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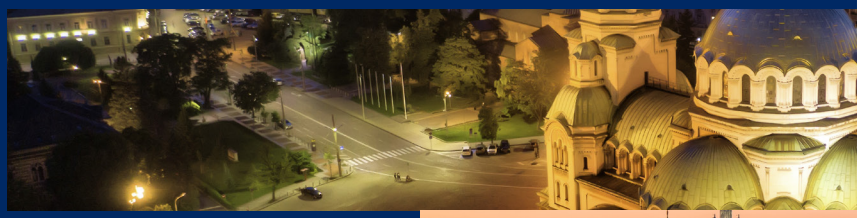
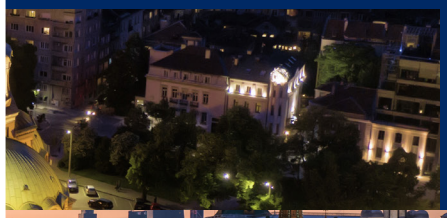



TRANSFER PRICING GUIDE

BULGARIA · CZECH REPUBLIC · ESTONIA · HUNGARY · LATVIA · LITHUANIA · POLAND · ROMANIA · SLOVAK REPUBLIC · SLOVENIA · UKRAINE

Contents

ABOUT MDDP TRANSFER PRICING TEAM

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 is the only Central European expert nominated by the prestigious International Tax Review as Transfer Pricing Practice Leader of the Year in the European Tax Awards 2020 contest. 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 Practice offers unique solutions in a comprehensive way to meet the needs of clients belonging to international capital groups and making large-scale intra-group settlements, the purpose of which is to ensure their arm's length nature and tax security.

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 process of sealing the tax system continues. Subsequent changes in tax regulations resulting from decisions of international institutions and national authorities are being introduced to the legal orders in individual jurisdictions. 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.

As a consequence of the new regulations being introduced, taxpayers are required to provide tax authorities with a lot of very detailed information about the company, as well as transactions with related entities, including in particular the results of comparative analyzes and the taxpayer's result realized on the transaction. In addition, meeting these obligations is associated with a large administrative burden for companies whose accounting and financial teams have to cope with numerous reporting obligations in the field of transfer pricing and the need to develop specialist knowledge in the field of transfer pricing.

To help our clients – especially those who conduct business operations within multinational capital groups –, we have prepared the third 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

BULGARIA

Regulations and rulings

- **Regulations**
  - Law on Corporate Income Taxation,
  - Tax and Social Security Procedure Code,
  - Ordinance No. H-9 dated 14 August 2006 on the Procedure and the Manners for Application of Transfer Pricing Methods,
  - Transfer Pricing Manual issued by the NRA.
- **Arm's length principle and definition of related party**
  - The Law on Corporate Income Taxation sets forth general transfer pricing principle applicable to related party transactions and GAAR (Chapter 1, Section 4, Art. 15 and Art. 16). Furthermore, the Law on Corporate Income Taxation also contains the Bulgarian CFC rules implementing the relevant requirements of Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (Chapter 1, Section 9a, Art. 47c through Art. 47e),
  - The Tax and Social Security Procedure Code sets forth the list of transfer pricing methods recognized in Bulgaria (Add'l Provisions, § 1, item 10). Furthermore, the definitions of 'related parties' and 'control' are also provided under the Tax and Social Security Procedure Code (Add'l Provisions, § 1, item 3 and item 4),
  - The Ordinance No. H-9 dated 14 August 2006 on the Procedure and the Manners for Application of Transfer Pricing Methods provides the rules and procedures for application of the transfer pricing methods listed under the Tax and Social Security Procedure Code.
- **Transfer pricing documentation**
  - The Tax and Social Security Procedure Code sets forth the rules and requirements for preparation and maintenance of transfer pricing documentation (Chapter 1, Section 8a, Art. 71a through Art. 71g),
  - Guidance on the preparation and maintenance of transfer pricing documentation is also provided in the Transfer Pricing Manual issued by the NRA.

OECD guidelines treatment

- Bulgaria is not an OECD member. However, Bulgarian tax authorities and courts often refer to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and use it as a source of interpretation and guidance. The key principles and rules provided under the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations are generally included in the instructions, case law and other documents issued by the tax authorities and courts.

Definition of related parties

- Pursuant to the definition under the Tax and Social Security Procedure Code **related parties** are:
  - spouses, relatives of direct descent/lineage, relatives of collateral descent/lineage – up to and including of third level, in-laws – up to and including of second level,

- employer and employee,
- shareholders/partners,
- persons one of whom participates in the management of the other or of the other's subsidiary,
- persons in the management or supervisory body of which one participates in the same legal entity or individual,
- a company and a person who owns more than 5% of the voting shares in the relevant company (where for the purposes of the rules governing the preparation and maintenance of transfer pricing documentation (Chapter 1, Section 8a, Art. 71a through Art. 71g) the person must hold 25% of the voting shares in the relevant company),
- persons one of which exercises control over the other,
- persons whose activity is controlled by a third person or a subsidiary of such a third person,
- persons who jointly control a third person or a subsidiary of such a third person,
- the persons one of which acts as a trade representative of the other,
- the persons one of which has made a donation in favour of the other,
- persons who directly or indirectly participate in the management, supervision or the equity of another person(s), as a result of which they may agree upon terms and conditions deviating from the standard terms and conditions,
- a local tax resident person and a foreign tax resident person in certain specific cases (where the foreign tax resident is registered in a jurisdiction with preferential tax treatment (60% or more lower tax than the tax due in Bulgaria) unless the tax resident person provides evidence that the foreign tax resident person is liable to tax which is not subject to preferential regime or that the foreign tax resident person has sold the goods or has provided the services on the local market), or a jurisdiction which does not participate in exchange of information arrangements),
- the owners of the local tax resident person and the foreign tax resident person in the cases covered under the preceding bullet.

▶ Pursuant to the definition under the Tax and Social Security Procedure Code **control** shall exist in cases where the person exercising control:

- directly, indirectly or by virtue of an agreement with another person **holds more than half of the voting rights in the general meeting** of another person, or
- **is in the position to** directly or indirectly **designate more than half of the members of the management or supervisory body** of another person, or
- by virtue of the articles of association or of an agreement **is in the position to manage the activity of another person**, including through or together with a subsidiary, or

- as a shareholder in a company and by virtue of an agreement with other shareholders in the same company **has sole control over more than half of the voting rights in the general meeting of the relevant company**, or
- is in the position to **otherwise materially influence the adoption of resolutions concerning the activity of the company**.

Transfer pricing methods

- The **transfer pricing methods** accepted by the tax authorities 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.
- Pursuant to the rules under Ordinance No. H-9 dated 14 August 2006 on the Procedure and the Manners for Application of Transfer Pricing Methods, the traditional transaction methods, if applicable, have priority over the transactional profit methods.

  In certain cases (e.g. evaluation of shares), when none of these methods is appropriate for evaluation (due to lack of comparable transactions), other methods could be also used as per reviewed case law, such as the net asset value, in combination with e.g. the discounted net cashflow method.

Transfer pricing documentation requirements

- Effective as of 1 January 2020, the Tax and Social Security Procedure Code sets forth a statutory framework regarding the preparation and maintenance of transfer pricing documentation. Relevant controlled transactions include transactions by virtue of which commercial and financial relationships are established between related parties. As a rule, the transfer pricing documentation comprises local file and master file. The contents of each of the local file and the master file are governed in detail. In general, the local file must introduce general information on the activity of the reporting person and its shareholder(s), details on the controlled transactions and details on the transfer pricing methods applied. The master file must generally contain information on the organizational structure and the activity of the multinational group, the controlled transactions, the functions of the entities in the group and the transfer pricing policy applied in the group.
- Save for certain exceptions listed by law, the persons obliged to prepare and maintain a local file include:
  - Bulgarian tax resident entities,
  - foreign tax resident entities, which carry out business activity in Bulgaria via permanent establishment, and
  - individuals operating as sole proprietors.
- The **persons listed above are under the obligation to prepare and maintain a local file for controlled transactions carried out by them, in cases where during the relevant year**:
  - the value of the transaction (net of VAT and excise duties) exceeds: (i) BGN 400,000 or a transaction related to sale of goods, or (ii) BGN 200,000 or any other transaction,

- ▷ irrespective of the foregoing indicator, the amount of received, respectively provided, loan exceeds BGN 1,000,000 or the amount of the interest accrued (and any other income or expenses related to the loan) exceeds BGN 50,000.

  As a rule and save for certain exceptions (such as where the close connection between the transactions allows aggregate evaluation), a stand-alone evaluation for the purposes of the above thresholds is made for each controlled transaction.

- Exception to the foregoing obligation to prepare and maintain a local file is provided for the following categories:
  - ▷ persons who enjoy certain exemption from payment of corporate income tax under the Law on the Corporate Income Tax,
  - ▷ persons who perform activity which is subject to taxation with alternative tax in accordance with the Law on the Corporate Income Tax (as opposed to taxation with corporate income tax),
  - ▷ persons who as of 31 December of the preceding year **do not exceed at least 2 of the following indicators**: (i) balance sheet value of the assets – BGN 38,000,000; (ii) net sales revenue – BGN 76,000,000; (iii) average number of personnel during the reporting period – 250 people,
  - ▷ persons, who carry out controlled transactions within Bulgaria only.
- There is no obligation for preparing and maintaining a local file for controlled transactions, where the counterparty is an individual (save for cases where the said individual operates as sole proprietor).
- In cases where the persons obliged to prepare and maintain a local file are part of multinational group, such persons must also have a copy of the master file prepared by the ultimate parent company or by another group entity.

Safe harbours

- Bulgarian law does not provide for any safe harbor rules or procedures particularly with respect to transfer pricing. There are certain rules which exclude certain transactions and persons from the scope of the transfer pricing requirements (see the 'Transfer pricing documentation requirements' section of the country profile). However, these are not so much safe harbor provisions yet rather exemptions from the relevant obligations/requirements.

Transfer pricing audit procedures and penalties

- A local file must be prepared by the relevant obliged persons (as listed above) not later than 31 March of the year following the year, to which the information in the local file pertains. The persons obliged to prepare and maintain a local file, which are part of multinational group, must obtain a copy of the master file for the fiscal year of the ultimate parent company starting on 1 January or later date of the year, for which a local file is prepared, not later than 12 months as of the deadline for preparation of the relevant local file under the foregoing sentence.

- Bulgarian tax resident companies may be under the obligation to file country-by-country report for a given reporting fiscal year and may be subject to certain notification obligations towards the National Revenue Agency. If a Bulgarian tax resident company will be the reporting entity for a given reporting fiscal year, deadline for filing of the country-by-country report is 12 months as of the end of the respective reporting fiscal year of the MNE Group (which is in fact the fiscal year of the UPE of the MNE Group). The notifications to the NRA shall be made not later than the last day of the reporting fiscal year of the MNE Group.
- The statutory rules in the field of transfer pricing documentation do not contain a requirement for such documentation to be prepared in Bulgarian language. Thus, it should be possible for the documentation to be prepared and maintained in English. However, from purely practical perspective, if the transfer pricing documentation is prepared in a foreign language (other than Bulgarian) and it is requested by the tax administration in the course of tax audit or tax inspection or it must be submitted to the tax authorities on other grounds (e.g. as part of the country-by-country reporting compliance), the tax authorities would normally require for such documentation to be accompanied by an official Bulgarian translation made by a sworn translator.
- Bulgarian law does not provide for special techniques and/or procedures related particularly to transfer-pricing-related audit. Thus, compliance with transfer pricing principles and requirement may be examined as part of a regular tax inspection or tax audit.
- The Tax and Social Security Procedure Code provides for specific penalties for violations and inconsistencies related to the transfer documentation:
  - a person who is obliged to prepare local file and has failed to do so may be subject to monetary sanction amounting up to 0.5% of the total value of the transactions for which documentation should have been prepared (for the purposes of this sanction: (i) in case of provision or use of a loan the total value of the transaction shall be the amount of the loan; and (ii) it is considered that local file is not prepared if the tax administration has requested the provision of such file and the obliged person has failed to provide it within the deadline set by the tax administration),
  - a person who is obliged to have a copy of a master file and has failed to obtain it may be subject to monetary sanction ranging between BGN 5,000 and 10,000,
  - a person who includes incorrect or incomplete data in the relevant transfer pricing documentation may be subject to a monetary sanction ranging between BGN 1,500 and BGN 5,000,
  - twice the amount of sanctions listed above in the case of repeated violation.

