the votes at the general meeting of another person, or
  - has the possibility to determine directly or indirectly more than half of the members of the managing or controlling body of another person, or
has the possibility to manage, including through or together with a subsidiary, in accordance with a particular statute or contract, the activity of another person, or

as a shareholder or a partner in an entity controls independently, in accordance with a deal made with other partners or shareholders of the same entity, more than half of the votes in the general meeting of this entity, or

can be by other means exert a decisive influence over the decision-making with respect to the activity of the entity.

Moreover there is a rebuttable presumption of relatedness if one of the parties is registered in a jurisdiction outside the EU with a corporate income tax rate of 4 percent or lower (unless the resident person submits evidence that the nonresident person is liable to tax that is not subject to a preferential regime, or that the nonresident person has sold the goods or has provided the services on the local market) and the tax administration of the country of registration refuses or is unable to provide information on the transaction/relationship under scrutiny, if an existing double taxation agreement is in force.

The transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are:

traditional methods: (i) comparable uncontrolled price, (ii) resale price, (iii) cost plus;

transactional profit methods: (i) profit split method, (ii) transactional net margin method.

Under Bulgarian legislation, the traditional transaction methods have priority over the transactional profit methods. The CUP method should be used in all cases when it is possible to apply and if it cannot be reliably applied, then the other methods may be used.

Rules for transfer pricing in Bulgaria do not provide specific transfer pricing documentation requirements. Generally it is recommended that taxpayers follow the Transfer Pricing Manual guidelines in this respect, which generally comply with the EU’s Code of Conduct for Transfer Pricing Documentation.

In general, taxpayers must proof the arm’s length nature of related-party transactions.

The documentation must be submitted to tax authorities or tax control authorities within 14 days of the date of the request and must be prepared in Bulgarian or in a certified translation (at taxpayers’ expense) if it was prepared in another language.

The tax subject is entitled to demand a suspension of the procedure for maximum three months, if the volume of the required information is considerable.
The Bulgarian legislation states that the market nature of the remuneration for the service transactions should be tested by using either the CUP method or the Cost Plus method. Only, if these two methods may not be reliably applied, other methods may be used.

In case of subscription services, a multiple year period should be reviewed. The remuneration for the services should be determined by applying the direct charge method. When this is not possible or requires unreasonably high costs, the indirect charge method may be applied.

The allocation key used with the indirect charge method should:

- be appropriate from business and accounting perspective;
- have safeguards against artificial increase or decrease of the remuneration for the services, and
- guarantee cost allocation between the service recipients in line with the actual or expected benefits for each of them.

The Bulgarian TP legislation explicitly states that the indirect charge method should not be applied when the service provider renders identical services to related and unrelated parties and the services provided to related entities.

No.

No.
<table>
<thead>
<tr>
<th><strong>Transfer pricing audit procedures and penalties</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>– The likelihood that transfer pricing will be reviewed as part of audit depends on the subject and scope of the transfer pricing review.</td>
</tr>
<tr>
<td>– In cases which a related entity does not submit a documentation when requested by the tax authorities, a fine for not cooperation might be imposed (approximately from EUR 128 to EUR 256).</td>
</tr>
<tr>
<td>– If the terms of the transactions are not at arm’s length, the tax authorities are entitled to determine the taxable base accordingly.</td>
</tr>
<tr>
<td>– Furthermore, a taxpayer involved in a “hidden profit distribution” would be subject to an administrative sanction, amounting to 20% of the expense classified as a “hidden profit distribution.” Both the expense classified as “hidden profit distribution” and the sanction would be non-deductible for corporate income tax purposes. Penalty will be derived from the difference between the agreed transfer prices and the market price.</td>
</tr>
<tr>
<td>– Since 1 January 2014, taxpayers might perform a voluntary disclosure of “hidden profit distribution”. Doing so will relieve taxpayer from penalty of 20% of hidden profit but are obliged to self-adjust any group transaction.</td>
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<table>
<thead>
<tr>
<th><strong>Transfer pricing adjustments</strong></th>
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<tbody>
<tr>
<td>– Corporate Income Tax Act allows for compensating adjustments in case the reported transfer prices for goods, services or rights transferred in a controlled transaction deviate from the prices which would have been established had the transaction taken place at arm’s length.</td>
</tr>
<tr>
<td>– The legal base for such adjustments is Art. 15 of the Corporate Income Tax Act. This provision stipulates that where related persons perform their commercial and financial relationships under conditions influencing the amount of the taxable base and these conditions differ from those which would be made between unrelated persons, the taxable base shall be determined and taxed accordingly under those conditions which would have been attained at arm’s length.</td>
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<table>
<thead>
<tr>
<th><strong>Cost Contribution Agreements (CCAs)</strong></th>
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<tbody>
<tr>
<td>– CCAs are generally accepted, but are not legally defined in Bulgarian legislation, and there are no specific provisions regulating them.</td>
</tr>
<tr>
<td>– Cost contribution payments are deductible, if the taxpayer provides sufficient evidence of the actual receipt of CCA benefits and corresponding actual expenses.</td>
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<tr>
<th><strong>Advanced Pricing Agreements (APAs)</strong></th>
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<tr>
<td>– Rules for transfer pricing in Bulgaria do not provide an option to obtain an Advanced Pricing Agreement.</td>
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<table>
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<tr>
<th><strong>Implementation of BEPS</strong></th>
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<tbody>
<tr>
<td>– At this moment there is no implementation of BEPS in this regard.</td>
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</tbody>
</table>
1. Is the CUP method preferred (should the CUP method be rejected if another method is applied?)

Yes, this method is preferred. It could be rejected if the tax authorities decide that it is not transparent enough.

2. In view of methods priority, is it necessary to explain in details why prioritised methods are non-applicable?

No. This is not necessary. The authenticity of the method applied has to be rationalized.

3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?

The priority depends on the type of the transactions analyzed.

4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?

No.

5. Are there any preferences for which point from the interquartile range should be applied, i.e. median is preferred or any point from IQR is acceptable? Do the tax authorities accept any level of mark-up for services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?

No.

6. Does your tax administration use secret comparables for transfer pricing assessment purposes?

No.

7. How do tax authorities approach accepting entities with loss (aggregated or incurred in particular years) in the benchmarking study?

This usually leads to deepening of the audit.

8. What is the duration of the tested period (3 or 5 years) preferred by the tax authorities?

There is no such period of time. The maximum is 5 years.

9. Are there any requirements for updating a benchmarking analysis?

No.
10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?

There is no legal definition of such a threshold. It is not applied in practice.

11. Burden of proof (that the transaction is arm’s length) lies with the taxpayer or tax administration?

The burden lies with the tax administration and concerns alleged deviations from the principle.

12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?

In local language or translated to a local language.

13. Do the tax authorities accept self-initiated adjustments?

Yes.

14. Has your country enacted legislation implementing the new structure of TP Documentation indicated in Action 13 of BEPS (Local File, Master File, country-by-country reporting) or is it considering enacting such legislation?

No.

15. If your legislation provides for exemption from transfer pricing documentation obligations, please explain.

Based on the TP Guidelines of the National Revenue Agency (a document with no legislative power, however, generally followed by both the revenue authorities and the taxpayers):
- the micro enterprises may not prepare TP documentation, and
- simplified documentation evidencing the arm’s length prices of the related party transactions should be prepared, if the following thresholds have not been reached:
  - BGN 200,000, when the transaction is supply of goods or provision of services;
  - BGN 400,000, when the transaction is grant of intangibles or financing (for financing the threshold applies to the amount of interest and not to the amount of the loan).
− However TP Guidelines of the National Revenue Agency also recommend that, the above will not apply when:
  − The operating profit of the entity engaged in related party transactions is lower with 20% or more than the average operating profit for the industry it operates in for each of the 3 years preceding the year when the transactions occurred and the enterprise is unable to prove that the deviation does not originate from its related party transactions;
  − The respective related party is registered in a non-EU country where the corporate tax due on the income from the transactions is lower by 60% or more than the Bulgarian corporate tax. This exception does not apply if the enterprise provides evidence that the tax due by the foreign related party is “not subject to a preferential regime or the foreign entity has traded the goods or services on the local market”;
  − The country where the related party is registered refuses or is not able to exchange information regarding the performed transactions or relations, where there is an applicable double tax treaty in place.

16. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?
   Yes.

17. What are the penalties for not having the TP Documentation (for the taxpayer and the Board)? Are there any penalties if the terms of transactions are not arm’s length?
   There are no such penalties. If the TP documentation has been required and not submitted, the fee is approx. EUR 260 maximum.

18. Is the transfer pricing of interest to the tax authorities in your country? If yes, please indicate what type of transactions / taxpayers / years, etc. are usually controlled?
   As a rule, yes. Basically, the deals with intangible assets are subjected to audit.

19. Are APAs popular in your country? What is the number of the issued APAs?
   No. Such agreements are not allowed.
Croatia | Legal regulations

Regulations and rulings

- The Corporate Income Tax Act (The CIT Act),
- The Corporate Income Tax Bylaw (The CIT Bylaw) and
- Bylaw on Advanced pricing agreements procedure.

Arm’s length principle and definition of related party

- Article 13 of the CIT Act (Official Gazette of Republic of Croatia, No 177/04, 57/06, 146/08, 80/10, 22/12, 148/13, 143/14 and 50/16), Paragraph 1.

Transfer pricing documentation

- Transfer pricing rules are prescribed by the CIT Act (Article 13) and by the CIT Bylaw (Article 40).

OECD guidelines treatment

- Croatia is not the OECD member country but the OECD Guidelines is a source of the Croatian tax legislation.
- The OECD Guidelines was also a source in the official Ministry of Finance instructions for the tax officials performing transfer pricing audits.
- For instance, domestic legislation or regulations does not provide guidance specific to intra-group services transactions, however, in practice, Croatian Tax Administration follows the OECD TP Guidelines and OECD recommendations on intra-group services.

Definition of related parties

- Croatian taxation legislation contains a very broad definition of related party.
- It defines related parties as parties whereby one of the parties directly, or indirectly, participates in the management, supervision or capital of the other; or, where the same persons (one of which is a resident Croatian company and the other one is a non-resident company) participate in the management, supervision or capital of another company.
- Therefore, it is crucial that one party directly (or indirectly) exercises control or influence over the other party (by means of participating in the management, supervision or capital of the other party), and on that basis may control and/or influence the prices to be agreed in a certain transaction.

Transfer pricing methods

- The transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are:
  - traditional methods: (i) comparable uncontrolled price method, (ii) resale price method, (iii) cost plus method;
  - transactional profit methods: (i) profit split method, (ii) transactional net margin method.
- There is no priority of methods. However, the CUP method is preferred and any other method should be rejected if CUP method can be applied.
- Moreover, when using other than recommended methods, it is necessary to explain in details why prioritised methods are non-applicable.
Croatia | Legal regulations

Transfer pricing documentation requirements

- Documentation requirements are based on the OECD Guidelines.
- The Croatian regulations require additional documentation that has to be obtained in order to be able to prove the arm’s length nature of the transaction:
  - documentation that specifies the chosen transfer pricing method and the reasons why this method was preferred,
  - documentation that describes the data that is used and the analytical methods used in a transfer pricing benchmarking study, as well as the documentation that supports all calculations performed,
  - documentation related to the functional analysis and risk analysis performed, and
  - updates of transfer pricing documentation from previous years (if any) to reflect current changes (if any).
- There is a requirement to update transfer pricing documentation and benchmark annually (to update comparables after each year and to prepare a new benchmark analysis after each 3 years).
- Taxpayers have to prepare transfer pricing documentation upon tax authority request.
- The burden of proof that the transaction is arm’s length lies with the taxpayer until the TP documentation is submitted, after that it lies with the tax administration.
- Additionally, the taxpayers must submit to tax authorities “Report on business transactions with related parties” by April 30 of the current year for the previous fiscal year or within 4 months of the date of the expiration of the period for which profit tax is assessed.
- There are no exceptions prescribed in terms of transfer pricing documentation obligations.
- Documentation must be prepared in Croatian.
- In practice, self-initiated adjustments are accepted by the tax authorities.

Safe harbours

- There is no simplified approach for low value-adding intra-group services. In practice Croatian Tax Administration follows the OECD TP Guidelines and OECD recommendations on intra-group services.
- There are special rules however on safe harbours in respect of certain industries, types of taxpayers, or types of transactions in case of intra-group financing.
Benchmarking analysis

- The local benchmark is preferred over the Pan-European analysis.
- Interquartile analysis is preferred in the benchmarking study when applying statistical method.
- When applying the interquartile range, Q1 until Q3 are preferred in the benchmarking study.
- The tax authorities accept any level of mark-up for services as long as it falls within the interquartile range.
- It is not officially prescribed, but in practice, loss making entities (last 3 years) are not included in the benchmarking study.
- The tax authorities accept any level of mark-up for services as long as it falls within the interquartile range.
- It is not officially prescribed, but in practice, loss making entities (last 3 years) are not included in the benchmarking study.

Transfer pricing audit procedures and penalties

- According to the Croatian regulations, business transactions between related parties and prices agreed between them will be recognized for tax purposes and accepted by the tax authorities if the taxpayer has in its possession, and provides upon a request from the tax authorities, details on the method used for determining the transfer prices, including reasons why the comparable uncontrolled prices method is not appropriate, as well as supporting documentation for such an argumentation.
- The Croatian company has to be able to document where, when and from whom the services were provided and which services those were. Services need to be supported with documentation as described in the points mentioned above.
- There is no special procedure connected with transfer pricing stipulated in the legal requirements, nevertheless, the Croatian authorities has published the Guidebook for Surveillance of Transfer Pricing.
- There are no special penalties for not having TP Documentation. Since transfer prices are audited within Corporate Income Tax audit general penalties for Corporate Income Tax violations are applicable.
- For legal or natural persons if the corporate income tax base is not defined, penalty is from EUR 260 to EUR 6.190.
- For the responsible persons within the legal entity, penalty is from EUR 260 to EUR 2.620.
- Penalty interest is 6.82% (as of 1 July 2018).
<table>
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<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>Transfer pricing adjustments</td>
<td>There is <strong>no special provisions or rules connected with transfer pricing adjustments</strong>. In practice year-end adjustments are <strong>available</strong>.</td>
</tr>
<tr>
<td>Cost Contribution Agreements (CCAs)</td>
<td><strong>CCAs are not legally described in the Croatian legislation, nevertheless, CCAs are generally accepted in case of correctly documented process of cost allocation.</strong> Local transfer pricing documentation should include information concerning benefits obtained by the Croatian company from the services received and details towards the allocation key. Furthermore, the allocation key used should prove consistency in its application – it means that it should be clear for all entities to which the allocation key is applied.</td>
</tr>
<tr>
<td>Advanced Pricing Agreements (APAs)</td>
<td>Republic of Croatia allows APAs from April 2017. APAs are regulated by Bylaw on Advanced pricing agreements procedure. As of July 2018 there are no APAs approved.</td>
</tr>
<tr>
<td>Implementation of BEPS</td>
<td>At this moment, the <strong>BEPS Reports were not yet implemented</strong>.</td>
</tr>
<tr>
<td>Signature of Multilateral Competent Authority Agreement (MCAA)</td>
<td>Croatia has signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information.</td>
</tr>
<tr>
<td>Transfer pricing as interest to the tax authorities in Croatia</td>
<td>The tax authorities are interested in all types of transactions. Since transfer prices are audited within Corporate Income Tax audit statute of limitations of 3 years is applicable, e.g.: during the 2016, years which are opened for a tax audit are 2012, 2013, 2014 and 2015.</td>
</tr>
</tbody>
</table>
1. Is the CUP method preferred (should the CUP method be rejected if another method is applied?)?
Yes, the CUP method is preferred and any other method should be rejected if CUP method can be applied.