- The Tax and Social Security Procedure Code also provides for separate monetary sanctions in the case of non-compliance with applicable country-by-country reporting requirements and obligations. A reporting entity, which failed to file a report within the deadline may be subject to a monetary sanction ranging between BGN 100,000 and BGN 200,000. A monetary sanction in the range between BGN 50,000 and BGN 150,000 may be imposed on Bulgarian tax resident companies for not complying with notification obligations. The sanction for inclusion of incomplete or untrue data in the country-by-country report or for failure to include required data at all is in the same amount.
- In addition to the monetary sanctions listed above, in case the tax authorities are not presented with appropriate transfer pricing documents and sufficient supporting evidence, they may find that relevant transaction(s) are not implemented in compliance with the arm's length principle and reevaluate the tax base. In the latter case, the tax authorities may establish additional tax liabilities, together with default interest thereon.

Transfer pricing adjustments

- Bulgarian transfer pricing framework does not contain express regulation of options for adjustment of prices of transaction between related parties.

Cost Contribution Agreements (CCAs)

- There are no specific regulations on the cost contribution agreements (CCAs) in the Bulgarian TP legislation. However, Section 15 of the Transfer Pricing Manual issued by the NRA provides some guidance in this respect. This section includes:
  - definition of CCAs,
  - general information on the benefits of the CCAs and its participants,
  - guidance on how to appropriately determine the contribution of each of the participants,
  - indications for the revenue authorities on issues to be investigated in case of tax inspection or tax audit,
  - potential risk factors,
  - indication of the information regarding CCAs which may be requested in the course of tax inspection or tax audit, etc.

Advanced Pricing Agreements (APAs)

- The concept of Advance Pricing Agreements (APAs) is not regulated under Bulgarian tax legislation. Thus, such APAs cannot be made in Bulgaria.

Implementation of BEPS

- The Tax and Social Security Procedure Code implements the structure of transfer pricing documentation (local file, master file, country-by-country reporting) set forth under Action 13 of the BEPS Action Plan and the corresponding EU directives.

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

Yes, Ordinance No. H-9 dated 14 August 2006 on the Procedure and the Manners for Application of Transfer Pricing Methods introduces a hierarchical sequence of the methods and the CUP method should be preferred (where applicable).

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

No, explaining why prioritized methods are not applied is not required by the statutory provisions. However, the obliged person should be in the position to justify the method applied.

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

If the local benchmark is preferred, is it enough to include the local market within the search strategy or is it required to have local comparables in a final sample?

Pursuant to Ordinance No. H-9 dated 14 August 2006 on the Procedure and the Manners for Application of Transfer Pricing Methods there are 4 key factors which influence the determination of the comparability between controlled and uncontrolled transactions:

- features of the product or service under the transaction;
- functions performed by each of the persons participating in the compared transactions;
- economic environment; and
- business strategies.

Since one of the key factors determining the comparability is the economic environment and given that it may be more difficult to identify other countries with identical or sufficiently similar economic environment as Bulgaria, domestic comparables and benchmarks would be preferred by the tax administration. However, if for some reason such domestic comparables and benchmarks cannot be identified or the identified ones are insufficient, the scope of the analyzed market can be broadened. When using local benchmark the inclusion of comparables is preferred if there are such.

Notably, based on publicly available information, Bulgarian tax administration has obtained a license to use Bureau van Dijk's specialized database TP Catalyst, which gives the tax authorities additional tools for reviewing and analyzing comparable transactions and/or companies.

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

   Is the full range (minimum-maximum) acceptable as a market range?

Both the use of arm's length range as well as statistical measure (e.g. interquartile range and median) is allowed under Ordinance No. H-9 dated 14 August 2006 on the Procedure and the Manners for Application of Transfer Pricing Methods.

If a range is provided, any amount within it should be acceptable, to the extent that it is supported by relevant analysis and documentation.

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 law value adding services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?

Pursuant to Ordinance No. H-9 dated 14 August 2006 on the Procedure and the Manners for Application of Transfer Pricing Methods, when applying the transactional net margin method and if the line of market values consists of results from uncontrolled transactions for which sufficient comparability is not achieved, such a line of market values must be narrowed down through application of the interquartile range method.

The interquartile range method is applied by narrowing down the line of market values between the 25th percentile and the 75th percentile of the results derived from the comparable uncontrolled transactions. The 25th percentile is the lowest value of the adjusted line of values so that at least 25% of the total number of derived results remain below this threshold. Wherever 25% of all results constitutes an integer, the 25th percentile is calculated as the arithmetic mean between the highest value of the excluded results and the next largest value. The 75th percentile is calculated in the same way.

In cases where the result of the controlled transaction falls outside the determined line of market values (including after applying the interquartile range method described above), such a result must be equated to a point in the line, which reflects facts and circumstances that correspond to the greatest extent to the conditions of the controlled transaction. If such a point cannot be identified, the result is equated to the median of the values in the line.

With respect to low value-adding services, Bulgarian transfer pricing legislation contains no detailed rules specifically addressing this matter. However, based on the Transfer Pricing Manual issued by the NRA it could be concluded that Bulgarian tax administration normally considers intragroup services as low value-adding services. For intragroup services, the NRA-issued Transfer Pricing Manual states that in most cases a 3%-8% margin would be considered usual and reasonable. However, this margin range is rather indicative. Deviations from it are possible if properly justified.

6. Does your tax administration use secret comparables for transfer pricing assessment purposes?	No (based on the statutory framework and available case-law).
7. What is tax authorities approach to accept entities with loss (aggregated or incurred in particular years) or extremely high results in the benchmarking study? Do they accept such entities within the benchmarking study?	There are no explicit regulations or guidance in this regard. Whether or not entities with significant loss or extremely high profit will be recognized as valid elements of the benchmarking study would be determined on a case-by-case basis. It would very much depend on the overall situation of a particular case, in particular the extent to which the elements included in the benchmarking study meet the comparability factors (as described under item 3 above).
8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?	The tax administration can launch a tax audit for a maximum of 5 years back. Once an inspection is in place, the authorities normally seek to cover the maximum 5-year period available, unless the inspection is focused on a particular aspect and time period. Otherwise, in the reviewed examples for testing the market values for results of a controlled transaction in Ordinance No. H-9 dated 14 August 2006 on the Procedure and the Manners for Application of Transfer Pricing Methods, the reviewed period would include normally 3 years.
9. Are there any requirements for updating a benchmarking analysis? If yes, how often the benchmarking analysis should be updated? Is it enough to update only the financial results of comparable entities from the final sample, or the whole analysis have to be updated?	Yes. Pursuant to the provisions of the Tax and Social Security Procedure Code governing the preparation and maintenance of transfer pricing documentation, a local file and a master file must be prepared on an annual basis. If there are no significant changes in the comparability factors with respect to the controlled transactions, the overall benchmarking study made for comparable uncontrolled transactions and/or persons must be updated at least once every three years. Notwithstanding the foregoing, the financial data for the relevant transactions or persons determined by the benchmarking study as comparable must be updated on an annual basis.
10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?	No such threshold is provided by law.

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

The burden of proof for evidencing and justifying the arm's length compliance of a transaction lies with the taxpayer. Pursuant to the Tax and Social Security Procedure Code, whenever an audited person made a transaction(s) with related parties, such a person must prove their compliance with the fair market prices and/or the reasons justifying any deviations from the fair market prices, including through provision of any relevant evidence originating from another jurisdiction.

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

The statutory rules in the field of transfer pricing documentation introduce no requirement for the documentation to be prepared in Bulgarian language. Thus, it should be possible for the documentation to be prepared and maintained in English.

However, from a purely practical perspective, if the transfer pricing documentation is prepared in a foreign language (other than Bulgarian) and it is requested by the tax administration in the course of tax audit or tax inspection or it must be submitted to the tax authorities on other grounds (e.g. as part of the country-by-country reporting compliance), the tax authorities would normally require for such documentation to be accompanied by an official Bulgarian translation made by sworn translator(s).

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

Bulgarian transfer pricing framework contains no explicit regulation of options for adjusting prices of transaction between related parties.

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

Yes.

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?

The Tax and Social Security Procedure Code introduces specific penalties for violations and inconsistencies related to the transfer pricing documentation. These are:

– a person who is obliged to prepare a local file and has failed to do so may be subject to a monetary sanction amounting to up to 0.5% of the total value of the transactions for which documentation should have been prepared (for the purposes of this sanction:

(i) in case of provision or use of a loan the total value of the transaction shall be the amount of the loan; and (ii) it is considered that local file is not prepared if the tax administration has requested the provision of such file and the obliged person has failed to provide it within the deadline set by the tax administration),

- a person who is obliged to have a copy of a master file and has failed to obtain it may be subject to a monetary sanction ranging between BGN 5,000 and 10,000,
- a person who includes incorrect or incomplete data in the relevant transfer pricing documentation may be subject to a monetary sanction ranging between BGN 1,500 and BGN 5,000,
- twice the amount of the sanctions listed above in the case of repeated violation.

The Tax and Social Security Procedure Code also provides for separate monetary sanctions in the case of non-compliance with applicable country-by-country reporting requirements and obligations.

In addition to the monetary sanctions listed above, if tax authorities are not presented with appropriate transfer pricing documents and sufficient supporting evidence, they may find that relevant transaction(s) is/are not implemented in compliance with the arm's length principle and reevaluate the tax base. In the latter case, tax authorities may establish additional tax liabilities, together with default interest thereon.

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?

Yes. Bulgarian tax administration tends to take interest into transactions between related parties and check for their compliance with the transfer pricing requirements and principles.

Generally, there are no particular categories of transactions and/or taxpayers which can be classified as high-risk or low-risk in terms of potential inspection by the tax authorities. The officers may investigate various transactions and categories of taxpayers. Notwithstanding, if an indicative list of transactions which may likely draw the attention of the tax administration in terms of transfer pricing compliance should be provided, the top ranking spots on such list will include transactions related to share sales, transfer of real estate, loans and intra-group financing, etc.

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

APAs are not regulated in Bulgaria and no such agreements have been made.

18. **Do the regulations in your country provide some special, local reporting obligations (for example a special declaration for transfer pricing purposes)?**

No.

19. **Do the regulations in your country provide any safe harbor procedures? If so, please provide us with the further details, i.e.: information on which transactions the procedures may be applied and what conditions must be met and also what simplifications the procedures result in. Are there any reporting requirements to the tax authority with relation to apply safe harbour procedure?**

Bulgarian law does not provide for any safe harbour rules or procedures, particularly with respect to transfer pricing. There are some rules which exclude certain transactions and persons from the scope of transfer pricing requirements (see the 'Transfer pricing documentation requirements' section of the country profile). However, these are not so much safe harbour provisions, but rather exemptions from the relevant obligations/requirements.

20. **Please provide us with information, if COVID-19 situation affect transfer pricing regulations in your country for instance extension of the deadline for transfer pricing obligations.**

In March 2020 Bulgarian Parliament adopted a Law on the Measures and Actions During the State of Emergency Declared on 13 March 2020 by Decision of the National Assembly. It was intended to serve as the main piece of legislation defining certain rules and measures for addressing the situation created as a result of the COVID-19 outbreak. The law provides for suspension or prolongation of certain deadlines, but none of these concern the rules and requirements governing the transfer pricing obligations.

21. **Is there a reference in your local transfer pricing regulations to the possibility of re-characterization or non-recognition of transactions, are tax authorities use such tools in practice within the tax audit?**

Yes.

If tax authorities are not presented with appropriate transfer pricing documents and sufficient supporting evidence, they may find that relevant transaction(s) is/are not implemented in compliance with the arm's length principle and reevaluate the tax base.
In the latter case, tax authorities may establish additional tax liabilities, together with default interest thereon.

22. In case of financial transactions, what is the value of transaction within the meaning of transfer pricing regulations, for example in case of loan the value of transaction which need to be compare to the threshold will be interests or loan capital?

Pursuant to the provisions of the Tax and Social Security Procedure Code regulating the penalties for violations and inconsistencies related to the transfer documentation, in case of provision or use of a loan the total value of the transaction shall be the amount of the loan (i.e. principal).

Other than that, for the purposes of determining whether an obligation for preparation of local file applies both the principal amount of the loan and the interest may be of relevance, as there are two separate thresholds provided in this regard. Pursuant to the statutory rules, the relevant obliged persons are under the obligation to prepare and maintain a local file for controlled transactions carried out by them in cases where during the relevant year the amount of received, respectively provided loan exceeds BGN 1,000,000 or the amount of the interest accrued (and any other income or expenses related to the loan) exceeds BGN 50,000.

Bulgarian transfer pricing regulation contains no explicit definition or guidance on what constitutes the value of the transaction for financial transactions other than loans. The only explicit regulation in this respect is the one concerning loans, as described herein. Since the statutory rules in the Bulgarian Tax and Social Security Code which currently govern the obligations related to TP documentation are relatively new (adopted in 2019 and effective as of 1 January 2020), there is no case-law or guidance provided by the tax authorities as well. Thus, the determination of the value of relevant financial transaction will likely have to be made on a case-by-case basis and in view of the specific terms of a transaction. As indicated, Bulgarian tax authorities normally take into account the guidance provided by the OECD, so in the absence of local rules and practice tax administration may consider referring to existing OECD interpretations and information.

CZECH REPUBLIC

Regulations and rulings

- **Regulations**
  - Income Tax Act,
  - Guidance GFŘ-D-22,
  - Guidance D-332,
  - Guidance GFŘ-D-32,
  - Guidance D-334,
  - Guidance GFŘ-D-10 (effective since January 2013) on the Low-Value-Adding Intragroup services.
- **Arm's length principle and definition of related party**
  - Article 23 (7) of the Income Tax Act introduced the arm's length principle whereby related party ("affiliation") is defined and the ownership rules are set for determining when parties are related.
  - Guidance GFŘ-D-22 recommends applying OECD Transfer Pricing Guidelines.
  - Guidance D-332 concerning the application of international standards in the taxation of transactions between associated companies.
  - Guidance GFŘ-D-32 outlines requirements concerning §38nc of the Income Tax Act and comments on the principles of binding assessments, the latter of which corresponds to the advance pricing agreement principles within the meaning of the OECD Guidelines.
  - Guidance GFŘ-D-10 (effective since January 2013) on the Low-Value-Adding Intragroup 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.

All the Guidances 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 GFŘ-D-22 includes a general reference to OECD Guidelines. Nevertheless their effect is binding in interpretation of the Treaties because 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 serve as a supportive guideline in domestic transactions since the arm's length principle is defined similarly in the OECD Guidelines and in Sec. 23(7) of the Income Tax Act.
- OECD Guidelines are 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 **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 related if they enter into a commercial relationship mainly for the purpose of reducing the tax base (this is an 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 for any legally binding rules for preparing 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 part of the corporate income tax return.

Mandatory TP disclosure as part of the corporate income tax return

- According to the amended transfer pricing legislation, taxpayers fulfilling criteria listed below must disclose transfer pricing information upon 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 matters. This risk analysis is subsequently used in tax control planning and in prevention of tax avoidance.
- The taxpayers must report details about their related-party transactions if they meet 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 makes 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 posted tax losses, and at the same time the taxpayer made 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 made 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.
- These taxpayers must disclose information annually and the documentation should cover basic information about the related party (name, place of residence, country) and 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 already stated, 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 while some may request translations.

Country by Country reporting

As of 19 September 2017, the Country-by-Country reporting directive was implemented into the Czech tax legislation. The amendment introduces 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 must newly submit (i) Notification announcing 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.

Safe harbours

- There is no safe harbour procedure in the transfer pricing regulations.

Transfer pricing audit procedures and penalties

- Generally, when the transaction is challenged by the tax authority, the taxpayer must – if requested – prove the existence of such a transaction (i.e. a substance test) and 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 must prove that the transaction was made between related parties and further that the prices the taxpayer applied differ from the arm's length prices. Once they do that, the taxpayer must then explain and document the reasons for the difference. If it fails the tax authority may modify the tax base. The taxpayer can submit its transfer pricing documentation supporting the arm's length nature of its related party transactions. However, it is not mandatory.
- Although the preparation of the transfer pricing documentation is not mandatory, the tax authority may request any reasonable information/documents from the taxpayer to check the arm's length principle. The tax authority shall allow a reasonable deadline if that is the case yet the law only states it can be shorter than 8 days only in very simple or very urgent cases. However, the deadline 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 Liechtenstein. 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, a taxpayer failing to fulfil obligations following Country-by-country rules faces the risk of penalty by the Czech tax authority of up to CZK 1.5m.

Transfer pricing adjustments

- **There are no specific legal provisions on secondary adjustments** yet domestic legislation **does not prevent taxpayers from making transfer pricing adjustments.**
- The right to make secondary adjustment is not always enacted in double tax treaties ("DTT") 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 for 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 a 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 the application for an APA, the taxpayer **must pay a CZK 10,000 fee**.
- The period for which the APA may be made **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** from taxpayer's request.

Implementation of BEPS

- Czech Republic has already implemented Country-by-country reporting (BEPS Action 13), Harmful tax practise (BEPS Action 5), CFC (BEPS Action 3), interest deduction (BEPS Action 4), GAAR (BEPS Action 6) and Hybrid Mismatch Arrangements (BEPS Action 2) into the tax legislation.

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

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

It is possible to apply 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 these 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 pubic market – at market value,
- shares not publicly traded – at a share on equity,
- business – DCF.

Additionally, the Ministry of Finance issued guidance where these methods are detailed.

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

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

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

   If the local benchmark is preferred, is it enough to include the local market within the search strategy or is it required to have local comparables in a final sample?

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 contain 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? **Is the full range (minimum-maximum) acceptable as a market range?**	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 law value adding 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 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 the right to understand how the tax was assessed or additionally assessed by the tax administrations. Therefore, such a use might be challenged by the taxpayer.
7. What is tax authorities approach to accept entities with loss (aggregated or incurred in particular years) or extremely high results in the benchmarking study? Do they accept such entities within 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 the case of a low-risk-profiled entities.
8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?	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.

9. Are there any requirements for updating a benchmarking analysis? If yes, how often the benchmarking analysis should be updated? Is it enough to update only the financial results of comparable entities from the final sample, or the whole analysis have to be updated?	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.
10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?	There is no detailed guidance on this topic. Usually the best practice is followed – 25%.
11. Does burden of proof (that the transaction is arm's length) lie with the taxpayer or tax administration?	Generally, when the transaction is challenged by the tax authority, upon request the taxpayer must prove the existence of such a 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 must 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 must explain and document the reasons for the difference. If it fails the tax authority may assess tax.
12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?	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 request translation.
13. Do the tax authorities accept self-initiated adjustments?	Yes, and in contrary to point 11 above, the burden of proof lies with the taxpayer.

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

Yes, on 27 January 2016.

The Country-by-Country reporting directive was implemented into the Czech tax law as of 19 September 2017. The amendment imposes obligations on Czech companies that are part of a multinational group and, at the same time, the consolidated revenues of the whole group exceeded EUR 750m. 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.

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?

The transfer pricing documentation is not mandatory in the Czech Republic, so there is no special penalty 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% on 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 1.5m.

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?

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 19 September 2017.

The Czech Tax Authority announced in 2015 that they would focus more 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. Furthermore, the Czech Tax Authority publicly disclosed its intention to use CbC reporting for risk assessment purposes.

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

Data not available.

18. Do the regulations in your country provide some special, local reporting obligations (for example a special declaration for transfer pricing purposes)?

There are no special, local reporting obligations except for CbC reports as already mentioned.

19. Do the regulations in your country provide any safe harbor procedures? If so, please provide us with the further details, i.e.: information on which transactions the procedures may be applied and what conditions must be met and also what simplifications the procedures result in. Are there any reporting requirements to the tax authority with relation to apply safe harbour procedure?

There is no safe harbour procedure in the transfer pricing regulation.

20. Please provide us with information, if COVID-19 situation affect transfer pricing regulations in your country for instance extension of the deadline for transfer pricing obligations.

The COVID-19 situation does not affect the transfer pricing obligations.

21. Is there a reference in your local transfer pricing regulations to the possibility of re-characterization or non-recognition of transactions, are tax authorities use such tools in practice within the tax audit?

There are some principles in the Tax Procedure Act:

- The tax administrator audit is based on the actual content of the legal action or other facts decisive for the tax administration.
- The tax administration does not take into account legal proceedings and other facts decisive for the administration of taxes, the predominant purpose of which is to obtain a tax advantage contrary to the meaning and purpose of the tax legislation.

In practice both these principles are followed by tax authorities.

22. In case of financial transactions, what is the value of transaction within the meaning of transfer pricing regulations, for example in case of loan the value of transaction which need to be compare to the threshold will be interests or loan capital?

In the case of financial transactions, the amount of interests needs to be compared to the threshold.

ESTONIA

Regulations and rulings

- **Regulations**
  - Income Tax Act, Articles 8, 14, 50, 53.
  - Minister of Finance regulation on Methods for determining the value of transactions made between associated persons
- **Arm's length principle and definition of related party**
  - Income Tax Act, Article 8
- **Transfer pricing documentation**
  - Income Tax Act, Article 50
  - Minister of Finance regulation on Methods for determining the value of transactions made between associated persons, article 18.

OECD guidelines treatment

- OECD Guidelines are respected by tax authorities and courts during the review of prices applied in related party transactions.

Definition of related parties

- Two legal entities are **related** parties provided they have common economic interests or if one person has a dominant influence over the other. The Income Tax Act lists persons that are related in any case, such as:
  - companies that are members of one group;
  - individual and legal persons where more than 10% of the share capital, votes or right to profits belong to the same individual;
  - related individuals (spouses, cohabitees, direct blood or collateral relatives), employers and employees, a company and a member of its controlling body;
  - legal persons where more than 50% of the share capital, votes or right to profits belong to one and the same person or associated persons;
  - persons who own more than 25% of the share capital, votes or right to profits in one and the same legal person;
  - legal persons where all management board members are one and the same.

Transfer pricing methods

- The **transfer pricing methods** accepted by tax authorities 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.

Transfer pricing documentation requirements

- A company and a non-resident operating in Estonia through a permanent establishment must prepare comprehensive TP documentation on its operations if the consolidated results with related parties meet at least one of the following criteria:
  - annual sales of the year preceding the relevant transaction exceeded EUR 50 million;
  - total assets exceed EUR 43 million;
  - employees number at least 250.
- Additional TP regulation documentation requirements apply to:
  - credit institutions, insurers, listed companies;
  - transactions with persons residing in low-tax territories.
- Local companies not reaching these thresholds are also required to prove the arm's length nature of related-party transactions and apply general documentation rules.
- Local file should contain the following information: (i) description of the taxpayer's activities, highlighting also changes in business strategy compared to the previous financial year; (ii) description of the inspected transactions made by the taxpayer; (iii) analysis of inspected transactions and comparable transactions; (iv) description of reasons for choosing the method or methods for determining the transfer prices and the use of such methods; (v) if possible, the relevant internal and external comparison data and references to sources of comparable transactions.

Safe harbours

- No.

Transfer pricing audit procedures and penalties

- In the case of failure to file a declaration as required or failure to correct errors in the declaration, the tax authority may impose a fine of EUR 3,200. Unpaid taxes due to not presenting data or presenting incorrect data to the tax authorities may lead to misdemeanour proceedings (if the amount of unpaid taxes does not exceed EUR 40,000) and a fine of up to EUR 32,000 or to criminal proceedings (if the amount of unpaid taxes exceeds EUR 40,000) and a five-year prison term or a significant fine.
- If an audit by the tax authorities results in TP adjustments, late payment interest (daily rate 0.06% / 21.9% annually) applies to the unpaid tax amount. Late payment interest is taxed with corporate income tax at the rate of 20/80 (25% on the net payment).
- Tax audits can go back 3 years from the date tax becomes payable (5 years in the case of international non-payment of taxes).
- TP cases are not enough to make general statement as to what extent penalties are enforced in practice.