2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?
Yes, it is necessary to explain in details why prioritised methods are non-applicable.

3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?
The local benchmark is preferred over the Pan-European analysis.

4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?
Interquartile analysis is preferred in the benchmarking study.

5. Are there any preferences as for the point from which the interquartile range should be applied, i.e. is median preferred or is any point from IQR acceptable? 
Do the tax authorities accept any level of mark-up for services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?
Interquartile range, Q1 until Q3 are preferred in the benchmarking study.
The tax authorities accept any level of mark-up for services as long as it falls within the interquartile range.

6. Does your tax administration use secret comparables for transfer pricing assessment purposes?
No, the tax administration uses publicly available databases.

7. How do tax authorities approach accepting entities with loss (aggregated or incurred in particular years) in the benchmarking study?
It is not prescribed, but we usually do not include loss making entities (last 3 years) in the benchmarking study.

8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?
The duration of the tested period is not prescribed by the tax authorities, but in practice 5 years is the preferred duration.
9. Are there any requirements for updating a benchmarking analysis?

Yes, there are requirements for an update of financial data of comparable companies every year and complete new benchmark analysis every third year (OECD Guidelines).

10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?

Not applicable.

11. Does burden of proof (that the transaction is arm’s length) lie with the taxpayer or tax administration?

The burden of proof lies with the taxpayer until the TP documentation is submitted, after that it lies with the tax administration.

12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?

The tax authorities prefer it prepared in local language.

13. Do the tax authorities accept self-initiated adjustments?

In practice, self-initiated adjustments are accepted by the tax authorities.

14. Has your country enacted legislation implementing the new structure of TP Documentation indicated in Action 13 of BEPS (Local File, Master File, country-by-country reporting) or is it considering enacting such legislation?

No, the BEPS Reports were not yet implemented.

15. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?

Croatia has signed the Multilateral Competent Authority Agreement (MCAA).

16. If your legislation provides for exemption from transfer pricing documentation obligations, please explain.

There are no exemptions prescribed.
17. **What are the penalties for not having TP Documentation (for the tax payer and the Board)? Are there any penalties if the terms of transactions are not arm's length?**

There are no special penalties for not having TP Documentation. Since transfer prices are audited within Corporate Income Tax audit general penalties for Corporate Income Tax violations are applicable.

For legal or natural persons if the corporate income tax base is not defined, penalty is from EUR 260 to EUR 6,190.

For the responsible persons within the legal entity, penalty is from EUR 260 to EUR 2,620.

18. **Is the transfer pricing of interest to the tax authorities in your country? If yes, please indicate what type of transactions / taxpayers / years, etc. are usually controlled?**

The tax authorities are interested in all types of transactions.

Since transfer prices are audited within Corporate Income Tax audit statute of limitations of 3 years is applicable, e.g.: during the 2016, years which are opened for a tax audit are 2012, 2013, 2014 and 2015.

19. **Are APAs popular in your country? How many APAs have been issued?**

Republic of Croatia allows APAs from April 2017, but there are still no APAs approved.
**Regulations**

- Income Tax Act,
- Guidance D-22,
- Guidance D-332,
- Guidance D-333,
- Guidance D-334,
- Guidance D-10 (effective since January 2013) on the Low Value-Adding Intra-group services.

**Arm's length principle and definition of related party**

- Article 23 (7) of the Income Tax Act introduced the arm’s length principle, providing a definition of related party (“affiliation”) and the ownership rules for determining when parties are related.
- Guidance D-22 recommends to use OECD Transfer Pricing Guidelines.
- Guidance D-332 concerning the application of international standards in the taxation of transactions between associated companies.
- Guidance D-333 outlines requirements concerning §38nc of the Income Tax Act and comments on the principles of binding assessments, the latter of which corresponds to the preliminary price agreement principles within the meaning of the OECD Guidelines.
- Guidance D-10 (effective since January 2013) on the Low Value-Adding Intra-group services.

**Transfer pricing documentation**

- Guidance D-334 is dedicated to the recommended scope of transfer pricing documentation.
- The Guidance also mentions that transfer pricing documentation prepared in accordance with the Code of Conduct in Transfer Pricing Documentation for Associated Enterprises in the EU “should be sufficient” for substantiating the method of calculating the arm’s length price.

Guidance D-332, 333 and 334 are not legally binding source of domestic law, but are usually followed by the tax authorities.
OECD guidelines treatment

The principles of the OECD Guidelines have not been directly implemented in tax law of the Czech Republic only the Guidance D-22 contains general reference to OECD Guidelines. Nevertheless their binding effect in interpretation of the Treaties arises from the fact that the Czech Republic is a signatory to the multilateral Vienna Convention on the Law of Treaties.

Guidance D-332 also confirms the application of the OECD Guidelines and states that, although the OECD Guidelines apply to cross-border transactions, they may be used as a supportive guideline in domestic transactions, given that the arm’s length principle is defined similarly in the OECD Guidelines and in Sec. 23(7) of the Income Tax Act.

OECD Guidelines has been translated into the Czech language and published by the Tax Administration.

Guidance D–334 refers to the OECD Guidelines, as well as the Code of Conduct in Transfer Pricing Documentation for Associated Enterprises in the EU.

Definition of related parties

Parties are considered to be related if:

- one party participates directly or indirectly in the management, control or capital of the other; or
- a third party participates directly or indirectly in the management, control or capital of both of them; or
- the same persons or their close relatives participate in the management or control of the other party (excluding the situation where one person is a member of the supervisory boards of both parties).

Participation in control or capital means ownership of at least 25% of a company’s registered capital or voting rights.

Individuals are related if they are close relatives.

Parties are also deemed to be related if they enter into a commercial relationship mainly for the purpose of reduction of the tax base (this constitutes the anti-avoidance rule).

Transfer pricing methods

The transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are:

- traditional methods: (i) comparable uncontrolled price (CUP) method, (ii) resale price method, (iii) cost plus method;
- transactional profit methods: (i) profit split method, (ii) transactional net margin method.
Transfer pricing documentation requirements

- Czech tax law does not provide any legally binding rules regarding the preparation of specific transfer pricing documentation. Taxpayers are not required to prepare and submit in advance any specific documents except for the following mandatory TP disclosure as a part of the corporate income tax return.

Mandatory TP disclosure as a part of the corporate income tax return

- According to the amended transfer pricing legislation, taxpayers fulfilling criteria listed below are obliged to disclose transfer pricing information at the time of disclosing the annual corporate income tax.

- The disclosed information can be used by tax authorities to perform a risk analysis of the taxpayer regarding transfer pricing issues. This risk analysis is subsequently used in tax control planning and in prevention of tax avoidance.

- The taxpayers are obliged to report details about their related-party transactions if they fulfil at least one of the three criteria listed below:
  - total assets exceeding CZK 40 million (EUR 1.5 million),
  - net turnover exceeding CZK 80 million (EUR 3 million) per annum,
  - average number of employees exceeding 50.

And they meet one of the following:

- The taxpayer carries out a transaction with related parties residing abroad. In this case, the taxpayer fills in this supplement in relation to these foreign related parties.

- The taxpayer has posted tax losses, and at the same time the taxpayer has carried out a transaction with a related party, foreign and/or local. In this case, it fills in the supplement in relation to all related parties.

- The taxpayer is a recipient of an investment incentive in the form of tax allowance and at the same time the taxpayer has carried out a transaction with a related party, foreign and/or local. In this case, the taxpayer fills in the supplement in relation to all related parties.

- The above-mentioned taxpayers are obliged to disclose the information annually and the documentation should include basic information about the related party (name, place of residence, country) and should also include the following information:
  - purchase / sale of long-term assets and inventories,
  - purchase / sale of services, royalties,
  - interest, dividend received or paid,
  - long/short term and current receivables and payables with related parties as of current and prior tax/financial period end,
  - existence of cash pool,
  - loans, share capital and other equity contributions.
Optional / recommended scope of the TP documentation

- The taxpayers are generally recommended by the Czech tax administration to prepare a transfer pricing documentation at least in the scope outlined in the Guidance D-334. As noted above it follows OECD and EU rules and principles.

- If the transfer pricing documentation is prepared in Czech or in Slovak, it will be accepted by the tax authorities. Some tax officers may accept the transfer pricing documentation in English, some may require its translation.

Country by Country reporting

As of 19th September 2017, the Country-by-Country reporting directive was implemented into the Czech tax legislation. The amendment sets out the obligations of Czech companies that are part of a multinational group and, at the same time, the consolidated revenues of the whole group exceeded 750 million EUR. These companies have to newly submit (i) Notification where announce that they are part of a multinational group, or if necessary (ii) the Country-by-Country Report, which will include selected information about the multinational group.

- No, general transfer pricing regulations in the tax law applies for intra-group services transactions.

Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?


Do you have any simplified approach for low value-adding intra-group services?

- Yes. Instruction of the General Financial Directorate D-10 for low value-adding intra-group services states that if taxpayer provides tax administration with information specified in the Instruction (among others description of services, purpose of transaction and method used in order to establish remuneration), taxpayer will not be obliged to prepare transfer pricing documentation for transaction regarding provision of low value-adding intra-group services. Definition of such services is included in the Instruction.
Transfer pricing audit procedures and penalties

Generally, when the transaction is challenged by the tax authority, upon request the taxpayer is obliged to prove the existence of such transaction (i.e. a substance test) and to prove benefits of the transaction for the taxpayer (i.e. a benefit test). However, as far as the arm's length test is concerned, the burden of evidence lies with the tax authority. Firstly, the tax authority has to prove that the transaction was made between related parties and further that the prices, which the taxpayer used, are different from the arm's length prices. If they do that, then the taxpayer has to explain and document the reasons for such difference. If it fails then the tax authority has right to assess tax.

The taxpayer can submit its transfer pricing documentation supporting the arm's length nature of its related party transactions. However, it is not mandatory requirement.

Although the preparation of the transfer pricing documentation is not mandatory, the tax authority has right to request any reasonable information/documents from the taxpayer to check the arm's length principle. The tax authority shall allow a reasonable time for submission of such documentation. The law does not specify the length of such period exactly, it only states that it can be shorter than 8 days only in very simple or very urgent cases. However, the time should correspond with the scope of required information/documents.

In practice, rather than requesting general information, the tax authorities will specify their requirements (e.g. questionnaires, price calculations, supporting materials).

In cases where the tax authorities have requested evidence to substantiate items included in the tax return, it is the tax authorities themselves that decide whether that evidence is adequate. Where it is considered inadequate, the tax authorities may reassess the taxpayer’s liability on the basis of their own sources of information, such as third-party valuations or information obtained from other taxpayers’ returns or investigation.

Difference between contractual price of the transaction and the price at arm’s length may be reclassified as deemed dividends (section 22/1/g/3 of Income Tax Act). This does not apply to entities residing in the EU, Iceland, Norway, Switzerland and Lichtenstein. Simultaneously, the double tax treaty aspects need to be considered.

Upon a successful challenge of transfer prices by the tax authorities, the taxpayer must pay a penalty of:

- 20% of the additional tax assessed,
- 1% of the decreased tax loss.

The taxpayer shall pay the interest on late payments: the interest rate applies for each day of the tax arrears and is calculated as the National Bank’s repo-rate (effective on the first day of the relevant half-year) increased by 14%. This interest charge is applicable for a maximum period of five years.

Furthermore, if the taxpayer does not fulfil its obligations following Country – by – country rules then the Czech tax authority might impose him a penalty up to CZK 1,5 mio.
### Transfer pricing adjustments

- There are no specific legal provisions on secondary adjustments, however domestic legislation does not forbid taxpayers to make transfer pricing adjustments.

- The right to make secondary adjustment is not always enacted in double tax treaties ("DDT") with the Country of taxpayer's related party residence (Article 9, § 2 of DTT). Only about 50% of the Czech Republic DTTs include § 2 which is mostly followed by § 3 that allows secondary adjustment only in cases of unintentional behaviour.

- The burden of proof lies with the taxpayer.

### Cost Contribution Agreements (CCAs)

- CCAs are generally accepted.

- Cost contribution payments are deductible, however, tax deductibility is determined on case-by-case basis.

### Advanced Pricing Agreements (APAs)

- The APA regulations came into force on 1 January 2006. The APA procedures are described in Article 38nc of the Income Tax Act.

- The Czech Ministry of Finance can issue:
  - unilateral APA, or
  - bilateral APA, or
  - multilateral APA.

- APAs in Czech Republic may only apply to transactions that have not yet affected the tax liability.

- In order to submit an application for an APA, the taxpayer must pay a CZK 10,000 fee.

- The period for which the APA may be concluded is no longer than three years.

- The APA is issued in the form of an administrative decision.

- The decision should be issued within 6 months period from taxpayer's request.

### Implementation of BEPS

- Czech Republic has already implemented Country-by-country reporting (BEPS Action 13) and Harmful tax practise (BEPS Action 5) into the tax legislation.

- Further the Czech Ministry of Finance stipulated provisions relating to CFC (BEPS Action 3), interest deduction (BEPS Action 4), GAAR (BEPS Action 6) and Hybrid Mismatch Arrangements (BEPS Action 2). These provision will be implemented into the Czech tax legislation after a final approval of the Act by Chamber of Deputies and Czech president. It is highly unlikely that the provisions will change before their final approval. The provisions should come into force as of 1 January 2019 expecting Hybrid Mismatch Arrangements, which should come into force as of 1 January 2020.

- Recommendations of the BEPS project dealing with an interpretation of arm’s length principle of course could be followed immediately without a need of including them into the law as such recommendations have an interpretation power.
1. Is the CUP method preferred (should the CUP method be rejected if another method is applied?)?

There is no detailed guidance on this topic. However, Ministry of Finance issued a few guidelines recommending to follow OECD TP guidelines.

It is possible to use the value determined under the Czech Act on Property Valuation only in exceptional cases, where the arm’s length price cannot be determined.

The Valuation Act describes the following methods: cost, DCF, comparison with other transactions, nominal value, book (accounting) value, price quoted on a public market or a price in a binding sale agreement. The act defines the categories of assets and the valuation methods to be used. For example:

- buildings are to be valued at cost, DCF, prices of comparable asset or a combination of these methods,
- land – value per square meter is determined by location in a “valuation map”. These values are issued by municipalities,
- most of intangibles at DCF,
- securities traded on a public market – at market value,
- shares not publically traded – at a share on equity,
- business – DCF.