- TP documentation can be in a language other than Estonian; however, the documents must be translated into Estonian if requested by tax authorities.
- TP documentation must be presented to the tax authorities within 60 days from the request.
- Country-by-country (CbC) report must be presented by a group company if the consolidated turnover of international group exceeds EUR 750 million. The report must be submitted to the Estonian Tax and Customs Board by the 31 December.
- There are no TP-specific penalties or fees which must be paid by the taxpayer. Intentional submission of false information or not providing information to the tax authorities can lead to misdemeanour procedure with the maximum penalty of EUR 32,000. Failure to submit a tax return, other document or information by due date, failure to register with a tax authority, failure to comply with the requirements for the keeping of records or failure to comply with an order of a tax authority can lead to a misdemeanor procedure with the maximum penalty of EUR 3,200. Intentional non-payment of taxes in the amount exceeding EUR 40,000 can lead to criminal procedure.
- On top of the above, transfer pricing adjustments are taxable with CIT at the rate of 20/80. Additionally, delay interest at the rate of 21.9% p/a applies if taxes were paid late.

Transfer pricing adjustments

- Yes.
- If the Tax and Customs Board finds that a transaction is not at arm's length, it will adjust the transaction values, determine the tax obligation and impose delay interest. Additionally, misdemeanour or criminal proceedings may be launched.
- The law does not introduce specific regulation on adjustments made by a taxpayer. Taxpayer can make adjustments itself once it discovers the need to make them. As this would lead to change in tax returns, taxpayers are able to change tax returns 3 years back. General tax limitation period of 3 years or 5 years (in the case of intentional non-payment of taxes) applies also to transfer pricing procedures.
- A request for elimination of double taxation caused by adjustments shall be submitted within three years after the first notice of the activity resulting or possibly resulting in double taxation.

Cost Contribution Agreements (CCAs)

- Yes, article 17 of the regulation of Minister of Finance on Methods for determining the value of transactions made between associated persons. This should be highlighted in the regulation:
- An agreement party may use the part of the agreement object belonging to the agreement party, without paying to other agreement parties for such use. Analysis of the agreement conditions shall identify whether all agreement parties are entitled to benefits from the agreement object, shall determine the contribution of each agreement party to the agreement object, and shall identify whether the contribution of the agreement party is in proportion to the share of the agreement party in the expected or earned revenue;
- The taxpayer shall not be considered an agreement party if there is no reasonable basis for an assumption that the taxpayer receives any benefit from the agreement object.
- The estimated revenue from the object shall be determined upon verifying the proportionality of the contribution. If the actual revenue of the agreement is *significantly* different from the estimated revenue, the estimates made upon signing the agreement shall be compared to the estimates which non-associated persons would have made upon signing an agreement under similar conditions.
- Contributions shall be accounted similarly to expenses that the taxpayer would have incurred for acquiring the agreement object without the contract. A contribution shall not be accounted as a license fee or a rental or lease fee for use of the agreement object, except if the contribution grants the contributor only the right to use the agreement object, without the right to receive revenue from the agreement object.
- A contribution shall be considered to conform to the market value if non-associated persons would have made an equivalent contribution to an agreement signed under similar conditions. If the contribution of an agreement party does not conform to the earned or estimated revenue, the tax administrator shall have the right to correct the contribution amount accordingly. The expense distribution agreement may also be extended to property owned by an agreement party before that.
- The amount and level of detail of the required documents must conform to the circumstances of the specific transaction and to the transaction price and must be sufficient to prove the conformity of the agreement to the market value. Upon signing the agreement, the following information shall be determined and documented:

  1) agreement parties;

  2) taxpayer's associated persons involved in the agreement;

  3) agreement object;

  4) agreement duration;

5) shares of agreement parties in the estimated results, and the assumptions and principles used for determining such shares;

6) distribution of rights and obligations of agreement parties and their associated persons;

7) form and value of the contribution of an agreement party and the principles used for determining such value, together with description of the accounting rules followed upon evaluating the contribution;

8) description of the procedure and consequences of joining, withdrawing from and ending the agreement;

9) rules for balancing the contributions and for amending the conditions of the agreement according to changes of the external environment.

- If the agreement is not followed, then the tax administrator may refrain from taking into account the agreement or may take into account such an agreement which would have been signed by non-associated persons under similar conditions.
- During the agreement term, the amendments made to the agreement shall be documented and the initial estimates of the revenue from the agreement shall be compared to the actual results. At the end of a financial year, the form and value of the contributions made during the financial year shall be documented.

Advanced Pricing Agreements (APAs)

- APAs are not available in Estonia.

Implementation of BEPS

- Estonia has implemented TP documentation structure indicated in Action 13 of BEPS.

1.	**Is the CUP method preferred (should the CUP method be rejected with the proper justification if another method is applied?)?**	No.
2.	**In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?**	No.
3.	**Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?** **If the local benchmark is preferred, is it enough to include the local market within the search strategy or is it required to have local comparables in a final sample?**	The local benchmark is preferred over the Pan-European one. However, as in most cases it is impossible to receive comparable data in a local benchmark it is allowed to use a wider region, i.e. Pan-European. In the case of a local benchmark local comparables must be included in the final sample.
4.	**Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?** **Is the full range (minimum-maximum) acceptable as a market range?**	Estonian legislation determines the full range as arm's length range. In practice interquartile range can be used.
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 low value adding services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?**	Usually it is determined based on the functions and risks of the analyzed company – the fewer functions are performed, risks assumed and assets used, the closer the result can be to the lower quartile. For low value adding services tax authorities generally accept a 5% mark-up.
6.	**Does your tax administration use secret comparables for transfer pricing assessment purposes?**	No information.

7.	**What is tax authorities approach to accept entities with loss (aggregated or incurred in particular years) or extremely high results in the benchmarking study? Do they accept such entities within the benchmarking study?**	No, unless the analyzed taxpayer is comparable.
8.	**What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?**	5 years.
9.	**Are there any requirements for updating a benchmarking analysis? If yes, how often the benchmarking analysis should be updated? Is it enough to update only the financial results of comparable entities from the final sample, or the whole analysis have to be updated?**	Transfer pricing documentation (including benchmarking) should be updated every year. It is not determined to what extent the documentation should be updated, so the recommendation is to keep the whole documentation up-to-date when renewed.
10.	**What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?**	No specific rules.
11.	**Does burden of proof (that the transaction is arm's length) lie with the taxpayer or tax administration?**	Taxpayer.
12.	**Should the transfer pricing documentation be prepared in local language or could it be prepared in English?**	TP documentation should be prepared in Estonian. Documentation may be prepared in English but tax authorities may request translation into the local language.
13.	**Do the tax authorities accept self-initiated adjustments?**	Yes.
14.	**Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?**	Yes.

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 the case of failure to file a declaration as required or failure to correct errors in the declaration, the tax authority may impose a fine of EUR 3,200. Unpaid taxes due to not presenting data or presenting incorrect data to the tax authorities may lead to misdemeanor proceedings (if the amount of unpaid taxes does not exceed EUR 40,000) and a fine of up to EUR 32,000 or to criminal proceedings (if the amount of unpaid taxes exceeds EUR 40,000) and a five-year prison term or a significant fine.

If an audit by the tax authorities results in TP adjustment, late payment interest (daily rate 0.06% / 21.9% annually) applies to the unpaid tax amount. Late payment interest is taxed with corporate income tax at the rate of 20/80 (25% on the net payment).

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?

Yes, especially in the case of intragroup loans and management support services.

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

Not available.

18. Do the regulations in your country provide some special, local reporting obligations (for example a special declaration for transfer pricing purposes)?

No special reporting. All legal entities must submit an annual report, including a description of related party transactions that must be filed within six month of the end of the reporting year (subject to COVID-19 related extensions). Annual report demonstrates main financials of the last accounting year (such as balance sheet, profits and loss statements, etc.). It does not include transfer pricing-specific categories, but covers general volume of related party transactions from last financial year.

19. Do the regulations in your country provide any safe harbor procedures? If so, please provide us with the further details, i.e.: information on which transactions the procedures may be applied and what conditions must be met and also what simplifications the procedures result in. Are there any reporting requirements to the tax authority with relation to apply safe harbor procedure?	No.
20. Please provide us with information, if COVID-19 situation affect transfer pricing regulations in your country for instance extension of the deadline for transfer pricing obligations.	In 2020, the deadline for filing annual reports (containing some TP related information) was extended to 31 October 2020. This is considered to be one-time extension due to COVID-19.
21. Is there a reference in your local transfer pricing regulations to the possibility of re-characterization or non-recognition of transactions, are tax authorities use such tools in practice within the tax audit?	No transfer pricing-specific rules. The general anti-avoidance rule enables to re-characterize arrangements according to their economic content and intent of the parties involved. Such re-characterization is used in tax audits from time to time.
22. In case of financial transactions, what is the value of transaction within the meaning of transfer pricing regulations, for example in case of loan the value of transaction which need to be compare to the threshold will be interests or loan capital?	Estonian law and transfer pricing guidelines do not provide for specific rules for determining the market price for financial transactions. All characteristics of the financial arrangement (including principal loan amount and interest) should be taken into account. Therefore, the OECD Guidelines on TP will be followed.

HUNGARY

Regulations and rulings

- **Regulations**
  - Act 131 of 1996 on Corporate Tax and Dividend Tax,
  - Act of 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 no. 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 introduces basic transfer pricing rules,
  - Article 4/23 defines related parties and Article 31/2 refers 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 guarantees provided by related entities.
- **Transfer pricing documentation**
  - Decree no. 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.

OECD guidelines treatment

- The CIT Act c**ontains 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**.

Definition of related parties

- An 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,
  - f) the taxpayer and another person if dominating influence is exercised between them relating to business and financial policy having regard to the equivalence of management,
  - * notwithstanding sub-paragraphs a)-c), the associated company relationship is still established
    - ga) points 11, 53, § 8 (1) (f) and 16 / A. § if there is a direct or indirect shareholding of at least 25 per cent, or a direct or indirect shareholding of at least 25 per cent, or a share of profits of at least 25 per cent, between the taxpayer and another person, provided that, for the purposes of these provisions, compliance with subparagraph (f) does not need to be examined,
    - gb) a 16 / B. § if there is a direct or indirect shareholding of at least 50 per cent, or a direct or indirect shareholding of at least 50 per cent, or a share of profits of at least 50 per cent, between the taxpayer and another person, provided that the influence of persons acting in a coordinated manner must be taken into account in respect of voting rights and shareholdings, in addition, in the case of taxpayers belonging to a group of companies preparing consolidated financial statements, the provisions of subparagraph (f) shall also be examined.

Transfer pricing methods

- The **transfer pricing methods** accepted by the tax authorities **are based on the OECD TP 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 OECD TP Guidelines.

Transfer pricing documentation requirements

- **An entity falling under the CIT Act** must prepare transfer pricing documentation for transactions with related parties if at the end of the tax year based on the report for the latest available financial year, it qualifies as a medium or large enterprise, i.e.:
  - **it employs** at least **50 people**, or
  - **its total turnover and total assets** on a consolidated statement exceed **EUR 10 million.**

These thresholds must be monitored on a group and not a stand-alone company basis. If a company previously qualified as a small enterprise, the thresholds have to be exceeded in two successive years to be reclassified and lose the exemption.

- **Exemptions** from these obligation are:
  - 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 141,000), 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 (note: the proof formally does not have to fulfil the requirements related to a TP documentation);
  - 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 made 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 classified as small or medium-sized enterprises on the last day of the tax year with regard to their long-term contracts made 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). If a taxpayer has at least one related party transaction for which a local file must be prepared, the taxpayer then must hold or prepare a master file as well.

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 group members**, 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 restructurings** 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 use 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:

- 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 main document drafting date.

The following essential elements must 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;
- a **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 thereof on the taxpayer;
- listing the **taxpayer's most important competitors**;
- a copy of 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 authorities other than the Hungarian Tax Authority which affect the transfer pricing subjected transactions; and
- the local document drafting date;
- data for each controlled or aggregated **transaction** – 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;
- a **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 the transfer pricing method chosen;
- 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[1];
- the presentation and detailed justification of the **comparability adjustments** and 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; and
- data of **any court or other authority proceedings pending or 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.