In addition to this Ministry of Finance issued guidance which defines in detail the above methods.

If taxpayer prepares transfer pricing documentation, it is recommended to explain why prioritised methods are non-applicable.

2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?
3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?

There is no detailed guidance on this topic. Ministry of Finance issued few guidelines recommending to follow OECD TP guidelines.

The comparability issue is always very important.

Based on our experiences Pan-European benchmarking studies are accepted. However, we recommend that the final set of comparable companies contains also Czech companies, unless a comparable company cannot be found in the Czech Republic.

4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?

No. There is no detailed guidance on this topic. Ministry of Finance issued a few guidelines recommending to follow OECD TP guidelines.

5. Are there any preferences as for the point from which the interquartile range should be applied, i.e. is median preferred or is any point from IQR acceptable?

Do the tax authorities accept any level of mark-up for services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?

No. Any point can be applied. Moreover, judicial decisions state that in a situation when a point from range is to be selected the authorities shall prefer the point that is the most beneficial for the taxpayer.

6. Does your tax administration use secret comparables for transfer pricing assessment purposes?

No, the Czech tax administration does not use any secret comparables.

The Tax Procedure Act guaranties a taxpayer a right to understand how the tax was assessed or additionally assessed by the tax administrations, therefore such use might be challenged by the taxpayer.

7. How do tax authorities approach accepting entities with loss (aggregated or incurred in particular years) in the benchmarking study?

There is no detailed guidance on this topic. Ministry of Finance issued a few guidelines recommending to follow OECD TP guidelines.

They can be included if they are comparable. The use of loss making entities in the benchmarking study is disputable in case of a low-risk-profiled entities.
### Czech Republic | Application practice

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?</td>
<td>There is no detailed local guidance on this topic. Ministry of Finance issued a few guidelines recommending to follow OECD TP guidelines. In practice both approaches are common.</td>
</tr>
<tr>
<td>9. Are there any requirements for updating a benchmarking analysis?</td>
<td>There is no detailed local guidance. Usually the best practice is followed – to update financial data for comparables annually and to update the whole benchmarking analysis every 3 years.</td>
</tr>
<tr>
<td>10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?</td>
<td>There is no detailed guidance on this topic. Usually the best practice is followed – 25%.</td>
</tr>
<tr>
<td>11. Does burden of proof (that the transaction is arm’s length) lie with the taxpayer or tax administration?</td>
<td>Generally, when the transaction is challenged by the tax authority, upon request the taxpayer is obliged to prove the existence of such transaction (i.e. a substance test) and to prove benefits of the transaction for the tax payer (i.e. a benefit test). However, as far as the arm’s length test is concerned, the burden of evidence lies with the tax authority. Firstly, the tax authority has to prove that the transaction was made between related parties and further that the prices, which the taxpayer used, are different from the arm’s length prices. If they do that, then the taxpayer has to explain and document the reasons for such difference. If it fails then the tax authority has right to assess tax.</td>
</tr>
<tr>
<td>12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?</td>
<td>Czech or Slovak versions of the transfer pricing documentation are generally accepted and preferred by the tax authorities. Nevertheless, some tax officers may accept TP documentation in English; some may require its translation.</td>
</tr>
<tr>
<td>13. Do the tax authorities accept self-initiated adjustments?</td>
<td>Yes, and in contrary to point 11 above, the burden of proof lies with the taxpayer.</td>
</tr>
</tbody>
</table>
14. **Has your country enacted legislation implementing the new structure of TP Documentation indicated in Action 13 of BEPS (Local File, Master File, country-by-country reporting) or is it considering enacting such legislation?**

The transfer pricing documentation is not mandatory in the Czech Republic. It may be subject to a change in the future but no legal steps have been taken so far. In terms of CbC please refer to the next point.

15. **Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?**

Yes, on 27th January 2016. The Country-by-Country reporting directive was implemented into the Czech tax law as of 19th September 2017. The amendment sets out the obligations of Czech companies that are part of a multinational group and, at the same time, the consolidated revenues of the whole group exceeded EUR 750 mio. These companies have to newly submit (i) Notification, or if necessary (ii) the Country-by-Country Report, which will include selected information about the multinational group.

16. **If your legislation provides for exemption from transfer pricing documentation obligations, please explain.**

The Czech tax law does not contain any exemption from transfer pricing documentation obligations.

17. **What are the penalties for not having TP Documentation (for the tax payer and the Board)? Are there any penalties if the terms of transactions are not arm's length?**

No special penalties for not having TP documentation.

There is a penalty if a taxpayer cannot justify the calculation of income tax including any adjustments between accounting profit and tax base and the tax is assessed by the tax authorities. There is a penalty of 20% of the difference between declared and assessed tax, plus an interest charge of 14% + CNB repo p.a.

If the taxpayer does not fulfil its obligations following Country – by – country rules then the Czech tax authority might impose him a penalty up to CZK 1,5 mio.
18. **Is the transfer pricing of interest to the tax authorities in your country?**
   If yes, please indicate what type of transactions / taxpayers / years, etc. are usually controlled?

Beginning the tax periods of 2014 the Ministry of Finance introduced new supplement to the Corporate Income Tax Return. Its objective is to disclose information on transactions with related parties and to identify risks for tax authorities. Starting from FY 2017 the supplement was extended about additional requested information.

Further the Country-by-Country reporting come into the force as of 19th September 2017.

The Czech Tax Authority announced in 2015 that they will more focus on transfer pricing during tax audits. It is more than highly likely that all these data and analysis will be used for tax control planning procedures. Further, the Czech Tax Authority publicly disclosed its intention to use CbC reporting for risk assessment purposes.

19. **Are APAs popular in your country?**
   How many APAs have been issued?

Data are not available.
Regulations

- Act 131 of 1996 on Corporate Tax and Dividend Tax,
- Act 127 of 2007 on the Value Added Tax,
- Act 150 of 2017 on the Rules of Taxation,
- Act 37 of 2013 on certain rules of international administrative cooperation on tax and other public charges (CbC report)
- Decree no. 22/2009 on transfer pricing documentation requirements,
- Decree 32/2017 from the Ministry for National Economy on transfer pricing documentation requirements,
- Guidelines issued by the tax authority.

**Arm’s length principle and definition of related party**

- Corporate Income Tax Act Article 18 sets out basic transfer pricing rules,
- Article 4/23 provides a definition of related parties and Article 31/2 references domestic legislation to OECD transfer pricing guidelines; Act on rules of taxation Article 2 [2] on arm’s length principle,
- VAT Act Article 67 – determination of tax base if consideration is not arm’s length,
- 55/2006 Guideline issued by the tax authority on the application of the Transactional Net Margin Method,
- 139/2007 Guideline issued by the tax authority on the application of transfer pricing methods in practice,
- 16/2010 Guideline issued by the tax authority on changes to the definition of related parties from 2010,
- 21/2010 Guideline issued by the tax authority on the adjustment of related party items in connection with the assumption of loan and waiver of receivables,
- 41/2010 Guideline issued by the tax authority on the adjustment of the prices for in-kind contributions,
- 19/2013 Guideline issued by the tax authority on suretyship provided by related entities.

**Transfer pricing documentation**

- Decree 32/2017 from the Ministry for National Economy on transfer pricing documentation requirements,
- Decree no. 22/2009 on transfer pricing documentation requirements,
- 37/2004 Guideline issued by the tax authority on the fulfilment of the transfer pricing documentation requirement,
- 48/2007 Guidelines issued by the tax authority on the preparation of simplified transfer pricing documentation and default penalties,
- 77/2007 Guideline issued by the tax authority on the preparation of consolidated transfer pricing documentation.
The CIT Act contains specific reference to the OECD Guidelines (in Article 31). Recent tax authority practice is that, if the Hungarian tax regulations do not concern provision on specific issues, the OECD Guidelines may be used as a primary reference.

The associated company means:

- the taxpayer and the person in which the taxpayer has a majority control – whether directly or indirectly – according to the provisions of the Civil Code,
- the taxpayer and the person that has majority control in the taxpayer – whether directly or indirectly – according to the provisions of the Civil Code,
- the taxpayer and another person if a third party has majority control in both the taxpayer and such other person – whether directly or indirectly – according to the provisions of the Civil Code, where any close relative holding a majority control in the taxpayer and the other person shall be recognized as third parties,
- a non-resident entrepreneur and its domestic place of business and the business establishments of the non-resident entrepreneur, furthermore, the domestic place of business of a non-resident entrepreneur and the person who maintains the relationship defined under Paragraphs a)-c) with the non-resident entrepreneur,
- the taxpayer and its foreign branch, and the taxpayer's foreign branch and the person who maintains the relationship defined under Paragraphs a)-c) with the taxpayer,
- the taxpayer and other person if between them dominating influence is exercised relating to business and financial policy having regard to the equivalence of management.

The transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are:

- traditional methods: (i) comparable uncontrolled price method, (ii) resale price method, (iii) cost plus method;
- transactional profit methods: (i) profit split method, (ii) transactional net margin method;
- other method: if the arm's length price can be determined by neither of the above five methods.

There is no established priority of methods. But the most appropriate method shall be interpreted as in the TPG.

An entity falling under the CIT Act is obliged to prepare transfer pricing documentation for transactions with related parties if:

- it employs at least 50 people,
- its total turnover on a consolidated statement is more than EUR 10 million.
The fulfilment of the above thresholds needs to be monitored on a group and not a stand-alone company basis.

**Exemptions** from aforementioned obligation are as follows:

- taxpayers are not obliged to prepare transfer pricing documentation for transactions where the arm’s length value of contractual performance during the tax year in question (without value added tax) does not exceed HUF 50 million (around EUR 164,000), provided that for the purpose of determining the limit – irrespective of whether a consolidation takes place – the value of the transactions referred to in the contracts which may be consolidated under this decree shall be aggregated;

- when costs are recharged without applying any mark-up, provided that the service provider is not a related party from the perspective of the taxpayer or the cost bearing entity. In addition, if the taxpayer, foreign entity recharges the consideration of the product or service supply to more than one associated parties, then the taxpayer shall prove that the applied allocation method – with the facts and circumstances of the given transaction taken into account – is in line with the arm’s length principle;

- where the tax authority established the applicable arm’s length price in a resolution (APA), from the tax year of filing the request to the last day of the tax year when the resolution expires, provided that the facts described in the resolution remain unchanged during this period;

- for non-repayable cash transfers;

- transactions carried out between a Hungarian resident taxpayer’s foreign permanent establishment and its related party, if the taxpayer’s CIT base does not include the income attributable to the foreign permanent establishment;

- taxpayers on the basis of contracts signed with individuals not acting as private entrepreneurs;

- taxpayers qualified as small or medium-sized enterprises on the last day of the tax year with regard to their long-term contracts concluded with associated companies in the interest of joint purchases and sales to overcome competitive disadvantage, if the voting rights of the small and medium-sized enterprises in question held in the associated company exceed 50 percent on the aggregate;

- taxpayers in connection with non-repayable financial support or grant provided by the state or any municipal government or with any asset provided without consideration under statutory obligation (including investment projects);

- stock exchange transactions performed in accordance with the Act on Capital Market or in the case of applying fixed official prices or any other prices determined in a legal regulation;

- public-benefit non-profit business association and the taxpayers in which the state has majority control – whether directly or indirectly.
Foreign entities are also subject to the documentation obligation. However, transfer pricing rules are not required to be followed where the CIT base would not change even if a non-arm’s length price was applied (if the income attributable to the foreign permanent establishment is exempt from Hungarian tax, based on the applicable double tax treaty).

Overall, the Hungarian transfer pricing documentation requirements are consistent with the OECD Guidelines.

The transfer price documentation consists of the master file, the local file and the country by country report (obligatory from FY 2018; however, for FY 2017 even the former documentation rules may be applied).

The following essential elements will have to be included in the Master File of the transfer pricing documentations in Hungary:

- group diagram representing the organization structure, the legal and ownership structure of the group and the geographical location of the organizations;

- as regards the presentation of the group:
  - the driving force behind business results;
  - the presentation of the supply chain for the five largest products and services of the group and to those exceeding 5% of the turnover of the group by sales revenue, such may also be presented in a table or graph;
  - a list of significant service agreements between the members of the group, excluding research and development services, and a brief description of the arrangements, including a description of the capacity of major sites providing significant services and a transfer pricing policy to allocate service costs and pay within the group for determining service charges;
  - the presentation of the main geographic markets of the group’s products and services referred to in subpoint above;
  - a concise functional analysis that demonstrates the contribution of individual players to value creation, in particular the key functions performed, the significant risks borne and the significant assets used;
  - the presentation of transactions related to major business reorganizations, acquisitions and divestments in the business year;

- as regards the intangible assets of the group:
  - the presentation of the group's comprehensive strategy for the development, ownership and utilization of intangible assets, including the geographical location of the main R & D facilities and R & D management;
  - a list of significant intangible assets or their groups and their legal owners;
  - a list of agreements with associated undertakings relating to intangible assets, including cost-agreement agreements, key research service and licensing agreements;
a general presentation of the group’s transfer pricing policy for research and development and intangible assets;

a general description of the assignment of any significant interest in any intangible asset between associated undertakings during the business year concerned, including associated companies, countries and compensation received or provided for;

concerning the group’s financial activities within the group:

a general presentation of the group’s financing, including significant financing arrangements with non-related creditors;

identification data of all members of the group providing central funding to the group, including the country whose law governs the operation of the funding organization and the place of effective management of the organization;

the presentation of a general transfer pricing policy for the financing agreements between related undertakings;

concerning the group’s financial and tax situation:

the consolidated financial statements of the group for the financial year, and, in the absence thereof, of other financial reporting, regulatory, internal management reports, taxation or other purposes;

listing and short presentation of the group’s current unilateral advanced pricing agreements and other tax arrangements (including, inter alia, conditional tax decisions, rulings) related to the distribution of income between countries; and

the date of preparation of the main document.