[1] Analysis is required for every transaction, that is subject to transfer pricing obligation

- 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 these 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 an MNE group member is not obliged to submit a CbC report under one of the above-listed requirements, it must only meet 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 must 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 **must prepare a Hungarian translation**. No translation can be requested by law for English, German or French documentations.

Safe harbours

- For low-value-added intra-group services, the safe harbour mark-up can be applied subject to certain thresholds. In such a case, a simplified transfer pricing documentation can be prepared and no benchmark study is required.

Transfer pricing audit procedures and penalties

- 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.**

Transfer pricing adjustments

- **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 for 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.

Cost Contribution Agreements (CCAs)

- 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.

Advanced Pricing Agreements (APAs)

- 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 (approx. EUR 6,400) for a unilateral statement**. In the case of a multilateral statement the fee is **HUF 2,000,000 (approx. EUR 6,400) multiplied by the number of parties involved**.
- 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 entered into is **3 to 5 years**, but it **could be extended for additional 3 years** on a taxpayer's request.

Implementation of BEPS

- Yes, these are implemented in Hungary.

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

Yes, in practice, the CUP method is strongly preferred. It is considered the most direct method of the designated ones. Nevertheless, other methods may still be considered the most appropriate methods.

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

Yes, explanation of the reason(s) is expected if the prioritized methods are not applicable. If a TP-method other than the five basic methods is applied, then it should be explicitly explained in detail. As a general rule, the most appropriate method should be used in each case.

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

If the local benchmark is preferred, is it enough to include the local market within the search strategy or is it required to have local comparables in a final sample?

Local or regional benchmarks are strictly preferred compared to Pan-European ones. However, the sample may be enlarged step by step in the case of the absence of sufficient number of comparables. To this end, the 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?**

Is the full range (minimum-maximum) acceptable as a market range?

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

In line with the OECD standards, specific rules regarding the preparation of the benchmarking analysis and the determination of the arm's length price range are applicable.

The interquartile range is mandatory:

- if comparable data are sourced from public or other databases auditable by the tax authority[1]; and
- if[2] the final sample covers more than at least 10 companies' financial data for 3 years or the range exceeds 15 percentage points;
- unless the taxpayer performs a functional analysis for each component of the comparable sample and, based on this analysis, it can be concluded without any doubt that the comparability has not been violated.

As for the determination of the usual market range from the final sample, the tax authority prefers the so-called "pooling method" (i.e. when each element of the comparable sample qualifies as one comparable data).

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?**

Any point of the IQR is acceptable yet median is considered the preferred point of the interquartile range.

Do the tax authorities accept any level of mark-up for law value adding services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?	Authorities accept any level of mark-up for services falling within the IQR.
6. Does your tax administration use secret comparables for transfer pricing assessment purposes	No.
7. What is tax authorities approach to accept entities with loss (aggregated or incurred in particular years) or extremely high results in the benchmarking study? Do they accept such entities within the benchmarking study?	In general, continuous loss-making entities shall be excluded from the final sample. Loss-making comparables can be accepted under special conditions (e.g. general economic downturn, start-ups, struggling industries, etc.). The tax authority accepts that related parties can also generate losses if it can be demonstrated that the whole group or the whole industry is loss generating at the period examined and/or independent companies would also accept temporary losses under comparable circumstances.
8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?	In general, tax authority prefers the analysis of 3-year periods, but 5-year periods are also accepted. Industry-specific matters might also justify the analysis of longer periods.
9. Are there any requirements for updating a benchmarking analysis? If yes, how often the benchmarking analysis should be updated? Is it enough to update only the financial results of comparable entities from the final sample, or the whole analysis have to be updated?	Benchmarking analysis shall be updated at least once every 3 years, unless there were any changes in the facts and the circumstances of the transaction examined. Financial update of the benchmarking analysis shall be performed at least every year.
10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?	It is not governed by the relevant Hungarian legislation from TP benchmarking perspectives.
11. Does burden of proof (that the transaction is arm's length) lie with the taxpayer or tax administration?	The taxpayer must prove that the transfer prices applied comply with the arm's length principle. The obligation to prepare a transfer pricing documentation (local file) places the burden of proof on the taxpayer. Once the transfer pricing documentation is prepared by the taxpayer timely, then the burden of proof shifts to the tax authority.
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 its modification(s), if any, and the supporting documentation can be prepared in Hungarian and other languages. The taxpayer must provide the tax authority with a professional translation of the transfer pricing documentation originally prepared in a foreign language (does not apply to English, German and French).

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

Yes, provided that it is well-supported with a thorough argumentation included in the local file and with an extensive economic analysis. It might take the form of a year-end adjustment or a corporate tax base adjustment, as well. In the latter case, the accounting records of the transaction are not amended. It must be emphasized that the upward adjustment of the corporate tax base is an obligation, whilst the downward adjustment is a possibility which is subject to specific administrative conditions. The tax authority deems any self-initiated adjustment as a risk element from tax audit perspectives.

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

Yes.

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?

If the taxpayer fails to present an appropriate transfer pricing documentation (i.e. Master File and Local File) at the request of the tax authorities within the framework of a tax audit, it may be fined up to HUF 2 million per related party transaction. In the case of repeated violations of the documentation obligation, the taxpayer may be fined up to HUF 4 million. In the 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 million.

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.

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?

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. Risk assessment is systematically conducted by the tax authority, focusing on certain industries, large taxpayers and/or loss generating companies. Transfer prices are usually controlled within the framework of general tax audits. Transfer pricing specific risk areas are also identified and examined by the transfer pricing central division of the tax authority.

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

Yes, it is popular (more than 160 APAs made). A relatively quick procedure that provides certainty for planned and repeated party transactions.

18. Do the regulations in your country provide some special, local reporting obligations (for example a special declaration for transfer pricing purposes)?	No.
19. Do the regulations in your country provide any safe harbor procedures? If so, please provide us with the further details, i.e.: information on which transactions the procedures may be applied and what conditions must be met and also what simplifications the procedures result in. Are there any reporting requirements to the tax authority with relation to apply safe harbour procedure?	For low-value-added intra-group services, the safe harbour mark-up can be applied subject to certain thresholds. In such a case a simplified transfer pricing documentation can be prepared and no benchmark study is required.
20. Please provide us with information, if COVID-19 situation affect transfer pricing regulations in your country for instance extension of the deadline for transfer pricing obligations.	For the tax year 2019, the deadline to prepare corporate income tax return had been extended from 31 May 2020 to 30 September 2020, which moved the deadline for the preparation of the corresponding local file and master files, as well.
21. Is there a reference in your local transfer pricing regulations to the possibility of re-characterization or non-recognition of transactions, are tax authorities use such tools in practice within the tax audit?	Based on the Act on the Rules of Taxation, the Tax Authority has the right for recharacterization or non-recognition. The Tax Authority prepares to use such tools especially in connection with financial transactions, management services, etc.
22. In case of financial transactions, what is the value of transaction within the meaning of transfer pricing regulations, for example in case of loan the value of transaction which need to be compare to the threshold will be interests or loan capital?	This question is not explicitly clarified by the regulation. In practice, the interests accrued are typically considered the value of transaction. However, by also taking into consideration the fact that the financial transactions are in the focus of tax audits it is advisable to be conservative in this regard and to prepare transfer pricing documents on loans with significant capital movement involved, cash-pools, guarantees, etc.

[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 auditable by the tax authority. Taxpayers could also use (i) public data from other sources or (ii) other data verifiable by the tax authority (e.g. industry indicators, market analyses).

[2] If the sample includes less than 10 companies and the range does not exceed 15 percentage points the application of the minimum-maximum range can be considered.

LATVIA

Regulations and rulings

- **Regulations**
  - Law on Taxes and Duties,
  - Cabinet Regulation No. 802 "Transfer Pricing Documentation and Procedures for Concluding an Advance Agreement Between a Taxpayer and Tax Administration on Determination of the Arm's Length Price (Value) for a Transaction or Type of Transactions".
- **Arm's length principle and definition of related party**
  - Law on Taxes and Duties, Article 1, 18).
- **Transfer pricing documentation**
  - Cabinet Regulation No. 802 "Transfer Pricing Documentation and Procedures for Concluding an Advance Agreement Between a Taxpayer and Tax Administration on Determination of the Arm's Length Price (Value) for a Transaction or Type of Transactions",
  - Law on Taxes and Duties.

OECD guidelines treatment

- OECD Guidelines are respected by tax authorities and courts during verification of the prices applied in related party transactions.

Definition of related parties

- Two legal entities are **related** parties provided that:
  - they are parent and subsidiary companies;
  - foreign related companies:
    - with at least a 20% shareholding; or
    - controlling interest belongs to the same individual/s (up to 10 individuals); or
    - controlling interest in the other party belongs to a related individual (spouse, relatives up to the 3rd degree);
  - related individuals (spouses, relatives up to the 3rd degree) own more than 50% of the share capital or the share value of a commercial company;
  - any other person/s if the main aim is reduction of the tax burden;
  - persons registered in low-tax or zero-tax territories.

Transfer pricing methods

- The **transfer pricing methods** accepted by tax authorities 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.

Transfer pricing documentation requirements

- Master file
  - If the transaction amount > EUR 15m; or if turnover > EUR 50m and the transaction amount > EUR 5m, the master file should be submitted to tax authorities within 12 months after the end of taxation year;
  - If turnover is < EUR 50m and the related party transaction amount is from EUR 5m to EUR 15m, the master file should be prepared within 12 months after the end of taxation year and submitted to tax authorities within 1 month upon their request.
- Local file
  - If the transaction amount > EUR 5m, the local file should be submitted to tax authorities within 12 months after the end of taxation year;
- If the transaction amount is between EUR 250k and EUR 5m, the local file should be prepared within 12 months after the end of taxation year and submitted to tax authorities within 1 month upon their request. TP documentation must be revised and updated every year. However, if the situation of the company does not change significantly taxpayers should update only financial data applied in the analysis. The whole TP documentation must be revised once every 3 years.
- Analysis is not required for transactions below EUR 20,000.
- Companies not exceeding the thresholds must also be able to prove their related-party transactions are arm's length in the case of a tax audit.

Safe harbours

- Safe harbour procedure generally can be applied to transactions that are low value-adding intra-group services transactions:
  - have a support nature,
  - do not form part of the core business of the group,
  - unique and valuable intangible assets have not been used,
  - transaction provider does not assume or control significant risks associated with the services.
- Usually these services are accounting, personal management, general IT, general administration and support services, etc.

Transfer pricing audit procedures and penalties

- If a taxpayer does not comply with the TP documentation submission and if it significantly violates the TP documentation preparation rules, a penalty of up to 1% of the related party transaction value (for which the taxpayer is obligated to prepare the TP documentation) may be applied, but no more than EUR 100,000.
- a "significant violation" includes incomplete TP documentation (information requested is not included in the TP documentation) meaning that it is not possible to conclude whether the agreed price is arm's length.

- Late payment penalty applies at 0.05% daily.
- tax audits can go back 3 years, except for TP transactions with persons that are not Latvian tax residents, where a tax audit can go back 5 years.
- TP local file must be prepared and submitted in Latvian while TP master file may be filed in English. However, tax authorities may still request its Latvian translation (within 30 days upon the request).

Transfer pricing adjustments

- Yes.
- TP adjustments made during audit might trigger value added tax (VAT) adjustments, without the right to adjust corresponding input VAT.
- The Latvian State Revenue Service (SRS) may require from the taxpayer TP documentation in order to "verify the risks of TP adjustments, to advise on possible TP adjustment risks, to offer voluntary adjustment of the corporate income tax (CIT) return or to invite the taxpayer to initiate the advance agreement procedure (APA)". In this case the TP documentation should be submitted within 90 days from the day of the request (with a possibility to extend the deadline by 30 days).

Cost Contribution Agreements (CCAs)

- Yes – however, there are no specific local regulations on CCA at the moment.

Advanced Pricing Agreements (APAs)

- Unilateral APAs are an option both for future transactions and transactions which took place during previous 5 taxation years.
- The taxpayer at its own initiative or agreeing to the proposal of the tax authority may apply for an APA and determine the market price for a transaction or certain types of transactions with a related foreign company, if the transaction amount (actual or planned) exceeds EUR 1.43 million annually.
- The tax authority charges a fee of EUR 7,114 for evaluating a taxpayer's APA application.
- The deadline for issuing the APA is 1 year.

Implementation of BEPS

- Latvia has implemented TP documentation structure indicated in Action 13 of BEPS.

1. **Is the CUP method preferred (should the CUP method be rejected with the proper justification 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 the local benchmark is preferred, is it enough to include the local market within the search strategy or is it required to have local comparables in a final sample?**	The local benchmark is preferred over the Pan-European one. However, since comparable data are most of the time not available in a local benchmark it is allowed to use wider region, i.e. Pan-European. In the case of the Pan-European benchmark local comparables must be included in the final sample.
4. **Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures?** **Is the full range (minimum-maximum) acceptable as a market range?**	Interquartile range is usually applied. The law does not preclude taxpayers from using the full (minimum-maximum) range as the market one.
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 low value adding services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?**	Usually it is determined based on the functions and risks of the analyzed company – the fewer functions are performed, risks assumed and assets involved, the closer the result can be to the lower quartile. For low value adding services tax authorities accept a 5% mark-up.

6.	**Does your tax administration use secret comparables for transfer pricing assessment purposes?**	No information.
7.	**What is tax authorities approach to accept entities with loss (aggregated or incurred in particular years) or extremely high results in the benchmarking study? Do they accept such entities within the benchmarking study?**	No, unless the analyzed taxpayer is comparable.
8.	**What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?**	3 years for local transactions and 5 years for cross-border transactions.
9.	**Are there any requirements for updating a benchmarking analysis? If yes, how often the benchmarking analysis should be updated? Is it enough to update only the financial results of comparable entities from the final sample, or the whole analysis have to be updated?**	Annual benchmarking updates are mandatory. Update of the financial data is acceptable.
10.	**What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?**	No regulation.
11.	**Does burden of proof (that the transaction is arm's length) lie with the taxpayer or tax administration?**	Taxpayer.
12.	**Should the transfer pricing documentation be prepared in local language or could it be prepared in English?**	Local language. It can be prepared in English but taxpayer must have it translated within 30 days after the tax authorities request.
13.	**Do the tax authorities accept self-initiated adjustments?**	Yes.

14. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?	Yes.
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?	Penalty of up to 1% from a controlled transaction for which there is an obligation to prepare the TP documentation, but not more than EUR 100,000. For transactions that are not arm's length CIT must be paid for the difference determined by the tax authority + late payment penalty of 0.05% (daily).
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?	Not really. The transfer pricing audit is part of a general tax audit. Audit is subject to tax authorities internal risk identification procedures. Cross-border transactions with the related parties should be treated as a potential risk increasing factor.
17. Are APAs popular in your country? How many APAs have been issued?	No, they are not. 5 to 8.
18. Do the regulations in your country provide some special, local reporting obligations (for example a special declaration for transfer pricing purposes)?	The total value of all related party transactions must be summarized and reported in the corporate income tax return for the respective reporting year. Transfer pricing documentation must be submitted together with related party agreements using Electronic Declaration System managed by the tax authority. Depending on the transaction value and revenues of the taxpayer, the submission may be required each year or only as requested by tax authorities (for further details please see section **Transfer pricing documentation requirements** in the Latvian country profile).

19. Do the regulations in your country provide any safe harbor procedures? If so, please provide us with the further details, i.e.: information on which transactions the procedures may be applied and what conditions must be met and also what simplifications the procedures result in. Are there any reporting requirements to the tax authority with relation to apply safe harbour procedure?

Safe harbour procedure generally can be applied to transactions that are low value-adding intra-group services transactions:

- has the support nature,
- does not form part of the core business of the group,
- unique and valuable intangible assets have not been used,
- transaction provider does not assume or control significant risks associated with the services.

Usually these services are accounting, personal management, general IT, general administration and support services, etc.

For the qualifying transactions, less complex transfer pricing documentation is allowed. Also, a 5% mark-up on costs can be applied and there is no requirement to prepare a benchmarking study to support such a mark-up.

20. Please provide us with information, if COVID-19 situation affect transfer pricing regulations in your country for instance extension of the deadline for transfer pricing obligations.

No.

21. Is there a reference in your local transfer pricing regulations to the possibility of re-characterization or non-recognition of transactions, are tax authorities use such tools in practice within the tax audit?

No.

22. In case of financial transactions, what is the value of transaction within the meaning of transfer pricing regulations, for example in case of loan the value of transaction which need to be compare to the threshold will be interests or loan capital?

It will be both, i.e. loan amount + interest (accrued).

For other financial transactions – guarantees, bonds issue, cash pooling – there is no official guidance on what is considered the value of a transaction.

LITHUANIA

Regulations and rulings

- **Regulations**
  - The Rules for Implementation of Article 40 (2) of the Republic of Lithuania Law on Corporate Income Tax and Article 15 (2) of the Republic of Lithuania Law on Personal Income Tax (hereinafter referred to as the **TP Rules**) approved by of the Minister of Finance of the Republic of Lithuania Order No. 1K-123 of 2004;
  - Rules for Completing Form FR0528 Report on Transactions or economic operations between associate parties;
  - Law on Corporate Income Tax;
  - Law on Personal Income Tax.
- **Arm's length principle and definition of related party**
  - oDefinition of an arm's length principle is introduced in Art. 3(3) of the TP Rules. All articles of the TP Rules are more or less related to this principle;
  - Art. 2 (19) of the Law on Personal Income Tax.
  - Art. 2 (8)(33) of the Law on Corporate Income Tax.
- **Transfer pricing documentation**
  - Chapter V of the TP Rules (Art.77-93).

OECD guidelines treatment

- OECD Guidelines are respected by tax authorities and courts during the review of prices applied in related party transactions.

Definition of related parties

According to Art. 2 (19) of the Law on Personal Income Tax and Art. 2 (8)(33) of the Law on Corporate Income Tax, two legal entities are **related** parties provided that:

- an entity and its shareholders and members;
- an entity and the members of its managing bodies;
- an entity and the spouses, fiancés, cohabitees, relatives (up to the fourth degree) and in-laws (an individual's spouse's relatives (up to the fourth degree) and the relatives (up to the second degree) of the spouses of the individual's relatives (up to the second degree)) and the testamentary heirs of the members of the entity or the members of the entity's managing bodies, thus personal and family relations are also included in the definition of the related parties;
- the members of a group of entities;
- an entity and the members of another entity if the latter entity and its members comprise one group of entities;
- an entity and the members of the managing bodies of another entity if these entities comprise one group of entities;

- an entity and the spouses, fiancés, cohabitees, relatives (up to the fourth degree) and in-laws (an individual's spouse's relatives (up to the fourth degree) and the relatives (up to the second degree) of the spouses of the individual's relatives (up to the second degree)) and the testamentary heirs of the members of managing bodies of another entity if both taxable entities make up one group of entities, thus personal and family relations are also included in the definition of the related parties;
- two entities if one of them directly or indirectly (through one or several entities or individuals) controls over 25% of the shares (ownership interests) in the other entity, or has over 25% of the voting rights in the other entity, or has an obligation to coordinate its business decisions with the other entity, or assumed the obligations of that other entity to third parties, or has assumed an obligation to transfer to that other entity all or part of its profits or has conferred on that other entity the right to use over 25% of its assets; – two entities if the same members or their spouses, fiancés, cohabitees, relatives (up to the fourth degree) and in-laws (an individual's spouse's relatives (up to the fourth degree) and the relatives (up to the second degree) of the spouses of the individual's relatives (up to the second degree)) and the testamentary heirs directly or indirectly control 25% of the shares (ownership interests) in each entity; – an entity and its permanent establishment; and
- two entities if one of them has a decision-making right in respect of the other entity.

Transfer pricing methods

- The **transfer pricing methods** accepted by tax authorities are:
  - traditional methods: (i) CUP method (Comparable Uncontrolled Price), (ii) Resale Price, (iii) Cost Plus;
  - transactional profit methods: (i) Profit Split, (ii) Transactional Net Margin.

Transfer pricing documentation requirements

- Master File is mandatory for Lithuanian companies and foreign companies operating in Lithuania through a permanent establishment
  - whose income in the previous tax period exceeded EUR 15 million, and
  - if they belong to an international group of companies;
- a local file must be prepared by Lithuanian companies and foreign companies operating in Lithuania through a permanent establishment whose income in the previous tax year exceeded EUR 3 million, as well as financial companies, credit institutions and insurance companies, irrespective of the level of income.
- The obligation to file form FR0528 with tax authorities is in place if the value or total value during the tax year of transactions or economic operations with associated parties equals or exceeds EUR 90,000.

- Transfer pricing documentation is not mandatory if the transaction value does not exceed EUR 90,000, unless:
  - the total value of all transactions with the same person exceeds EUR 90,000;
  - the transaction is inseparably related to another transaction with a value exceeding EUR 90,000;
  - the transaction is concluded with a person registered in a target territory ("offshore jurisdictions").

Safe harbours

- No.

Transfer pricing audit procedures and penalties

- Non-compliance with transaction pricing documentation procedures triggers a fine of between EUR 1,820 and EUR 5,590. The administrative offense referred to above, committed repeatedly, triggers a fine of between EUR 3,770 and EUR 6,000.
- TP documentation can be made in a language other than Lithuanian. However, the documents must be translated into Lithuanian if requested so by the tax authorities.
- The deadline for preparing transfer pricing documentation is 15 June of the next tax period. At the request of the tax administrator, documentation must be submitted within 30 days.

  Exceptions:
  - the 2019 tax period master file must be prepared by 15 December 2020;
  - if transactions were made only among Lithuanian subjects, then the deadline for preparing transfer pricing documentation is not set but documentation must be submitted within 30 days from the request by tax authorities.
- Transfer pricing documentation (including comparative transaction data) may be updated every 3 years if the terms and conditions of controlled transactions do not change significantly.
- The data of a controlled transaction itself must be updated annually.

Transfer pricing adjustments

- Taxpayers must adjust transfer prices whenever they are not compatible with the arm's length principle. However, if the price falls within arm's length range, the adjustment will not be necessary.

Cost Contribution Agreements (CCAs)

- Lithuanian jurisdiction does not have any legislation on CCAs.

Advanced Pricing Agreements (APAs)

- Unilateral, bilateral and multilateral APAs are available yet we assume that APAs are not popular in Lithuania.
- In order to avoid double taxation due to possible actions by the tax administrator of another state in the context of future controlled transaction, it is advisable in Lithuania to apply with a competent authority of another foreign state regarding the alignment of the principles of pricing of future controlled transactions and conclusion of the agreement with the following the provisions of the relevant Tax Treaty between the Republic of Lithuania and another state for the avoidance of double taxation of income and capital.
- APA request should be filed with State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania. However, there is no information how many APAs have been issued.

Implementation of BEPS

- Lithuania committed to amend the bilateral double taxation treaties to align it with the recommendations of the OECD and BEPS. Thus, Lithuania implemented TP documentation structure indicated in Action 13 of BEPS. The amended bilateral double taxation treaties with the recommendations of the BEPS entered into force and applies starting 1 January 2019.

1. Is the CUP method preferred (should the CUP method be rejected with the proper justification if another method is applied?)?	Yes, the CUP method is preferred. According to the Provision 23 of the Rules for Implementation of paragraph 2 of Article 40 of the Republic of Lithuania Law on Corporate Income Tax and paragraph 2 of Article 15 of the Republic of Lithuania Law on Personal Income Tax (hereinafter referred to as the TP Rules) approved by the Minister of Finance of the Republic of Lithuania Order No 1K-123 of 2004, in the case of equal opportunities to apply traditional methods (CUP method, "Resale Price", "Cost Plus") and profit methods ("Profit Split", Transactional Net Margin"), traditional methods shall be preferred. In the case of equal opportunities with the CUP method and any other method, the CUP method shall be preferred. The TP Rules also provide for the possibility to combine and modify the methods if this allows achieving the result which is in line with the arm's length principle.
2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?	Yes (Provision 24 of the TP Rules).
3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one? **If the local benchmark is preferred, is it enough to include the local market within the search strategy or is it required to have local comparables in a final sample?**	The local benchmark is preferred over the Pan-European benchmark. However, as in most cases, it is not possible to receive comparable data in a local benchmark so it is allowed to use a wider region, i.e. Pan-European. In the case of the local benchmark, local comparables must be included in the final sample (Provision 25 of the TP Rules).
4. Are there any preferences (in TP rules or practice) over statistical methods applied in benchmarking study, i.e. interquartile range or single figures? **Is the full range (minimum-maximum) acceptable as a market range?**	An interquartile range is usually used in practice. The general rule is that the full range (minimum-maximum) is acceptable as a market range, except for cases when not all selected comparable transactions meet the comparison criteria and/or have other characteristics that do not allow to achieve the result which is in line with the arm's length principle. In this case, these data must be eliminated, thus ensuring the formation of the arm's length principle range using equally reliable comparable transactions. (Provision 55 of the TP Rules).