The following essential elements will have to be included in the Local Files of the transfer pricing documentations in Hungary:

a description of the structure of the taxpayer’s management (management), its organizational chart, the names of the persons to whom the management reports and the names of the countries in which these persons maintain their head office;

da detailed presentation of the taxpayer’s business, activity and strategy, including whether the taxpayer participated in or was affected by any relocation of business, reorganization or transfer of intangible assets in the current or immediately preceding fiscal year; and the impact of such to the taxpayer;

listing the taxpayer’s most important competitors;

a copy of existing unilateral, bilateral or multilateral advanced pricing agreements (APAs) in force and other tax arrangements (including inter alia, conditional tax assessment, ruling decisions) that were issued by other than the Hungarian Tax Authority affects the transfer pricing subjected transactions; and

the date of the local document being prepared;

data for each controlled or aggregated transactions – to be detailed below:
the presentation of a controlled transaction (e.g. obtaining production services, acquiring goods, selling products, providing services, lending, providing financial and performance guarantees, licensing intangible assets) and the presentation of the environment and relevant market in which the transaction is to be established;

the name, domicile, domestic or foreign tax number of other associated companies involved, if any, of the company's registration number by the court of registry (or other registration number) and the name and registered office of the court (authority) of the company register, and the indication of the basis of the associated business relationship;

the amount of payments effected or incurred on the basis of the controlled transaction, in the tax year, broken down at least by the parties to the transaction;

a copy of all versions that is/was valid in the tax year of the contracts relevant for the determination of the transfer prices, if the contract is not in writing, a detailed description of its content;

da detailed comparative and functional analysis of the related undertakings involved in the controlled transaction, including any change compared to the previous years;

the description of the most appropriate transfer pricing method, taking into account the nature, type of transaction, available comparative data; and the reasons for choosing the method;

where relevant, the designation of the associated company chosen for the tested party and the reasons for the choice;

a summary of the most important presuppositions taken into account when applying chosen transfer pricing method;

where relevant, an explanation of the multiannual comparative analysis;

the listing and presentation of selected internal and external comparative transactions and the presentation of the relevant financial data of the independent companies on which the transfer pricing analysis is relied, including a description of the comparative analysis methodology and the source of that information;

the presentation and detailed justification of the comparability adjustments and the indication whether the adjustment is made in the tested party, in the comparable independent transaction or both;

a detailed description of how the price was adjusted at the controlled transactions by the chosen transfer price determination method, in accordance with the arm's length principle;

a summary of the financial information used in applying the transfer price determination method;

its essential presentation of how the financial data used in the application of the transfer pricing method may be linked to the data contained in the taxpayer’s financial report;
data of any court or other authority proceedings in progress or already closed concerning the transfer pricing of the controlled transaction: the name and seat of the court or other authority (in the case of a foreign court or authority also of its precise title), the number of the case, the commencement and termination date of the procedure, the market price submitted to, and whether accepted or disputed or confirmed by the court/authority.

About CbC reports

A Hungarian resident taxpayer that is a member of a multinational entity (MNE) group is required to prepare a CbC reporting-related notification to the Hungarian tax authority, if the MNE group had an annual consolidated group revenue of EUR 750 million or more in the fiscal year preceding the reporting fiscal year.

The CbC reporting requirement for a Hungarian resident taxpayer can arise in the following situations:

- As the ultimate parent entity
- As the succour entity (and due to specific reasons [Section 2 or Section 4 of Paragraph 43/N of the Act 37 of 2013]).

If a MNE group member does not have an obligation to submit a CbC report under one of the above-listed requirements, it must only satisfy the CbC reporting notification requirement until the last day of the fiscal year.

For low value-added intra-group services taxpayers may prepare transfer pricing documentation encompassing a relatively less-detailed technical analysis.

The transfer pricing documentation for contracts effective in a given tax year has to be prepared by the deadline for filing the annual CIT return (the last day of the fifth month following the closing of the given tax year).

Documentation can also be prepared in a foreign language. However, at the tax authority’s request, the taxpayer has to prepare a Hungarian translation. No translation can be requested by law for English, German or French documentations.

- No,
- Guidance contained in the TPG relating intra-group services would be relevant.

- Reduced amount of information is expected. The applied arm’s length range shall be between 3-7 percent.
Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?

For the type of taxpayer (SME):
- There are some cases when the taxpayer has no liability for preparing Master file/Local file:
  - the transaction was made based on agreement with an individual,
  - the enterprise is considered small-sized,
  - medium-sized companies for certain transactions,
  - transfers to the State specified by law,
  - the arm's length price was determined by the tax authority in an Advance Pricing Agreement,
  - recharge of consideration for the sale of product or service in the same amount to related party(ies), if the seller or party bearing the cost is not related enterprise,
  - free cash transfer,
  - the value of the transaction does not reach HUF 50 million within the tax year,
  - transactions on stock exchange or fixed price specified by law.

- CbCR: multinational enterprise is not required to prepare CbCR, if consolidated revenue is under EUR 750 million in the financial year preceding the financial year reported.

For the type of transaction
- Simplified approach for low value-adding intra-group services: reduced amount of information is expected. The applied arm's length range shall be between 3-7 percent.

- During tax audits, the tax authorities will review the formal elements and also the supporting analysis of the inter-company transactions from an arm's length point of view.

- In relation to a tax base adjustment, a penalty of 50% of the unpaid tax may be imposed, as well as a late payment interest charge at double of the prime rate of the National Bank of Hungary.

- Furthermore, if the taxpayer fails to present appropriate transfer pricing documentation (Master file, Local file) at the request of the tax authorities, it may be fined up to HUF 2 million per related party transaction. In case of repeated violations of the documentation obligation, the taxpayer may be fined up to HUF 4 million.

- If the taxpayer fails to present appropriate CbC Report at the request of the tax authorities, it may be fined up to HUF 20 million.
Taxpayers may/have to initiate adjustments in the CIT calculation to meet the arm's length principle in their transfer prices among related parties.

- If the pre-tax profit is lower due to the non-arm's length transfer prices, the taxpayer should increase its CIT base by the difference;
- Reduction of the tax base is also possible [except if the related party is a controlled foreign corporation] if a document signed by both parties declaring the difference between the arm's length price and the price used is available, the other party is subject to Hungarian corporate tax or a similar tax abroad and from 2017 on the condition that the transfer pricing adjustment is also considered at the other party.

There are no specific regulations or guidelines on CCAs. The Hungarian tax authorities would likely take into consideration the OECD Guideline.

Although no formal guidelines or rulings exist, these costs should be deductible in accordance with standard deductibility rules.

The APA regulations came into force on 1 January 2007. The APA procedures are described in Articles 174-183 of the Act 150 of 2017 on the Rules of Taxation.

APAs in Hungary may apply only electronic way to transactions that have not yet been executed or transactions that are in progress. Under the Hungarian legislation, all types of APAs are available:

- unilateral,
- bilateral,
- multilateral.

There are no transaction value limits to be covered by the APAs.

The official filing fees for an APA, payable to the Hungarian Tax Authority, are HUF 2,000,000 [appr. EUR 6,400] for an unilateral statement. In case of multilateral statement the fee is HUF 2,000,000 [appr. EUR 6,400] multiplied by the number of parties involved. The fee of personal consultation is HUF 500,000 [appr. EUR 1,600].

The APA must be issued without unnecessary delay within 120 days of the start of the APA application procedure.

The period for which the APA may be concluded is from 3 to 5 years, but it could be extended to additional 3 years on a taxpayer’s request.

Yes, there are implemented in Hungary.
1. Is the CUP method preferred (should the CUP method be rejected if another method is applied)?

Yes, in practice, CUP method is preferred, nevertheless other methods may be considered as appropriate methods as well.

2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?

Yes, it is recommended to explain the reason(s) if the prioritised methods are unsuitable for being applied. If a TP-method other than 5 basic methods is used, it should be explicitly explained. In all cases the most appropriate method should be used.

3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?

Local benchmark is preferred; nevertheless sample may be enlarged in the case of the absence of sufficient number of comparables. AMADEUS database is used by the Hungarian Tax Authority as well.

4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?

As the CUP method is preferred in practice, the comparable prices (prices of comparable goods/services/transactions) are preferred over statistical methods.

As of 1 January 2015, in line with the OECD standards, new rules regarding the preparation of the comparable analysis and determination of the arm’s length price range were introduced.

The interquartile range shall be (mandatorily) applied:

- when any method is applied (namely the CUP, the resale minus, cost plus, profit split, TNMM or any other method),
- when the comparable data are sourced from public or controlled databases recognized by the tax authority¹, and
- when the analysis covers more than 10 companies or the price range exceeds 15 percentage points,
- unless the taxpayer performs a functional analysis for each component of the sample and, based on this analysis, can conclude that comparability has not been violated.
5. Are there any preferences as for the point from which the interquartile range should be applied, i.e. is median preferred or is any point from IQR acceptable?

Do the tax authorities accept any level of mark-up for services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?

Any point of IQR is acceptable, nevertheless median is considered as a preferred point of the interquartile range. Authorities accept any level of mark-up for services falling within the IQR.

6. How do tax authorities approach accepting entities with loss (aggregated or incurred in particular years) in the benchmarking study?

If there are acceptable and rational reasons for the tested company being a loss maker (and no doubt that losses are not the result of any intra-group transactions), then it may not trigger any issue for the company from a transfer pricing perspective. Nevertheless, tax authorities uphold reservations concerning loss maker entities.

7. Does your tax administration use secret comparables for transfer pricing assessment purposes?

No.

8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?

3-years period is preferred.

9. Are there any requirements for updating a benchmarking analysis?

Benchmarking analysis shall be updated once in 3 years, if there was not any change in the facts and the circumstances.

10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?

It is not regulated from a TP perspective. However, Hungary applies a thin capitalization threshold of 3:1 debt to equity ratio.

11. Does burden of proof (that the transaction is arm’s length) lie with the taxpayer or tax administration?

Taxpayer is obliged to prove that transfer prices comply with the arm’s length principles.

12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?

Documentation can also be prepared in a foreign language. However, at the tax authority’s request, the taxpayer has to prepare a Hungarian translation (except for the English, German and French documentations).
13. Do the tax authorities accept self-initiated adjustments?

Yes, provided that this is well-supported. Risk for challenge.

14. Has your country enacted legislation implementing the new structure of TP Documentation indicated in Action 13 of BEPS (Local File, Master File, country-by-country reporting) or is it considering enacting such legislation?

Hungary has implemented the BEPS suggestions for the transfer pricing documentations, so the transfer price documentation consists of the master file, the local file and the country by country report.

15. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?

Yes.

16. What are the penalties for not having TP Documentation (for the taxpayer and the Board)? Are there any penalties if the terms of transactions are not arm’s length?

If the taxpayer fails to present appropriate transfer pricing documentation (Master file, Local file) at the request of the tax authorities, it may be fined up to HUF 2 million per related party transaction. In case of repeated violations of the documentation obligation, the taxpayer may be fined up to HUF 4 million, and in case of repeated default related to the same transfer pricing report, the taxpayer may be fined up to four times the first penalty per related-party transaction.

If the taxpayer fails to present appropriate CbC Report at the request of the tax authorities, it may be fined up to HUF 20 mio.

In relation to a tax base adjustment, a penalty of 50% of the unpaid tax may be imposed, as well as a late payment interest charge at double of the prime rate of the National Central Bank of Hungary.
17. If your legislation provides for exemption from transfer pricing documentation obligations, please explain.

There are some cases when the taxpayer has no liability for preparing Master file/Local file:
- the transaction was made based on agreement with an individual,
- the enterprise is considered small-sized or medium-sized companies for certain transactions,
- transfers to the State specified by law,
- the arm's length price was determined by the tax authority in an Advance Pricing Agreement,
- recharge of consideration for the sale of product or service in the same amount to related party(ies), if the seller or party bearing the cost is not related enterprise,
- free cash transfer,
- the value of the transaction does not reach HUF 50 million within the tax year,
- transactions on stock exchange or fixed price specified by law.

CbCR: multinational enterprise is not required to prepare CbCR, if consolidated revenue is under EUR 750 million in the financial year preceding the financial year reported.

18. Is the transfer pricing of interest to the tax authorities in your country? If yes, please indicate what type of transactions / taxpayers / years, etc. are usually controlled?

The control of transfer pricing and related party transactions are within the focus of the Hungarian Tax Authority since the introduction of the respective documentation obligations in 2003.

19. Are APAs popular in your country? How many APAs have been issued?

Yes, it is popular (ca. 160 APAs have been issued) – relatively quick procedure that provides good certainty for repeated party transactions.

1 Under the Hungarian transfer pricing regulations, if taxpayers source comparable data from a database, they may take into account data of comparable assets, services, or companies stored in a public database, or in a database verifiable by the Hungarian tax authority (HTA). Taxpayers could also use (i) public data from other sources or (ii) other data verifiable by the HTA (e.g. industry indicators, market analyses).
Regulations and rulings

- The Corporate Income Tax Act (Article 9a, 11, 19),
- The Personal Income Tax Act (Article 25, 25a, 30d),
- The exchange of tax information with other countries Act (9 March 2017),
- Regulation of Ministry of Finance on CBC (June 2017),
- Regulation of Ministry of Finance on CIT-TP (July 2018),
- Regulation of Ministry of Finance on PIT-TP (July 2018),
- Regulation of Ministry of Finance on transfer pricing documentation elements (September 2017),
- Regulation of Ministry of Finance on extension of deadlines for the performance of certain obligations in the field of tax documentation (March 2018),
- Regulation of Ministry of Finance on identifying countries and territories that use harmful tax competition (May 2017).

Arm's length principle and definition of related party

Article 11 of the CIT Act and Article 25 of the PIT Act introduced the arm’s length principle, providing a definition of related party (“affiliation”) and the ownership rules for determining when parties are related.

Transfer pricing documentation

Article 9a of the CIT Act and Article 25a of the PIT Act provide detailed guidance regarding transactions which are subject to documentation requirements, including value limits and categories of such transactions.

OECD Guidelines treatment

- Poland is the OECD member country.
- The OECD Transfer Pricing Guidelines are no part of the Polish law, however they are used as an explanatory instrument.
- Polish regulations are in line with the OECD Guidelines.
- The tax authorities refer to the OECD Guidelines when applying transfer pricing principles.

Definition of related parties

- Since 2017 the threshold for capital relations is set at the level of 25%.

Domestic entity and foreign entity are related if:

- a domestic entity participates directly or indirectly in managing or controlling the foreign entity or has a share (at least 25%) in its capital, or
- a foreign entity or foreign individual participates directly or indirectly in managing or controlling a domestic entity or has a share (at least 25%) in its capital, or
- the same legal entity or individual participates directly or indirectly at the same time in managing or controlling a domestic entity and a foreign entity or has a share (at least 25%) in their capital.
Two domestic entities are related if:

- a domestic entity participates directly or indirectly in managing or controlling another domestic entity or has a share (at least 25%) in its capital, or
- the same legal entity or individual participates directly or indirectly at the same time in managing or controlling two or more domestic entities or has a share (at least 25%) in their capital.

Two domestic entities may be considered related also in cases in which the following links may be observed between entities or persons performing managerial or supervisory roles in those entities:

- family relations,
- property relations,
- relations resulting from an employment relationship.

The transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are:

- traditional methods: (i) comparable uncontrolled price, (ii) resale price, (iii) cost plus;
- transactional profit methods: (i) profit split method, (ii) transactional net margin method.

There is no priority of methods.

In determining whether the correct pricing method has been selected the tax authorities will consider:

- the specifics of the transaction, including the parties’ contribution to the transaction,
- access to reliable data on similar transactions/companies in the market,
- comparability of the respective transactions/companies.

Transactions which must be documented

Domestic entities are obliged to prepare transfer pricing documentation for transactions with related parties if their revenues or costs (according to Accounting Act) in previous tax year exceed 2 million EUR (only for transactions concluded after 2016).

Elements of statutory transfer pricing documentation:

Domestic regulations divide TP documentation requirements depending on taxpayer’s revenue or costs basis, thus taxpayers are obligated to provide:

- local file (above 2 million euro),
- local file with benchmarking analysis and CIT-TP form (above 10 million euro),
local file with benchmarking, CIT-TP form and master file (above 20 million euro),
local file with benchmarking, CIT-TP form, master file and Country-by-Country Reporting (above 750 million euro).

**Local file** requirements:
- description of the company and transaction,
- financial data,
- description of method and manner of calculation of profits including justification of the choice,
- description of business environment (the company’s competition),
- reference documents (i.e. agreements).

**Benchmarking analysis** requirements:
- prepared on the basis of data that is comparable to the terms of the transaction,
- prepared on the basis of comparable data from entities based in Poland.

**CIT-TP form**: simplified financial statement considering transactions and other occurrences between related entities.

**Master file** requirements:
- identification of the related entity, which has prepared the Master file,
- description of organisational structure of the group,
- description of the transfer pricing policy,
- description of the subject and scope of business activities conducted by the group,
- description of significant intangible assets,
- description of financial situation within the group,
- description of agreements conducted with fiscal authorities (APA).

**CbC Reporting** requirements:
- level of income,
- taxes paid, and
- scale of operation conducted by other entities from the group in different countries.

Documentation requirements are based on the OECD Guidelines.

**Documentation should be prepared till the end of the ninth month after the end of the fiscal year.**
The deadline to submit the documentation is:
- 7 days following the request of tax authorities for transactions exceeding the statutory thresholds, or
- 30 days following the request of tax authorities for transactions not exceeding the statutory thresholds, after receiving a request to present such a documentation. The authorities must clarify the reasons for submitting this kind of request.

Additionally, the taxpayer must submit within 9 months after the end of fiscal year:
- statement of preparation of the complete tax documentation, and
- CIT-TP / PIT-TP form.

Safe harbours

There is no safe harbours.

It is planned to introduce safe harbours rules. The proposed solution assumes introduction of safe harbours for loan transactions and low value-adding services.

Benchmarking analysis

Entities are obliged to prepare benchmarking analysis if their revenues or costs (according to Accounting Act) in previous tax year are above 10 million EUR.

Polish regulations require taking into account domestic comparables as a first choice while preparing benchmarking study.

Report from benchmarking study should feature:
- an indication of the associated entity which was chosen as the tested party and an explanation of the reason for this choice,
- a summary of the main assumptions made while performing the analysis and an explanation of the reasons behind these assumptions, including:
  - characteristics of goods or services being the subject matter of the analysed transaction,
  - the course of transaction, including functional analysis,
  - the conditions of the comparable transactions between unrelated parties, business strategy of associated entities and market conditions if they affect the value of the transaction.
- an explanation of the reasons for applying multi-year or one-year data,
- data on comparable business operations between unrelated entities, including data on the relevant financial indicators and data on business operations rejected during the process of benchmarking study because of incomparability with analysed transaction, including the source of data,
- a description of any comparability adjustments made to eliminate the differences between comparable transactions.
If the tax authorities consider the remuneration in the transaction with related party to be not in line with the arm’s length principle and the taxpayer did submit a documentation, tax authorities may estimate taxpayer’s revenue and tax it at a 19% rate.

If the taxpayer fails to submit the documentation on the tax authorities’ request, will be obliged to pay a 50% rate on revenues estimated by fiscal authorities.

There are sanctions under penal and fiscal code for non-submitting the statement of preparation of complete tax documentation and CIT-TP / PIT-TP form or submitting a false statement.

The Polish legislation does not include any information related to transfer pricing adjustments.

Generally, transfer pricing adjustments are acceptable.

CCAs are generally accepted.

APA for CCA is possible according to Article 20a of the Tax Ordinance Act.

APA regulations came into force on 1 January 2006. The APA procedure is described in Articles 20a–20r of the Tax Ordinance Act.

APAs in Poland may apply to transactions that have not yet been executed or transactions that are in progress at the time the taxpayer submits an application for an APA. Under the Polish rules, three types of APAs are available: (i) unilateral, (ii) bilateral, (iii) multilateral.

There are no transaction value limits to be covered by the APAs.

In order to submit an application for an APA, the taxpayer must pay a fee of 1% of the transaction value. However, the Tax Ordinance Act sets the following fee limits:

- unilateral APA concerning domestic entities – fee cannot be less than PLN 5,000 and cannot exceed PLN 50,000,
- unilateral APA concerning domestic and foreign entity – fee cannot be less than PLN 20,000 and cannot exceed PLN 100,000,
- bilateral or multilateral APA – fee cannot be less than PLN 50,000 and cannot exceed PLN 200,000.

The APA is issued by the Ministry of Finance in the form of an administrative decision, and the general administrative procedure resulting from the Tax Ordinance Act applies to the APA.

The period for which the APA may be concluded is no longer than five years.

The APA may be renewed for the period of maximum 5 years.
The APA must be issued without unnecessary delay within:
- 6 months in case of unilateral APA,
- 12 months in case of bilateral APA,
- 18 months in case of multilateral APA.

It is planned to introduce a simplified APA regulations.

The amended Corporate Income Tax Act was introduced in January 2018. The following exemptions from tax deductible costs were introduced:
- advisory services (e.g. advisory services related to: financial management (excluding taxes), market management, strategic management and consultancy services related to resource management), market research, advertising services, management and control, data processing, insurance, guarantees and sureties, bankruptcy management services and similar services,
- all kinds of fees and charges for the use or right to use the rights or values, i.e. copyrights, licenses and know-how,
- transferring the debtor’s insolvency risk due to loans other than those granted by banks and cooperative savings and credit unions.

Expenses for the aforementioned services are excluded from the tax deductible expenses in the part in which the total costs in a tax year exceed 5% of the amount corresponding to the surplus of revenues from all sources of income.

This rule applies to the surplus of costs, in excess of PLN 3,000,000 in the tax year. If the taxpayer’s tax year is longer or shorter than 12 months, the amount of this threshold is calculated by multiplying the amount of PLN 250,000 by the number of months in the tax year of the taxpayer.

The new documentation requirements (resulting from BEPS reports) were introduced on January 1, 2017.

Poland has signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information.

The tax authorities are interested in all types of transactions.
1. **Is the CUP method preferred (should the CUP method be rejected if another method is applied?)?**

There is no hierarchy for the application of methods. The taxpayer could use any method that leads to achieving price which is arm’s length. However, as the tax authorities are required to use methods listed in the Transfer Pricing Decree (consistent with the OECD Guidelines), the application of one of those methods provides greater safety to the taxpayer. There is no obligation to present arguments for rejecting the CUP method. Nevertheless, in practice, the tax authorities examine whether it is possible to use internal comparable data i.e. they verify whether the taxpayer concluded comparable transactions with unrelated parties.

It is planned to amend the regulation in this respect. The proposed solution assumes introduction of another methods, including valuation technics, if it is not possible to use the methods listed above.

2. **In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?**

There is no hierarchy for the application of methods. It should be taken into consideration that the tax authorities verify whether the taxpayer concludes comparable transactions with unrelated parties. Consequently, if the taxpayer concludes the transactions with related and unrelated parties, he should firstly verify whether the terms of such transactions are comparable and the CUP method could be applied. Additionally, in the CIT-TP form the taxpayer has to indicate whether individual transactions occurred only with related parties (or they are also concluded with unrelated entities).

3. **Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?**

Polish regulations require the use of Polish comparables, in the first place. In the absence of such data, it is possible and acceptable to use Pan-European data.

4. **Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?**

The legislation does not define any procedures for applying the statistical methods in benchmarking study. In practice interquartile range is usually applied.
5. Are there any preferences as for the point from which the interquartile range should be applied, i.e. is median preferred or is any point from IQR acceptable?

Do the tax authorities accept any level of mark-up for services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?

6. How do tax authorities approach accepting entities with loss (aggregated or incurred in particular years) in the benchmarking study?

The selection of point of the interquartile range depends on the specific circumstances.

Generally, the tax authorities accept any level of the mark-up in service transactions, as long as it falls within the interquartile range.

It is planned to introduce safe harbours rules. The proposed solution assumes introduction of safe harbours for loan transactions and low value-adding services.

Generally, the tax authorities reject entities with accumulated losses from the set of comparable entities.

7. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?

3 or 5 years period is usually applied, depending on the specific circumstances. In practice, a 3-years period is often applied.

8. Are there any requirements for updating a benchmarking analysis?

The preparation of the benchmarking analysis is mandatory for taxpayers whose revenues / costs in the previous tax year exceeded EUR 10 million. The benchmarking analysis has to be updated every 3 years unless economic conditions change – analysis in the given year would have to be then reviewed.

New transactional materiality thresholds applicable for local file, including the obligation to prepare a benchmarking analysis, is planned to be introduced, i.e.

- PLN 10 million (approx. EUR 2.5 million for transactions concerning tangible assets and financing), and
- PLN 2 million (approx. EUR 0.5 million for other transactions).

Not defined by the law. In practice 25%.

9. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?

The taxpayer is obliged to submit transfer pricing documentation, and the burden of proof lies with the tax administration.
11. **Should the transfer pricing documentation be prepared in local language or could it be prepared in English?**

   However, the taxpayers whose revenues / costs in the previous tax year exceeded EUR 10 million are obliged to prepare and submit (on the tax authority's request) the benchmarking analysis justifying the arm's length character of transactions concluded with related parties.

   The documentation must be prepared in Polish. However, the draft of new regulations in the field of transfer pricing provides for the possibility of submitting Master File in English.

12. **Do the tax authorities accept self-initiated adjustments?**

   Yes, adjustments are accepted.

13. **Has your country enacted legislation implementing the new structure of TP Documentation indicated in Action 13 of BEPS (Local File, Master File, country-by-country reporting) or is it considering enacting such legislation?**

   New requirements (resulting from the implementation of the BEPS reports) are in force as of 1 January 2017 (Local File, Master File). New regulations on CbC reporting entered into force at the beginning of 2016.

14. **Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?**

   Yes, Poland has signed the Multilateral Competent Authority Agreement.

15. **What are the penalties for not having TP Documentation (for the tax payer and the Board)? Are there any penalties if the terms of transactions are not arm's length?**

   In case of lack of documentation and assessment of the income by the tax authorities, the amount of the difference between the declared and assessed tax is subject to the sanction tax rate of 50%. Additionally, the taxpayer is obliged to pay interest for late tax payment. The company's board is exposed to sanctions under the Fiscal Penal Code for not submitting to the tax authorities the required tax information.

   Yes, all types of transactions, especially financial transactions, management and support services, restructuring, license fees.

16. **Is the transfer pricing of interest to the tax authorities in your country? If yes, please indicate what type of transactions / taxpayers / years, etc. are usually controlled?**

   APAs are popular in Poland.

   As of January 2018, 55 APAs have been concluded (46 unilateral, 8 bilateral and 1 multilateral), and 22 APA proceedings were in progress (8 unilateral, 13 bilateral and 1 multilateral).
Regulations and rulings

- Romanian Fiscal Code,
- Order no. 3735/2015 – regarding the application procedure and forms for issuing and amending APAs,
- Order no. 442/2016 – regarding the values of transactions, the content, deadline for preparation, and condition for the request of the transfer pricing file, and the procedures for adjustments/estimates of transfer prices,
- The EU Code of Conduct of Transfer Pricing Documentation,
- OECD Guidelines;

Arm’s length principle and definition of related party

- Article 7 of the Romanian Fiscal Code – providing a definition of related parties,
- Article 11 (4) of the Romanian Fiscal Code and its application Norms introduced the arm’s length principle and transfer pricing methods.

Transfer pricing documentation

- Article 108 of the Romanian Fiscal Procedure Code approved by Law no. 207/2015 requiring the preparation of a transfer pricing file,
- Order no. 442/2016 – regarding the values of transactions, the content, deadline for preparation, and condition for the request of the transfer pricing file, and the procedures for adjustments/estimates of transfer prices,
- The EU Code of Conduct of Transfer Pricing Documentation.

According to the Romanian Fiscal Code and the related norms, besides below mentioned methods every other calculation method accepted by the OECD Guidelines is an applicable method.

The Romanian legislation requirements also refer to the European Union Code of Conduct of Transfer Pricing Documentation [C176/1 of 28 July 2006].

Definition of related parties

Two legal entities are related parties provided that:

- one entity holds directly or indirectly (through the shareholding of related entities) a minimum of 25% of the number/value of shares or voting rights of the other entity or it effectively controls the other entity, or
Romania  |  Legal regulations

- one person holds directly or indirectly (through the shareholding of related entities) a minimum of 25% of the number/value of shares or voting rights in the two entities or the person effectively controls both legal entities.

- In case of an individual which holds directly or indirectly, including the shareholding of related entities, a minimum of 25% of the number/value of shares or voting rights in the legal entity or it effectively controls the legal entity - it is a related party with an entity.

- The norms for the application of Fiscal Code consider that any natural person or legal entity is effectively controlling a legal entity if, according to factual and legal evidences, the administrator/representatives of the company management has/have the power of decision over the activity of the respective legal entity by concluding transactions with other legal entities which are under the control of the same administrator/representatives of the company management.

- In case of two individuals who are spouses or relatives up to the third degree – they are also related parties.

Transfer pricing methods

- The transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are:
  - traditional methods: (i) comparable uncontrolled price method, (ii) resale price method, (iii) cost plus method;
  - transactional profit methods: (i) profit split method, (ii) transactional net margin method;
  - every other method accepted by the OECD Guidelines.

Transfer pricing documentation requirements

- Documentation requirements depend on the taxpayer’s size and the annual value of the intercompany transactions.

- Obligation for the annual preparation transfer pricing documentation is applicable only to large taxpayers that engage in intra-group transactions exceeding certain thresholds. For other taxpayers – only during fiscal audit, upon request of tax authority.

- Large taxpayers are obliged to prepare the transfer pricing documentation if they engage in intra-group transactions with a total annual value exceeding:
  - EUR 200.000 for interest received/paid for financial services,
  - EUR 250.000 for services received/provided,
  - EUR 350.000 for acquisitions/sales of tangible and intangible goods.
The requirement to prepare the transfer pricing documentation based on a specific request:

- The requirement applies to large taxpayers for which the criteria above mentioned is not applicable, and small and medium-sized taxpayers that engage in intra-group transactions with a total annual value exceeding:
  - 50,000 EUR for interest received/paid for financial services,
  - 50,000 EUR for services received/provided,
  - 100,000 EUR for acquisitions/sales of tangible and intangible goods.

Documentation requirements were amended by Order no. 442/2016 and it should include detailed information about the group as well as about the company. Annex 3 to this Order lists 11 sub-items referring to the group and 16 sub-items referring to the company, among others information regarding the taxpayer’s industry and group and an overview of the taxpayer, the transactions related parties involved, functions performed, risks borne, assets engaged, method used and economic analysis.