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 low value-adding services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?**	Usually, it is determined based on the functions and risks of the analyzed company – the fewer functions are performed, risks assumed and assets used, the closer the result can be to the lower quartile. According to Provision 38 of the TP Rules, the arm's length transaction margin should be considered to be the lowest if the taxpayer performs only very simple functions and the highest if the taxpayer assumes advertising, delivery, warranty maintenance, stockpiling and other functions, using a lot of resources and assuming various risks. However, there is no information that the tax authorities prefer a specific level of mark-up, e.g. 5%.
6. Does your tax administration use secret comparables for transfer pricing assessment purposes?	No information.
7. What is the tax authorities approach to accept entities with loss (aggregated or incurred in particular years) or extremely high results in the benchmarking study? Do they accept such entities within the benchmarking study?	Tax authorities accept such entities within the benchmarking study if such data (loss or extremely high results) helps to reveal circumstances that may affect the pricing of the controlled transaction or if such data helps to reveal circumstances that may affect the pricing of the controlled transaction, for example, explain the cyclical nature of a particular type of business.
8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?	No information.
9. Are there any requirements for updating a benchmarking analysis? If yes, how often the benchmarking analysis should be updated? Is it enough to update only the financial results of comparable entities from the final sample, or the whole analysis have to be updated?	Transfer pricing documentation (including comparative transaction data) may be updated every 3 years if the terms and conditions of controlled transactions do not change significantly. The whole bnchmarking analysis must be updated. The data of a controlled transaction itself must be updated annually. (Provision 89 of the TP Rules).
10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?	No information.
11. Does the burden of proof (that the transaction is arm's length) lie with the taxpayer or tax administration?	Taxpayer.

12. Should the transfer pricing documentation be prepared in the local language or could it be prepared in English?	TP documentation can be prepared in a language other than Lithuanian. However, the documents must be translated into Lithuanian if requested so by the tax authorities.
13. Do the tax authorities accept self-initiated adjustments?	Yes.
14. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?	Yes.
15. 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?	Non-compliance with transaction pricing documentation procedures imposes a fine of from EUR 1,820 to EUR 5,590. The administrative offense referred above, committed repeatedly, imposes a fine of EUR 3,770 to EUR 6,000.
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?	Yes. The transfer pricing audit is part of the general tax audit. Audit is subject to the tax authorities internal risk identification procedures. Cross-border transactions with related parties should be treated as having increasing potential risk.
17. Are APAs popular in your country? How many APAs have been issued?	Although unilateral, bilateral and multilateral APAs are available, we assume that APAs are not popular in Lithuania. In order to avoid double taxation due to the possible actions by the tax administrator of another state in the context of the future controlled transaction, it is advisable in Lithuania to apply with the request regarding the alignment of the principles of pricing of future controlled transactions and conclusion of the agreement with the competent authority of another foreign state, following the provisions of the relevant Tax Treaty between the Republic of Lithuania and another state for the avoidance of double taxation of income and capital. **APA request should be made** to State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania. However, there is no information how many APAs have been issued.

18. Do the regulations in your country provide some special, local reporting obligations (for example a special declaration for transfer pricing purposes)?

The obligation to file form FR0528 with the tax authorities arises if the value or total value during the tax year of transactions or economic operations with associated parties equals or exceeds EUR 90,000.

Transfer pricing documentation is not mandatory if the transaction value does not exceed EUR 90,000, unless:

- the total value of all transactions with the same person exceeds EUR 90,000;
- the transaction is inseparably related to another transaction with a value exceeding EUR 90,000;
- the transaction is concluded with a person registered in a target territory ("offshore jurisdictions").

Taxpayers shall also prepare a master file and/or local file in line with the content set by the OECD Guidelines in the following situations:

- A Master File is mandatory for Lithuanian companies and foreign companies operating in Lithuania through a permanent establishment:

  (i) whose income in the previous tax period exceeded EUR 15 million, and

  (ii) if they belong to an international group of companies;
- A Local File must be prepared by Lithuanian companies and foreign companies operating in Lithuania through a permanent establishment whose income in the previous tax year exceeded EUR 3 million, as well as financial companies, credit institutions and insurance companies, irrespective of the level of income.

19. Do the regulations in your country provide any safe harbor procedures? If so, please provide us with further details, i.e.: information on which transactions the procedures may be applied and what conditions must be met and also what simplifications the procedures result in. Are there any reporting requirements to the tax authority with relation to apply a safe harbor procedure?

No.

20. Please provide us with information, if COVID-19 situation affects transfer pricing regulations in your country for instance extension of the deadline for transfer pricing obligations.

Disregarding COVID-19, on 15 June 2020 all companies with more than EUR 3m revenue and more than EUR 90,000 worth of transactions with associated parties had an obligation to transfer pricing documentation for such transactions. Failure to do so could have resulted in penalties imposed on a CEO of more than EUR 1,800 and taxpayer being declared "unreliable".

21. Is there a reference in your local transfer pricing regulations to the possibility of re-characterization or non-recognition of transactions, are tax authorities use such tools in practice within the tax audit?

In practice, tax authorities always first assess whether a transaction took place (e.g. whether the services have actually been provided).

22. In case of financial transactions, what is the value of transaction within the meaning of transfer pricing regulations, for example in case of loan the value of transaction which needs to be compared to the threshold will be interests or loan capital?

The value of the transaction consists of both loan amount and interests.

For other financial transactions – guarantees, bonds issue, cash pooling – there is no official guidance on what is considered the value of a transaction.

POLAND

Regulations and rulings

- **Regulations**:
  - The Corporate Income Tax Act (Chapter 1a, article 11a-11t),
  - The Personal Income Tax Act (Chapter 4b, article 23m-23zf),
  - The exchange of tax information with other countries Act (9 March 2017, article 76-81),
  - Regulation of Ministry of Finance on CBC (June 2017),
  - Act of 16 October 2019 on the resolution of double taxation litigation and the making of Advanced Pricing Agreements,
  - Decree of the Minister of Finance from 21 December 2018 on transfer pricing for corporate income tax (also a similar regulation for personal income tax),
  - Decree of the Minister of Finance from 21 December 2018 on transfer pricing information on corporate income tax (also a similar regulation for personal income tax),
  - Decree of the Minister of Finance from 21 December 2018 on transfer pricing documentation for corporate income tax (for personal income tax),
  - Tax Ordinance Act from 29 August 1997 (Articles 58a-58e).
- **Arm's length principle and definition of related party**

Article 11c of the CIT Act and Article 23o of the PIT Act introduce the arm's length principle. Article 11a CIT Act and Article 23m PIT Act define related party ("affiliation") and the ownership rules for determining when parties are related.

- **Transfer pricing documentation**

Article 11k of the CIT Act and Article 23w of the PIT Act lay down detailed guidance regarding transactions subject to documentation requirements, including transaction thresholds.

OECD Guidelines treatment

- Poland is the OECD member country.
- The **OECD Transfer Pricing Guidelines** are not part of the Polish law yet they **are used as an explanatory instrument**.
- Polish regulations are in line with the OECD Guidelines.
- Tax authorities refer to the OECD Guidelines when applying transfer pricing principles.

Definition of related parties

Related entities are:

- entities where one entity exerts significant influence on at least one other entity, or
- entities over which it exercises significant influence:
  - the same other entity, or

- a spouse, relative or affinity up to the second degree of a natural person exercising significant influence over at least one entity, or

- unincorporated companies and their partners, or
- taxpayers and their foreign establishments, and in the case of a tax capital group – a capital company being part of it and its foreign establishment.

Relations are defined as relations referred to above between related parties.

Furthermore, exerting a significant influence is understood as exercising a significant influence:

- direct or indirect holding of at least 25%:
  - about shares in the capital, or
  - about voting rights in control bodies, constituting or managing bodies, or
  - about shares or profit-sharing rights or assets or their prospects, including units and investment certificates, or
- the effective ability of a natural person to influence key business decisions of a legal person or an unincorporated entity, or
- being married or having affinity or affinity up to the second degree.

The same regulations apply to domestic and foreign related entities.

Transfer pricing methods

- The **transfer pricing methods accepted by tax authorities** are based on the OECD Guidelines. These are:
  - comparable uncontrolled price,
  - resale price,
  - cost plus,
  - profit split method,
  - transactional net margin method.

If none of these methods can be used, others are allowed, including a valuation technique.

- **There is no priority of methods.**
- While 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 respective transactions/companies.

Transfer pricing documentation requirements

Transactions to be documented

Tax documentation should be prepared for transactions of one kind, whose value, less the value added tax, exceeds these documentation thresholds in a financial year:

- **PLN 10,000,000.00** – for a commodity transaction,
- **PLN 10,000,000.00** – for a financial transaction,
- **PLN 2,000,000.00** – for a service transaction,
- **PLN 2,000,000.00** – for any other transactions.

The value of the controlled transaction which is homogeneous is calculated regardless of the number of accounting documents, payments made or received and related entities involved. When assessing whether a transaction is homogeneous, the following criteria should be taken into account:

- uniformity of the controlled transaction in economic terms,
- comparability criteria:
  - characteristics of goods, services or other benefits,
  - the course of transactions, including the functions performed by entities in the compared transactions, the assets they engage and the risks incurred, taking into account the ability of the transacting parties to perform a given function and bear a given risk,
  - terms of the transaction, specified in the contract, agreement or other evidence documenting these terms,
  - economic conditions at the time and place of the transaction,
  - economic strategy,
- transfer pricing verification methods referred to in Art. 11d paragraph. 1-3 of the CIT Act,
- other material circumstances of the transaction.

Furthermore, regulations specify the values to be taken into account when determining the value of a controlled transaction, i.e.:

- capital value – in the case of a loan or credit,
- nominal value – in the case of a bond issue,
- guarantee amount – in case of surety or guarantee,
  - value of income or expense allocations – in case of allocating income (loss) to a foreign permanent establishment,
  - the value appropriate for a given controlled transaction – in the case of the remaining transaction.

Documentation thresholds are set separately for:

- each controlled transaction of one kind, independently of the allocation of the controlled transaction to commodity, financial, service or other transactions,
- the cost and revenue side.

Local file includes:

- description of the company,
- description of the transaction, including analysis of the functions, risks and assets,
- transfer pricing analysis, including:
  - benchmarking analysis, interpreted as an analysis of data of unrelated entities or transactions contracted with unrelated entities or between unrelated entities considered as comparable to conditions established in controlled transactions, or
  - conformity analysis whose main goal is to prove that the terms and conditions under which the controlled transaction was executed comply with those which would have been determined by unrelated entities – if a benchmarking analysis is impossible to prepare,
- financial data.

Master file includes:

- description of the group,
- description of the group's significant intangible assets,
- description of the group's significant financial transactions,
- financial and tax data about the group.

Documentation requirements are based on the OECD Guidelines.

Documentation should be prepared until 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 such a request.

Safe harbours

- From 1 January 2019 safe harbour is introduced into Polish transfer pricing regulations.
- The safe harbour solutions concern two types of transactions:
  - Low added-value services,
  - Loan agreements.

Low added-value services

Regarding the low added-value services, the transfer pricing assessment is not necessary when:

- the mark-up on costs for these transactions is based on the cost plus or TNMM method and is:
  - no more than 5% of the costs – in the case of service recipient,
  - not less than 5% of the costs – in the case of service provider.
- the service provider is not a resident, nor has a registered office or management on the territory or country classified as tax haven,
- the service recipient has a calculation including the following information:
  - type and amount of costs included in the calculation,
  - the method of application and the rationale for selecting allocation keys for all related entities using the services.