Does your domestic legislation or regulations provide guidance specific to intra-group transactions?

The application norms of the Fiscal Code include a guideline regarding the criteria for accepted intra-group services, although in certain aspects the guideline is unclear and can be easily misinterpreted.

Does your jurisdiction have safe harbours for low value-adding intra-group services?

Local tax legislation does not indicate any approach with regards to low value-adding intra-group services. Although the Fiscal Code specifics that the mark-up of the Guidelines, i.e. the mark-up of 5%, is implicitly accepted for the low value-adding intra-group services.

Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?

The local tax legislation does not include regulation concerning institution safe harbours.
Transfer pricing
audit procedures and penalties

- For large taxpayers that exceed the above-mentioned specific thresholds, the deadline for preparation of the transfer pricing file is the legal deadline for the submission of the annual corporate income tax return (i.e. 25 March of the following year), for each fiscal year. Moreover, these taxpayers are obliged to submit the transfer pricing documentation to the tax authorities within 10 days of the date of the request, but not earlier than 10 days from the expiration of the preparation deadline.

- For taxpayers that are obliged to prepare the transfer pricing file based on a specific request, the deadline for the preparation of the transfer pricing documentation is 30 to 60 days. The deadline can be prolonged only once up to 30 days.

- Documentation must be prepared in the Romanian language.

- Transfer prices adjustments/estimates to a company’s profits are subject to 16% corporate income tax and late payment interest and penalties.

- What is more, large and medium taxpayers may be subject to a fine of €900 – €2,250 for failure to prepare the transfer pricing file under the conditions and terms imposed by the competent authorities, while for small and medium taxpayers, a fine of €450 – €1,100 may apply.

Transfer pricing adjustments

- The Romanian tax authorities will adjust transfer prices in case they are not performed according to the arm’s length principle.

- The Romanian tax authorities will estimate transfer prices in case they are not or are incompletely documented.

- The adjustment/estimation is made based on the median value of market trend acc. Art. 9 of the Order 442/2016.

Cost Contribution Agreements (CCAs)

- CCAs are generally accepted (according to the chapter 8 section B of the OECD Guidelines); however CCAs are problematic in practice due to a lack of domestic provisions and thus no significant experience of tax authorities exists in this respect.

- Local transfer pricing documentation should include information in connection with benefits obtained by the Romanian company from the services received and details towards the allocation key.

- Furthermore, the allocation key used should prove consistency in its application – it means that it should be clear for all entities to which the allocation key is applied.
Advanced Pricing Agreements (APAs)

- An APA concluded for a particular transaction is binding on the tax authorities with regard to the conditions and method selected by the taxpayer.
- Under the Romanian rules, two types of APAs are available: unilateral, and bilateral/multilateral.
- The fee connected with APAs is set between 10,000 EUR and 20,000 EUR and depends on the taxpayer’s sales but the fee for the modification of an existing APA is set between 6,000 EUR and 15,000 EUR.
- The period of an APA may be up to 5 years, and longer if it is a long-term contract.
- Unilateral APAs should be issued within 12 months and bilateral and multilateral APAs within 18 months.

Implementation of BEPS

- At this moment, the BEPS Reports were not yet implemented.
1. Is the CUP method preferred (should the CUP method be rejected if another method is applied)?

No. The method to be applied is the most suitable method for the determination of market prices among the methods mentioned in the Tax Code.

2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?

The transfer price documentation has to include also the argumentation why a certain method was applied.

3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?

When performing a comparative analysis the territorial criterion has to be observed in the following priority: national, European Union, Pan-European, international.

4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?

The TP legislation (Order no. 442/2016) provides that, for determining the minimum and maximum values, the comparable margin will be divided into four segments/quartiles. The bottom and top quarter represent the extreme values and should be excluded when setting up the market range of remuneration. If the price of the benchmarked transaction does not fall within the market range, then the tax authority sets adjust the transfer price at the median value.

If TP documentation of the taxpayer is incomplete or it is not provided by the taxpayer, the tax authorities adjust the transfer prices. In such case, the transfer price has to reflect the central market trend, i.e. the median value.
5. Are there any preferences as for the point from which the interquartile range should be applied, i.e. is median preferred or is any point from IQR acceptable?

Do the tax authorities accept any level of mark-up for services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?

According to Order no. 442/2016 the median value has to be determined, if possible. If not, the arithmetic mean should be used.

However, there could be objective situations in which comparative values are difficult to identify. In such cases a specific level of mark-up (e.g. 5%) could be taken into consideration, having as argument the facts that:

- Order no. 442/2016 states that its provisions are supplemented with the provisions of the OECD-Guidelines and the EU Code of Conduct,
- particular discussion documents issued by the EU Joint transfer pricing forum mention the usage of specific levels of mark-ups in particular cases.

However, in case of the usage of specific levels of mark-ups the reasons therefore (and any difficulties occurred in case of using the standard methods) should be explained in detail in the transfer price documentation and no guarantee exists that the mark-ups will be accepted by the tax authority.

6. Does your tax administration use secret comparables for transfer pricing assessment purposes?

In the first place, the tax inspectors verify the criteria of selection used by the taxpayer in the benchmark study. If the tax inspectors deem examined criteria acceptable they conduct their own analysis. Comparables obtained during said analysis are then compared with benchmark analysis conducted by the taxpayer.

The issue of transfer prices is rather delicate in the context of the existence of losses. The motivation of losses is a difficult issue and requires the effort of understanding the value-generating factors, the managing of such factors by the company, the presentation of causes for such losses based on comprehensive arguments and conclusive evidence (e.g. strategic issues, extraordinary costs, economic conditions in a clear and concise form).

In practice the tax authorities often eliminate the entities with losses from the comparative data. A transfer pricing documentation shall include a strong justification for including entities with losses in the benchmark study. However, does not guarantee that the tax inspectors would accept such results.

7. How do tax authorities approach accepting entities with loss (aggregated or incurred in particular years) in the benchmarking study?

In practice the tax authorities often eliminate the entities with losses from the comparative data. A transfer pricing documentation shall include a strong justification for including entities with losses in the benchmark study. However, does not guarantee that the tax inspectors would accept such results.
8. **What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?**

In Romania the general prescription period is five years (starting with the year following the transaction occurred). The tax audits usually cover the prescription period and the transfer pricing file covering this entire period can be requested. In case of requesting the transfer pricing file, the tax authority has to mention the period for which such file should be presented.

If the transfer pricing file is being prepared on a voluntary basis, it should cover the prescription period as well, in order to have the necessary arguments in case of a tax audit.

Therefore, generally, the 5-years period is preferred.

9. **Are there any requirements for updating a benchmarking analysis?**

Starting with 2016, the large taxpayers exceeding defined thresholds in intercompany transactions are obliged to prepare and file annually a TP documentation.

All other companies have to prepare and file a TP documentation upon request of the tax authorities, during a tax audit.

However, it has become a common practice that tax authorities request transfer pricing documentations in case of tax audits. Thus, many companies prepare and update on a voluntary basis the transfer pricing documentation / benchmark studies, in order to be prepared in case of a fiscal control.

10. **What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?**

Romanian legal provisions do not mention such a threshold.

11. **Does burden of proof (that the transaction is arm’s length) lie with the taxpayer or tax administration?**

Burden of proof lies with the taxpayer as the tax authorities have the right to adjust (if the principle of market prices is not adhered to) or estimate (if necessary data is not provided by the company) values for accepted market prices.

12. **Should the transfer pricing documentation be prepared in local language or could it be prepared in English?**

The transfer pricing documentation as well as subsequent amendments are to be prepared in Romanian language. All documents not in Romanian language have to be translated into Romanian.
13. Do the tax authorities accept self-initiated adjustments?

Self-initiated adjustments are not covered by any legal provisions. Nevertheless, in the case of self-adjustments, the calculation method of the tax authorities in case of adjustments (see item 4.) should be considered in order to avoid different interpretations.

14. Has your country enacted legislation implementing the new structure of TP Documentation indicated in Action 13 of BEPS (Local File, Master File, country-by-country reporting) or is it considering enacting such legislation?

Romania is to join the OECD BEPS developments. On 2 June 2016, the Romanian Government approved the country’s accession as an associate to the BEPS Implementation Forum, in order to enable the country to be part of this process and implement the BEPS measures.

15. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?

According to publicly available information Romania is to be among the signatories of the MCAA (Multilateral Competent Authority Agreement); first exchange of information is currently intended for September 2017.

16. If your legislation provides for exemption from transfer pricing documentation obligations, please explain.

The following transactions are exempted from the transfer pricing documentation obligations:

- the transactions with affiliated persons falling below the thresholds,
- the transactions in the tax periods for which an APA is concluded.

17. What are the penalties for not having TP Documentation (for the tax payer and the Board)? Are there any penalties if the terms of transactions are not arm’s length?

Penalties for not filing the TP Documentation can range between ca. EUR 450 and EUR 2.250, depending on the size of the company.

18. Is the transfer pricing of interest to the tax authorities in your country? If yes, please indicate what type of transactions / taxpayers / years, etc. are usually controlled?

Yes. Usually the requests for TPD are not specific but include all transactions performed by a taxpayer with affiliates during the verified period.

19. Are APAs popular in your country? How many APAs have been issued?

APAs are not yet that popular in Romania, but will become of more importance in the future due to the increased obligations (especially for large taxpayers).
Regulations and rulings

- The Corporate Income Tax Act (The CIT Act),
- Rulebook on transfer pricing and methods for the determination of arm’s length prices in intra-group transactions (Rulebook).

Arm’s length principle and definition of related party

- Article 59 and 60 of the CIT Act,

Transfer pricing documentation

- Article 60 of the CIT Act,
- Article 2 of the Rulebook.

The Serbian tax legislation is based on the OECD Guidelines.

OECD guidelines treatment

- Pursuant to the Serbian CIT Act, related parties are those (domestic or foreign) individuals or legal entities, who have the possibility of control or significant impact on business decisions of the taxpayer. The CIT Act presumes that »possibility of control« or »significant impact on business decisions« exists if a party possesses at least:
  - 25% of equity interest in a taxpayer,
  - 25% of decision rights in taxpayer’s decision-making boards.

- Also, parties are considered related if the same individuals or legal persons directly or indirectly participate in management, control or capital. Moreover, related parties are considered to be spouses or common law partners, descendants, parents, sisters and brothers and their descendants, grandparents and their descendants, brothers, sisters and parents of the spouse or common law partner, adopted children and their descendants and adoptive parents.

- Companies from a jurisdiction with preferential tax systems (black list countries) performing transactions with the taxpayer are always regarded as related parties.

Transfer pricing methods

- The transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are:
  - traditional methods: (i) comparable uncontrolled price method, (ii) resale price method, (iii) cost plus method;
  - transactional profit methods: (i) profit split method, (ii) transactional net margin.
- There is no priority of methods.
### Transfer pricing documentation requirements

- The transfer pricing documentation has to include:
  - analysis of the group,
  - industry analysis,
  - functional analysis,
  - selection of transfer pricing method,
  - conclusion reached,
  - appendices.

- Documentation **must be** prepared in Serbian.

- Taxpayers must submit documentation **along with the CIT return [180 days from the end of the previous tax period]**.

- In case the taxpayer fails to submit the transfer pricing documentation with the CIT return or submits incomplete documentation, the Tax Authority issues a warning after which the taxpayers is obliged to submit or complete the transfer pricing documentation **within 30 to 90 days** from the receipt of the warning.

### Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?

- No.

### Do you have any simplified approach for low value-adding intra-group services?

- No.

### Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?

- The Ministry of Finance publishes every year the arm’s length interest rates for intercompany loans for that year. Taxpayers are entitled to apply general rules on determining arm’s length interest rates instead to use interest rates published by the Ministry of Finance.
Transfer pricing audit procedures and penalties

- All transactions between related parties must be charged at arm's length.
- If taxpayer submits transfer pricing documentation after the deadline or fails to disclose the value of related party transactions based on arm's length principle in the tax balance sheet, penalties amount to approximately 18,000 EUR.
- The possible adjustment of taxable income on transfer pricing basis may result in penalty of 30% of the difference between stated and actual tax liabilities and may have further influence in increased interest for late tax payments.

Transfer pricing adjustments

- If transfer price based on transaction with individual related party differs from the arm's length price, taxpayer is obliged to include in the tax base:
  - the amount of positive difference between income based on price in accordance with arm's length principle and income based on transfer price, or
  - the amount of positive difference between cost based on transfer price and cost based on price in accordance with arm's length principle.

Cost Contribution Agreements (CCAs)

- CCAs are not legally defined in Serbian legislation.

Advanced Pricing Agreements (APAs)

- Currently, APAs are not available.

Implementation of BEPS

- At this moment, the BEPS Reports were not yet implemented.
1. Is the CUP method preferred (should the CUP method be rejected if another method is applied)?
   Yes.

2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?
   Yes.

3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?
   If local benchmark is not available, Pan-European analysis is also acceptable.

4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?
   Generally, the interquartile range is preferred.

5. Are there any preferences as for the point from which the interquartile range should be applied, i.e. is median preferred or is any point from IQR acceptable?
   If transfer price is out of interquartile range, median is applied.
   Tax authorities accept any level of mark-up for services as long as it falls within the interquartile range.

6. Does your tax administration use secret comparables for transfer pricing assessment purposes?
   No.

7. How do tax authorities approach accepting entities with loss (aggregated or incurred in particular years) in the benchmarking study?
   There is no practical experience.

8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?
   Generally, the 3-5 years period is preferred.

9. Are there any requirements for updating a benchmarking analysis?
   The update should be performed every year.

10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?
    Not specified.
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. Does burden of proof (that the transaction is arm's length) lie with the taxpayer or tax administration?</td>
<td>The burden of proof lies with the taxpayer.</td>
</tr>
<tr>
<td>12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?</td>
<td>The documentation must be prepared in Serbian language.</td>
</tr>
<tr>
<td>13. Do the tax authorities accept self-initiated adjustments?</td>
<td>Yes.</td>
</tr>
<tr>
<td>14. Has your country enacted legislation implementing the new structure of TP Documentation indicated in Action 13 of BEPS (Local File, Master File, country-by-country reporting) or is it considering enacting such legislation?</td>
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</tr>
<tr>
<td>15. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?</td>
<td>No.</td>
</tr>
<tr>
<td>16. If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</td>
<td>No.</td>
</tr>
<tr>
<td>17. What are the penalties for not having TP Documentation (for the tax payer and the Board)? Are there any penalties if the terms of transactions are not arm's length?</td>
<td>If taxpayer submits transfer pricing documentation after deadline or fails to disclose the value of related party transactions based on arm's length principle in the tax balance sheet, penalties are approximately 18 000 EUR. The possible adjustment of taxable income on transfer pricing basis may result in penalty of 30% of the difference between stated and actual tax liabilities and may have further influence in increased interest for late tax payments. Yes. TP documentation is obligatory as of 2013, but still there is no practical experience regarding the control of documentation.</td>
</tr>
<tr>
<td>18. Is the transfer pricing of interest to the tax authorities in your country? If yes, please indicate what type of transactions / taxpayers / years, etc. are usually controlled?</td>
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</tr>
<tr>
<td>19. Are APAs popular in your country? How many APAs have been issued?</td>
<td>Not applicable.</td>
</tr>
</tbody>
</table>
Regulations

- The Income Tax Act (No. 595/2003 Coll. as amended),
- MF/014283/2016-724 guidelines published by the Ministry of Finance (hereinafter “the Guidance”).

Arm’s length principle and definition of related party

Definition of arm’s length principle:


According to this article the arm’s length principle is based on a comparison of the terms agreed in controlled transactions between related parties and the terms which would have been agreed between unrelated parties in similar transactions, in comparable circumstances.

Definition of related party:

Article 2 letter n) (definition of related party) and r) (definition of non-resident related party) of the Income Tax Act.

Transfer pricing documentation

Requirements regarding transfer pricing documentation are stipulated in the Guidance of the Ministry of Finance of the Slovak Republic No. MF/014283/2016-724, stipulating the content of the transfer pricing documentation according to article 18 (1) of Income Tax Act.

The tax authority usually follows the provisions of the OECD Guidelines, e.g. the acceptable methods listed in the Income Tax Act correspond with the methods listed in the OECD Guidelines.

According to Income Tax Act:

- the term “related party” means a close person, a person with economic, personal or other ties or a person/entity which is part of a consolidated group,
- the term “economic or personal tie” means (i) a person’s interest in the property, control or management of other person or (ii) mutual relation between persons which are under control or management of the same person or its close person or (iii) where such person or its close person has direct or indirect ownership interest, where interest in:
  - the property or control means direct interest, indirect interest or indirect derived interest more than 25% in the registered capital; direct interest, indirect interest or indirect derived interest more than 25% in voting rights or interest more than 25% on profit; where the indirect derived interest exceeds 50%, all persons used in the calculation thereof shall be deemed to have economic ties irrespective of the actual amount of their interests,
the term "management" means the relationship between the members of the statutory bodies, the members of the supervisory bodies or the members of other similar bodies of legal person or entity to that legal person or entity;

the term "other ties" means a legal relationship or other similar relationship established particularly for the purposes of tax base decrease or tax loss increase,

the term "non-resident related party" shall mean a situation, in which a resident individual, a resident legal entity or a resident entity has ties to a non-resident individual, a non-resident legal entity or a non-resident entity as provided in letter a) above; the above shall apply also to the relation between a taxpayer with unlimited tax liability and its permanent establishments abroad, and to the relationship between a taxpayer with limited tax liability and its permanent establishment in the territory of the Slovak Republic and the relationship between permanent establishments of taxpayers with ties as set out in letter a) and the correlation between these permanent establishments and these taxpayers.

The transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are:

- traditional methods: (i) comparable uncontrolled price method, (ii) resale price method, (iii) cost plus method;
- transactional profit methods: (i) profit split method, (ii) transactional net margin method.

There is no priority of methods.

There is no hierarchy for the application of Transfer Pricing methods currently prescribed by the Slovak tax law.

It is not required by the law to explain in detail why prioritised methods are non-applicable, but it is still strongly recommended. It can be required by the tax authorities in practice, thus the taxpayer is obliged to use the most appropriate method which is in compliance with arm’s length principle.

As of 1 January 2015 the duty to keep transfer pricing documentation is extended to domestic entities. The Guidance distinguishes between three types of documentation, depending on the scope:

- shortened (generally with regards to domestic and micro-entities),
- basic (generally with regards to foreign, small, medium and large entities),
- full scope (generally with regards to foreign, small, medium and large entities).
The following criteria have to be considered by subjects for a particular documentation:

- company size,
- transaction type (domestic, foreign – contracting /non-contracting state),
- special circumstances,
- materiality.

The documentation scope is defined depending on the risk rate of subjects. Low-risk subjects should not be burdened with redundant administrative burden and they are obliged to keep only the shortened documentation.

However, special circumstances representing a higher transfer pricing risk or resulting in the duty to keep full scope documentation are defined by the Guidance as follows:

- the subject has filed an application for a pricing method approval,
- the subject has filed a request for a tax base adjustment with respect to foreign controlled transactions,
- the subject claims a tax relief,
- the subject carries forward a tax loss of over EUR 300 thousand, or over EUR 400 thousand for 2 years (hereafter “4 circumstances”).

There is also a certain “hierarchy” of risk levels according to countries, reflected subsequently in the scope of documentation duty. Generally, domestic controlled transactions are less risky, provided none of the four above mentioned circumstances has occurred. Foreign controlled transactions with contracting countries are considered to be less risky than transactions with non-contracting countries.

All intra-group transactions have to be documented but the difference is to which extent.

Taxpayers who keep shortened documentation has to provide list of all controlled transactions together with description of individual controlled transactions of a taxpayer, including identification of the contractual parties of controlled transactions, the value of transactions expressed in monetary terms and further information on controlled transactions (commercial terms and conditions and other facts affecting controlled transactions).

Taxpayers who have to keep documentation in the extent of basic or full-scope documentation shall keep the documentation in this extent only on controlled transactions which are material (transactions with an amount exceeding the level of materiality for accounting purposes as defined by IFRS), but always for each transaction or group of transactions in the amount over EUR 1 million in the relevant tax period. These taxpayers shall keep the documentation in the extent of shortened documentation on the other controlled transactions. Also information on controlled transactions which are not material may be involved in the basic or full-scope documentation.
The Guidance specifies which information must be included in basic or full-scope documentation (general and specific documentation), the full scope includes comparability analysis.

As of 1 January 2014, tax authorities have the right to require the submission of the transfer pricing documentation at any time (not only during a tax audit), and the time limit for submission of the documentation was reduced to 15 days from the delivery of the request.

The burden of proof that the transaction is arm’s length lies with the taxpayer.

In practice, self-initiated adjustments are accepted by the tax authorities, upon request.

There is no exemption for TP documentation obligations but there is simplification on TP documentation requirements for individuals, SME and domestic transactions. No requirements of functional and risk analysis and no requirements of benchmark analysis for transactions of individuals, transactions of SME and domestic transactions.

Documentation should be in the Slovak language, but upon request of the taxpayer the tax authorities may allow the submission of the documentation in another language, usually in English.

Safe harbours

There is no simplified approach applicable to low value-adding intra-group services.

There is no special rules on safe harbours.

Benchmarking analysis

Both, Pan-European and local benchmarks are accepted.

Interquartile analysis is preferred in the benchmarking study when applying statistical method.

In terms of preference of the point from interquartile range to be applied, the tax authorities accept any point from such interquartile range. However, if the price does not fall within the interquartile range, the median is preferred.

Authorities accept entities with loss (aggregated or incurred in particular years) in the benchmarking study, for a start-up period depending on the function and risk analysis and if reasonable grounds are available.

The duration of the tested period is usually 3 years.

Is not required by the law but in practice benchmarking analysis is usually updated every 3 years.

The maximum threshold of share capital for the entities eligible in the set of comparable entities is 25%.

Tax administration does not use any secret comparables for transfer pricing assessment purposes.
Slovak Republic | Legal regulations

Specific guidance to intra-group services transactions

- There is no specific guidance. The general TP rules are applied and it is followed Guidelines except of approach mentioned on TPG D.2.: Simplified determination of arm’s length charges for low value-adding intra-group services.

- The Slovak central tax authorities have built transfer pricing departments and are more focusing on tax audits, therefore a growing number of transfer pricing audits of all types of businesses is apparent.

- The tax administration may inflict, even repeatedly, a special penalty of up to EUR 3,000 upon a taxpayer who is in default of an obligation (i.e. for breach of a non-monetary obligation, if the transfer pricing documentation was not provided to the tax authorities based on their request within the set deadline of 15 days), as well as the regular penalty of three times the European Central Bank (ECB) basic rate, or 10 % (whichever is higher) per annum of the tax amount levied by the tax auditor. The penalties for intentional tax avoidance and tax evasion through setting incorrect transfer prices in controlled transactions have been doubled (to 20% p.a.). However, where a taxpayer waives an appeal and pays the assessed tax difference within the prescribed deadline, the tax administrator imposes a penalty in the standard amount only (10% p.a.).

- Further, where a tax audit follows the transfer pricing approval process and an additional tax is assessed for a reason other than intentional tax avoidance or evasion, the sanction will be lower: instead of three times only one time the ECB base rate. In the case of additional tax assessments resulting from non-compliance with the arm’s length principle, a penalty in the amount of three times the base interest rate of the European Central Bank or 10% from the misstated tax (whichever is higher) would be levied. The penalty is twice as high on the additional tax assessed in the case of non-compliance with General Anti-Avoidance Rule.

- According to the Income Tax Act, there is an obligation to increase the tax base by the difference between the actually applied price of the transaction and the arm’s length price of the transaction but only if the difference reduced the tax base.

- The row no. 110 of the Corporate Tax Return is adapted to the mentioned stipulation and it allows to adjust (increase) the tax base by the amount of the difference between the price stated in the accounts of the taxpayer and the arm’s length price (i.e. non-accounting adjustment of the tax base). The only guidance for the application of the aforementioned is the explanatory note to the filing of the Corporate Income Tax Return.

- The Income Tax Act also regulates the situations when the primary as well as the corresponding adjustments are performed by inland taxpayers, i.e. when both adjustments have an impact on the Slovak state budget.

Transfer pricing audit procedures and penalties

Transfer pricing adjustments

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- The Income Tax Act also regulates the situations when the primary as well as the corresponding adjustments are performed by inland taxpayers, i.e. when both adjustments have an impact on the Slovak state budget.
Basically, the corresponding adjustment is voluntary except for situations when one of the taxpayers is a recipient of the state aid in form of a tax relief. In such a case the adjustment is compulsory and depends on particular circumstances of the case.

The corresponding adjustments within SK are subject to a notification duty within the filing deadline for the relevant tax return.

Yes, generally CCAs are accepted; according to article 17 (5) of the Income Tax Act. The amendment has extended the possibility to deduct the costs incurred by another member of the group upon the condition these costs are related to the activities of the taxpayer (previously applicable only to services).

At the determination of the tax base of a related party, it shall also be allowed to treat prorated expenses as tax expenses (costs) which were incurred by a third party with which it is related, as long as:

- the costs are related to the scope of business of such dependent party,
- the related party would have to bear the costs or place an order for such service with unrelated parties, if the service were not provided by a party to which it is related,
- the amount of costs or the price of the service was determined on an arm’s length basis,
- the party shall submit evidence of the aggregate amount of expenses (costs) related or incurred in the provision of such service, and their distribution among the beneficiaries of such service.

APAs cover the appropriateness of the method used as well as the margin/mark-up.

Under Slovakian legislation, two types of APAs are available: unilateral and bilateral.

For unilateral APAs, a fee EUR 10,000; for bilateral APAs a fee EUR 30,000 must be paid.

The period for which the APA may be concluded is no longer than 5 years.

Subject to a mutual agreement of the countries concerned, also the transfer prices for previous periods (‘roll back’) can be approved through bilateral and multilateral APA.

APAs represent relatively new instruments in Slovak legislation and unilateral as well as bilateral APAs are requested by transnational corporations. However, the Slovak tax authority does not publish APA data either in the form of an annual report or through the disclosure of data in public forum.
Transfer pricing documentation – The Guidance No. MF/014283/2016-724 stipulates the required content of the transfer pricing documentation, which is generally in line with the Master File and Local File approach.

The documentation should consist of general (Master File) and specific (Local File) documentation. The general documentation provides an overall review with regard to the whole group of related parties and contains information such as identification of the members of the group, its organizational structure, overview of the industry, activities of the group in the industry, business strategies and general overview of functions, risks and assets of the members of the group. The local documentation follows general documentation and contains this information relating to the Slovak taxpayer. Moreover, it consists of information regarding the approach to transfer pricing, methods used, determination of price and list of all transactions with related parties. The local documentation should also include comparability analysis of the transactions.

CbC reporting – Slovakia has signed a multilateral competent authority agreement for the automatic exchange of CbC reports. The CbC reporting has already been implemented into Slovak legislation.

Hybrid Mismatch Arrangements – Slovakia already stipulates a similar provision regarding the profit shares (Art. 12/7/c CIT).

CFCs – CFC rules will be first applicable for the tax period starting on 1 January 2019. The aim of these rules is to combat artificial shifting of profits of Slovak companies and permanent establishments to foreign controlled corporations residing outside Slovakia. CFC rules mean that the income of a low taxed CFC will be attributed to the controlling Slovak company, depending on actual functions performed and risks assumed by the controlled company. CFC rules will be applicable in cases when the Slovak company has controlling influence, and, at the same time, the tax to be paid abroad is lower than 50% of the tax which would apply in Slovakia.

Interest deductions – Slovak tax law stipulates a thin cap rule (Art 21a CIT). The rule has introduced a cap on interest expense at 25% of EBITDA (earnings before interest, tax, depreciation and amortization) as reported in the financial statements under Slovak accounting rules or IFRS rules.

Harmful tax practices – An automatic exchange of information regarding tax rulings and APAs was implemented in Slovakia in 2016 and it is applicable also to the rulings issued within the previous five years.

Exit taxation – As of 1 January 2018, all economic values created in Slovakia are subject to taxation. Exit taxation will apply at the point Slovakia loses its taxing rights, e.g. as a consequence of relocation, transfer of activities abroad, transfer of assets to a foreign permanent establishment or transfer of assets from a Slovak permanent establishment back to the head office.
Slovak Republic | Legal regulations

- **GAAR** – Slovak law already provides a general anti abuse provision (Art 3/6 of the Tax Procedure Code) and similar provision regarding profit shares stipulates Art 50a CIT.

- **Permanent establishment** – Implementation according to OECD Multilateral instrument.

- **MLI** – As a member of OECD, Slovakia has acceded to the Multilateral Convention in the case of 64 out of the total 68 double tax treaties concluded. It can be briefly summarized that Slovakia has opted for most of the provisions without reservations, while most of them must be accepted by both contracting states. Regarding the application of methods for the elimination of double taxation, Slovakia has chosen to apply the general tax credit method with respect to all income types where the tax treaties enable the other jurisdiction to tax the income. The only provision which has not been accepted is the arbitration provision.

  - Slovakia has signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information.

1 Contracting countries are countries, which has entered into an international convention on the avoidance of double taxation or an international agreement on exchange of information on tax matters or states which are parties to the multilateral convention containing provisions on exchange of information on tax matters in a similar extent binding upon this state and the Slovak Republic.
1. Is the CUP method preferred (should the CUP method be rejected if another method is applied?)?

No hierarchy for the application of TP methods is currently prescribed by the Slovak tax law.

2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?

Not required by the law, but strongly recommended. May be required by the tax authorities in practice thus the taxpayer is obliged to use the most appropriate method which is in compliance with arm's length principle.

3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?

Pan-European benchmark as well as the local benchmark are both accepted.

4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?

In practice interquartile range is usually applied.

5. Are there any preferences as for the point from which the interquartile range should be applied, i.e. is median preferred or is any point from IQR acceptable?

Tax authorities basically accept any point from interquartile range. However, if the price does not fall within the interquartile range, they prefer median.

6. Does your tax administration use secret comparables for transfer pricing assessment purposes?

No.

7. How do tax authorities approach accepting entities with loss (aggregated or incurred in particular years) in the benchmarking study?

In generally accepted for a start-up period depending on the function and risk analysis and if reasonable grounds are available.

8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?

Usually 3 years.

9. Are there any requirements for updating a benchmarking analysis?

Not required by the law. In practice benchmark analysis are usually updated every 3 years.
10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?

25%.

11. Does burden of proof (that the transaction is arm’s length) lie with the taxpayer or tax administration?

In general burden of proof lies with the taxpayer.

12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?

Documentation shall be in the Slovak language, but upon request of the taxpayer the tax authorities may allow the submission of the documentation in another language, usually in English.

13. Do the tax authorities accept self-initiated adjustments?

Generally, the tax authorities accept self-initiated adjustments, upon request.

14. Has your country enacted legislation implementing the new structure of TP Documentation indicated in Action 13 of BEPS (Local File, Master File, country-by-country reporting) or is it considering enacting such legislation?

Master File and Local File practice have already been implemented into domestic law by The Guidance No. MF/014283/2016-724 stipulating the required content of the transfer pricing documentation and which is generally in line with the Master File and Local File approach. Country-by-country reporting has also been implemented in Slovakia.

15. If your legislation provides for exemption from transfer pricing documentation obligations, please explain.

There is no exemption for TP documentation obligations but there is simplification on TP documentation requirements for individuals, SME and domestic transactions.

There are no requirements of functional and risk analysis and no requirements of benchmark analysis for transactions of individuals, transactions of SME and domestic transactions.

16. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?

Yes.
17. **What are the penalties for not having TP Documentation (for the tax payer and the Board)? Are there any penalties if the terms of transactions are not arm’s length?**

In the case of additional tax assessments resulting from non-compliance with the arm’s length principle, a penalty in the amount of three times the base interest rate of the European Central Bank or 10% from the misstated tax (whichever is higher) would be levied. The penalty is twice as high on the additional tax assessed in the case of non-compliance with General Anti-Avoidance Rule.

The tax administration may also inflict, even repeatedly, a special penalty of up to EUR 3,000 upon a taxpayer for non-compliance with the transfer pricing documentation obligations, i.e. for breach of a non-monetary obligation (if the transfer pricing documentation was not provided to the tax authorities based on their request within the set deadline of 15 days).

18. **Is the transfer pricing of interest to the tax authorities in your country? If yes, please indicate what type of transactions / taxpayers / years, etc. are usually controlled?**

The Slovak central tax authorities have built transfer pricing departments and are more focusing on tax audits, therefore a growing number of transfer pricing audits of all types of businesses is apparent.

19. **Are APAs popular in your country? How many APAs have been issued?**

APAs represent relatively new instruments in Slovak legislation and unilateral as well as bilateral APAs are requested by transnational corporations. However, the Slovak tax authority does not publish APA data either in the form of an annual report or through the disclosure of data in public forum.
Regulations
- Corporate Income Tax Act,
- Rules on Transfer Pricing,
- Rules on recognized rate of interest,
- Tax Procedure Act.

Arm’s length principle and definition of related party
- Article 16 and 17 of the Corporate Income Tax Act introduced the definition of related party and requirements that related parties need to follow.
- Articles 397 and 398 of the Tax Procedure Act sets out regulations concerning transfer pricing penalties.

Transfer pricing documentation
- Article 19 of the Corporate Income Tax Act provides the general rules on the Acknowledged Interest Rate on intercompany loans.
- Article 18 of the Corporate Income Tax Act and Article 382 of the Tax Procedure Act provides general information on transfer pricing documentation requirements in Slovenia.
- Articles 397 and 398 of the Tax Procedure Act sets out regulations concerning transfer pricing penalties.

Slovenian transfer pricing regulations follow principles established in the OECD Guidelines. If there is absence of regulations in domestic regulation, the Slovenian tax authorities will also consider the OECD Guidelines during the tax audits.

Definition of related parties
- Domestic entity and foreign entity are related if:
  - the domestic entity directly or indirectly holds 25% or more of the value or number of shares of a foreign entity through holdings, control over management, supervision or voting rights; or controls the foreign entity on the basis of a contract or terms of transactions different from those that are or would be achieved in the same or comparable circumstances between unrelated parties,
  - the foreign entity directly or indirectly holds 25% or more of the value or number of shares of a domestic entity through holdings, control over management, supervision or voting rights; or controls the taxable entity on the basis of a contract or terms of transactions different from those that are or would be achieved in the same or comparable circumstances between unrelated parties,
  - the same entity directly or indirectly holds 25% or more of the value or number of shares, or participates in the management or supervision of the domestic entity and the foreign entity, or of two Slovene entities, or they are under the same control on the basis of a contract or transaction terms that differ from those that are or would be agreed in the same or comparable circumstances between unrelated parties, and
The same individuals or members of their families directly or indirectly hold 25% or more of the value or number of shares, holdings, voting rights or control over the management or supervision of the domestic entity and the foreign entity, or of two Slovene tax resident entities; or they are under their control on the basis of a contract or transaction terms that differ from those that are or would be agreed in the same or comparable circumstances between unrelated parties.

Two domestic entities:

- Are related in terms of capital, management or supervision by virtue of one resident, directly or indirectly, holding 25% or more of the value or number of shares, equity holdings, control, supervision or voting rights of the other resident; or controls the other resident on the basis of a contract in a manner that is different from relationships between non-related parties.

- The same legal or natural persons or their family members directly or indirectly hold 25% or more of the value or number of shares, holdings, control, supervision or voting rights; or control the residents on the basis of a contract, in a manner that is different from relationships between non-related parties.

The transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are:

- traditional methods: (i) comparable uncontrolled price method, (ii) resale price method, (iii) cost plus method;
- transactional profit methods: (i) profit split method, (ii) transactional net margin method.

Considering the priority of methods, Slovenia follows the “best method rule” meaning that the most appropriate method, considering the circumstances, should be used.

Entities that carry out transactions with related parties must supply the supplement to the corporate tax return. The appendix 16 (cross border transactions) and appendix 17 (domestic transactions) to the corporate tax account must be fulfilled. In any case it includes the following data:

- the names of the entities involved,
- country of the seat of the related entity,
- tax number,
- the type of relationship according to the Slovenian Corporate Tax Act (definition of the associated enterprises),
- the total value of the controlled transactions for each related party separately. However, only if/when it exceeds EUR 50,000.

In case of loans, the appendix 15 to the corporate tax account must be fulfilled.
In case of request from tax authorities during the tax audit, taxpayer should submit documentation immediately. If the taxpayer cannot submit the documentation upon request, the tax authorities will set a deadline which cannot be shorter than 30 days and longer than 90 days.

Documentation should include at least:

1. general documentation (master file), that may be unified for the whole group of related parties as a whole, and shall contain at least:
   a. a description of the tax payer, of the organizational chart on the worldwide level and type of the participating interests (as capital, contractual, personal), tax payer’s system of transfer pricing determination, general description of operations and business strategies, general economic and other factors, market competitiveness.

2. specific documentation (country-specific documentation) shall contain at least:
   a. data with regards to the transactions of related parties (description, type, value, time limits and conditions),
   b. data with reference to the benchmarking analysis,
   c. characteristic of assets and services,
   d. functional analysis (performed assignments with regards to assets used or services and risks assumed),
   e. contractual terms,
   f. economics and other circumstances that have the influence on the transactions,
   g. business strategies,
   h. other influences, important for performance of transaction,
   i. data of the selected method for determination of transfer pricing and its determination in accordance with the comparable market prices,
   j. other documentation that demonstrate conformity of transfer pricing with comparable market prices.

Rules on transfer pricing in Section 6, Article 22 provide general guidance relating to intra-group service transactions.
Do you have any simplified approach for low value-adding intra-group services?

There is no special simplified approach/regime for low value-adding intra-group services currently in place. However, the tax auditors when requesting information regarding the transfer pricing documentation take into account the company size and the costs that might occur so to not over burden the taxpayer.

Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?

In determining the thin capitalisation and interest rate in controlled transactions safe harbour can be used.

Article 32 of the Corporate Income Tax Act determines the thin cap rule. In general the taxpayer’s interest on loan is not recognized for tax purposes if the loan exceeds four times the amount of the capital of the taxpayer (the borrower), unless the taxpayer can demonstrate that he or she would have received such a loan from an independent (non-related person) lender. The rule is not applicable to banks and insurance companies.

Article 19 of the Corporate Income Tax Act determines the tax recognition of the taxpayer’s revenue or cost relating to the interest rate. The taxpayer can when determining the interest rate use the recognised interest rate (safe harbour). If an interest rate other than the recognised interest rate is used the taxpayer needs to demonstrate that such interest rate complies with the ALP.

The methodology (calculation) of the recognized interest rate is further explained in the Rules on the recognised rate of interest where EURIBOR and LIBOR and certain mark ups (for maturity, the credit rating of the taxpayer etc.) are taken into account.

Transfer pricing audit procedures and penalties

The documentation must be submitted to tax authorities upon request or in within set period (from 30 to 90 days).

If the terms of the transactions are not at arm’s length, the tax authorities are entitled to adjust the tax base to increase the tax charge or decrease a tax loss.

If the documentation is not submitted in prescribed manner or in set deadline, the taxpayer might be imposed a fine of:

- between EUR 1,200 and EUR 15,000 on a taxpayer (company) that is deemed a micro-company or small company according to the Companies Act, or
- between EUR 3,200 and EUR 30,000 on a taxpayer (company) that is deemed a medium-sized or large company according to the Companies Act.

Additionally, the manager responsible for the company’s tax settlements may be subject to the penalty up to EUR 4,000 for his offence.

In case of a tax base adjustment, late payment interest and penalties for offences may be charged. In a special cases and circumstances (i.e. when the tax offence is qualified as a severe tax offence) fines in the amount of EUR 100,000 or EUR 150,000 (if the Company is deemed a medium-sized or large company according to the Companies Act) might be charged.
Transfer pricing adjustments

Cost Contribution Agreements (CCAs)

Advanced Pricing Agreements (APAs)

- Slovenian legislation does not provide provisions implicitly allowing or disallowing compensating or year-end adjustments.

- There are no specific regulations concerning CCAs. However tax authorities allow such agreements for intra-group services when they are based on the cost allocation method.

- The APA is regulated in Articles 14a-14f of the Tax Procedure Act and the provisions apply as of 1 January 2017. Moreover, Article 248a of the same act provides the obligation to report.

**Forms:**

- Unilateral;
- Bilateral;
- Multilateral.

**Formal conditions:**

- The taxpayer is performing transactions with related persons;
- The taxpayer is subject to the corporate income tax;
- The meeting considering the APA conclusion was held prior to submission of the application for APA conclusion;
- There is an economic substance of the transaction and serious performance intention;
- The transaction is granted an adequate performance time and the case is not about a transaction before its expiry.

**Other conditions (i.e. procedural principles):**

- Active participation of the taxpayer at the meetings;
- Active cooperation of the taxpayer by submitting adequate documentation;
- Constructive overall cooperation in order to conclude the APA;
- Consent of the tax authority and the taxpayer on the APA content (suitable method, criteria, critical predispositions); and
- Signature of the APA.

**Procedure:**

- Interview prior to the submission of an application for the APA conclusion;
- Submission of an application for the APA conclusion (3 months deadline for tax authority's decision) – in the event of bi- or multilateral APAs, the mutual agreement procedure (MAP) needs to take place; if the MAP is not reached, a unilateral APA may be still concluded with remaining double taxation risk.
- Conclusion and signature.
Term

5 years with a renewal option. **Notification duty:**

- The taxpayer shall report the validity of critical predispositions and performed adjustments **in compliance** to the agreed criteria once a year. This report shall be submitted along with the tax return calculation, however, in a separate file. **Discrepancies** from the agreed criteria shall be noted in 30 days.

Payment:

- EUR 15,000 for the procedure (no reimbursement in case of withdrawal from the APA; if the cause for withdrawal lies with the tax authority, a flat fee of EUR 5,000 is reimbursed);
- EUR 7,500 for prolongation.

Termination:

- Expiry;
- Omission to report;
- Material changes of circumstances, influencing the TP methodology without concluding an adequate amendment.

**Generally the rules of domestic APA regulations follow the OECD Guidelines.**

- Action 13 (TPD – not implemented, CbC – implemented);
- Action 15 (The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the “Convention”) entered into force on 1 July 2018);
- At this moment, the other BEPS Reports were not yet implemented, however, Slovenia is considering to enact such legislation.
1. Is the CUP method preferred (should the CUP method be rejected if another method is applied)?
   In practice – yes.

2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?
   In practice – yes.

3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?
   Yes, it is generally accepted.

4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?
   No, there are no preferences.

5. Are there any preferences as for the point from which the interquartile range should be applied, i.e. is median preferred or is any point from IQR acceptable?
   Yes – the median is preferred.

6. Does your tax administration use secret comparables for transfer pricing assessment purposes?
   No.

7. How do tax authorities approach accepting entities with loss (aggregated or incurred in particular years) in the benchmarking study?
   If the entity is comparable, it can be accepted.

8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?
   It is considered on a case by case basis. In general 3 years period is applied.
9. Are there any requirements for updating a benchmarking analysis?

As long as there were no changes, there is no need for the update.

10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?

There is no rule in this field.

11. Does burden of proof (that the transaction is arm's length) lie with the taxpayer or tax administration?

Burden of proof lies with the taxpayer.

12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?

The country file must be prepared in Slovenian language. The master file might be prepared also in English, however tax administration has a right to ask for a translation.

Yes, the adjustments are generally acceptable.

13. Do the tax authorities accept self-initiated adjustments?

Yes.

14. Has your country enacted legislation implementing the new structure of TP Documentation indicated in Action 13 of BEPS (Local File, Master File, country-by-country reporting) or is it considering enacting such legislation?

Yes.

15. If your legislation provides for exemption from transfer pricing documentation obligations, please explain.

There is no special exemption.

16. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?

Yes.
17. What are the penalties for not having TP Documentation (for the tax payer and the Board)? Are there any penalties if the terms of transactions are not arm's length?

If the documentation is not submitted in prescribed manner or in set deadline, the taxpayer might impose a fine of:

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18. Is the transfer pricing of interest to the tax authorities in your country? If yes, please indicate what type of transactions / taxpayers / years, etc. are usually controlled?

Yes. The tax authorities control in particular the loan transactions.

19. Are APAs popular in your country? How many APAs have been issued?

The provisions on the APAs are in use as of 1st January 2017 and there is no data on the volume of issued APAs available to date.
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