Loan agreements

In the case of loan agreements safe harbour solutions can be applied if:

- the interest rate on the day the loan was granted is determined based on the type of the base interest rate and the margin published in the Minister of Finance notice,
- no other payments other than interest are expected,
- the loan was granted for no longer than 5 years,
- the total value of liabilities or receivables of related party loans is no more than 20,000,000 PLN or the equivalent amount, calculated independently for granted and received loans,
- the lender is not a resident, nor has a registered office or management on the territory or country considered as tax haven.

Transfer pricing audit procedures and penalties

- Related entities which must prepare transfer pricing documentation have to submit the documentation to tax authorities within **7 days** from the request serving date.
- Tax authorities may also demand the local file to be submitted without benchmarking or comparability analysis for selected controlled transaction during the tax year within **30 days** from the day of delivery of demand if there is a probability that the remuneration in the transaction is not in line with the arm's length principle.
- The penalties for applying non-market prices are:
  - **10%** of the sum of the under- or overstated tax loss and not reported in whole or in part taxable income,
  - **20%** if the base for the additional tax liability determination is above 15,000,000 PLN, or the documentation was not submitted on time,
  - **30%** if both of the above-mentioned conditions are fulfilled.

In addition, avoiding taxation, not revealing a base of taxation or not submitting the documentation triggers a fine up to 720 daily rates per day or imprisonment sentence.

Transfer pricing adjustments

- Transfer pricing adjustments are addressed in Polish tax regulations.
- The taxpayer may make a transfer pricing adjustment and take it into account when determining the income / tax deductible cost if the conditions of art. 11e of the CIT Act (Article 23q of the PIT Act, respectively) will be met:
  - the terms of the transaction during the year are in line with the arm's length principle;
  - there was a change in significant circumstances affecting the terms of the transaction established during the tax year or the actual costs or revenues received that affect the calculation of the transfer price are known;
  - at the time of the TP adjustment, the taxpayer has a declaration from the related party that this entity also made an adjustment in the same amount as the taxpayer;
  - a related entity that has also made the TP adjustment is based in Poland or another country with which Poland has an agreement or other legal basis for the exchange of tax information;
  - the taxpayer will confirm the correction in the tax return for the year to which the correction applies.

Cost Contribution Agreements (CCAs)

- **CCAs are generally accepted.**

Advanced Pricing Agreements (APAs)

- APA regulations came into force on 1 January 2006. The APA procedure is described in Articles 81–107 of the Act of 16 October 2019 on the resolution of double taxation litigation and the making of Advanced Pricing Agreements.
- 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 extended for the period of maximum 5 years.
- The APA must be issued without unnecessary delay within:
  - 6 months in the case of a unilateral APA,
  - 12 months in the case of a bilateral APA,
  - 18 months in the case of a multilateral APA.

Implementation of BEPS

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

1. **Is the CUP method preferred (should the CUP method be rejected with the proper justification if another method is applied?)?**	There is no hierarchy for the application of methods. The taxpayer could use any method leading to achieving an arm's length price. Tax authorities use methods listed in the Polish tax regulations (consistent with the OECD Guidelines). For this reason applying one of them provides greater safety to the taxpayer. There is no obligation to present arguments for rejecting the CUP method. Nevertheless, in practice, tax authorities examine whether it is possible to use internal comparable data: they verify whether the taxpayer made comparable transactions with unrelated parties.
2. **In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?**	No, Polish regulations do not prioritise methods. Therefore, no explanations are needed. It should be taken into consideration that tax authorities verify whether the taxpayer makes comparable transactions with unrelated parties. Consequently, if the taxpayer transacts with related and unrelated parties, it should first verify whether the terms of such transactions are comparable and the CUP method could be applied. Nevertheless, no explanation is needed.
3. **Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one?** **If Pan-European benchmark is preferred, is it enough to include the local market within the search strategy or is it required to have local comparables in a final sample?**	Based on our experiences Pan-European benchmarking studies are accepted. If Pan-European benchmark is preferred, it is enough to include the local market within the search strategy. There is no obligation to have local comparables in the final sample.
4. **Are there any preferences (in TP rules or practice) over statistical methods applied in benchmarking study, i.e. interquartile range or single figures?** **Is the full range (minimum-maximum) acceptable as a market range?**	An interquartile range is usually used in practice. The general rule is that the full range (minimum-maximum) could be accepted as a market range when all selected comparable transactions (data) meet the comparison criteria.

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 low value-adding services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?**	Usually it is determined based on the functions and risks of the analyzed company – the fewer functions are performed, risks assumed and assets used, the closer the result can be to the lower quartile. Any level of mark-up for low value-adding services – as long as it falls within the interquartile range – is acceptable. It is important that the interquartile range be the result of a benchmarking study. Regarding the low added-value services it is possible to refrain from the transfer pricing assessment when the mark-up on costs for these transactions is based on the cost plus or TNMM method and is at 5% of the costs. Certain conditions specified in the CIT Act must be met (see the 'Safe harbour' section of the country profile). The list of low value-adding services is in the annex to the CIT Act/PIT Act.
6. Does your tax administration use secret comparables for transfer pricing assessment purposes?	Using of comparables obtained from sources not available to the public is not allowed. The taxpayer should be able to find out about the source of comparables used by tax authorities, as well as to verify their correctness, completeness and adequacy in the proceedings. It should be noted that source data and information as well as comparative analyzes of taxpayers should also be presented to the tax authorities in a way that allows their verification.
7. What is the tax authorities approach to accept entities with loss (aggregated or incurred in particular years) or extremely high results in the benchmarking study? Do they accept such entities within the benchmarking study?	It is not necessary to exclude potentially comparable entities from the sample only because of negative financial results (ie showing a loss). An entity with loss should not be automatically removed from the benchmarking study solely because of the loss. Nevertheless, each situation in which there are the entities showing a loss should be analyzed individually. Rejecting entities with extreme results (positive or negative) from the sample should only result from the potential lack of comparability of the data of these entities in relation to the analyzed transaction.
8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?	There are no regulations in Polish tax law on the duration of the tested period. However, a minimum 3-year tested period is recommended.

9. Are there any requirements for updating a benchmarking analysis? If yes, how often the benchmarking analysis should be updated? Is it enough to update only the financial results of comparable entities from the final sample, or the whole analysis have to be updated?

Benchmarking studies must be updated every 3 years.

If there is a change in the economic environment earlier that significantly affects the prepared analysis, the analysis should be updated earlier (in the year when the change occurred).

Updating the financial results of comparable entities from the final sample does not trigger full updating of benchmarking study. It is necessary to updating the whole analysis.

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

Not defined by law. In practice – 25%.

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

The burden of proof for evidencing and justifying the arm's length compliance of a transaction lies with the taxpayer. The taxpayer must prove in its transfer pricing documentation that the ingragroup transaction is in line with arm's length principle.

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

TP documentation should be prepared in Polish.

However, the new regulations in the field of transfer pricing provides for the possibility to submit Master File in English.

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

Yes.

The taxpayer may make a transfer pricing adjustment and take it into account when determining the income / tax deductible cost if the conditions of art. 11e of the CIT Act (Article 23q of the PIT Act, respectively) will be met:

- the terms of the transaction during the year are in line with the arm's length principle;
- there was a change in significant circumstances affecting the terms of the transaction established during the tax year or the actual costs or revenues received that affect the calculation of the transfer price are known;
- at the time of the TP adjustment, the taxpayer has a declaration from the related party that this entity also made an adjustment in the same amount as the taxpayer;
- a related entity that has also made the TP adjustment is based in Poland or another country with which Poland has an agreement or other legal basis for the exchange of tax information;
- the taxpayer will confirm the correction in the tax return for the year to which the correction applies.

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

Yes.

15. 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?

Penalties for the use of non-market prices are:

- **10%** of the sum of the under- or overstated tax loss and not reported in whole or in part taxable income,
- **20%** if the base for the additional tax liability determination is above PLN 15,000,000, or the documentation was not submitted on time,
- **30%** if both of the above-mentioned conditions are met.

In addition, failure to submit transfer pricing documentation on time and failure to submit a declaration on holding it (and that the terms of the transaction are in line with arm's length principle) may trigger additional penalties for a company's board.

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?

Yes.

The transfer pricing audit is part of a general tax audit. Audit is subject to the tax authorities internal risk identification procedures. Cross-border transactions with related parties should be treated as having increasing potential risk. In addition, tax authorities often control licensing transactions, assets transactions and intangible assets transactions (DEMPE analysis).

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

APAs are gaining importance. 87 APAs have been made since 2006, of which 15 in 2019 and 7 in 2020.

18. Do the regulations in your country provide some special, local reporting obligations (for example a special declaration for transfer pricing purposes)?

In 2020, Polish taxpayers for the first time will be obliged to submit a new tax declaration about transfer pricing: the TP-R form.

The TP-R form includes e.g. the taxpayer's financial information (values of financial ratios measure of financial situation of the company), information about transactions with related parties (including the information regarding results of the benchmarking study and the taxpayer outcome on the given transaction).

It is very important to complete the form correctly, because tax authorities will highlight entities for tax audits on this basis. It will also show authorities how a given entity looks in comparison to the entities operating in the same industry.

19. Do the regulations in your country provide any safe harbor procedures? If so, please provide us with the further details, i.e.: information on which transactions the procedures may be applied and what conditions must be met and also what simplifications the procedures result in. Are there any reporting requirements to the tax authority with relation to apply a safe harbor procedure?

From 1 January 2019 the safe harbour is introduced into Polish transfer pricing regulations.

The safe harbour solutions concern two types of transactions:

- Low added-value services,
- Loan agreements.

Low added-value services

Regarding the low added-value services it is possible to refrain from the transfer pricing assessment when:

- the mark-up on costs for these transactions is based on the cost plus or TNMM method and is:
  - no more than 5% of the costs – in the case of service recipient,
  - not less than 5% of the costs – in the case of service provider.
- the service provider is not a resident, nor have a registered office or management on the territory or country considered as tax haven,
- the service recipient has a calculation including the following information:
  - type and amount of costs included in the calculation,
  - the method of application and the rationale for selecting allocation keys for all related entities using the services.

Loan agreements

In the case of loan agreements safe harbour solutions can be applied if:

- the interest rate on the day the loan was granted is determined based on the type of the base interest rate and the margin published in the Minister of Finance notice,
- no other payments other than interest are expected,
- the loan was granted for no longer than 5 years,
- the total value of liabilities or receivables of related party loans is no more than 20,000,000 PLN or the equivalent amount, calculated independently for granted and received loans,
- the lender is not a resident, nor has a registered office or management on the territory or country considered tax haven.

20. Please provide us with information, if COVID-19 situation affects transfer pricing regulations in your country for instance extension of the deadline for transfer pricing obligations.

The situation caused by Covid-19 contributed to the extension of the deadlines for the fulfillment of transfer pricing obligations for FY2019 until 31 December 2020.

21. Is there a reference in your local transfer pricing regulations to the possibility of re-characterization or non-recognition of transactions, are tax authorities use such tools in practice within the tax audit?

Yes, the tax authorities can use such tools in practice within the tax audit.

22. In case of financial transactions, what is the value of transaction within the meaning of transfer pricing regulations, for example in case of loan the value of transaction which needs to be compared to the threshold will be interests or loan capital?

The value of the transaction is:

- nominal value – in the case of a bond issue,
- loan principal – in the case of a loan,
- guarantee sum – in the case of a guarantee.

The transaction value in the case of financial transactions is determined on the basis of contracts or other documents.

ROMANIA

Regulations and rulings

- **Regulations**
  - 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;
  - The EU Code of Conduct of Transfer Pricing Documentation and OECD Guidelines are mentioned explicitly as complementing the legal provisions of Order 442/2016, therefore they are binding in their application.
- **Arm's length principle and definition of related party**
  - Article 7 of the Romanian Fiscal Code – defines 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 (2) 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.

OECD guidelines treatment

- According to the Romanian Fiscal Code and the related norms, on top of the methods listed below every other calculation method accepted by the **OECD Guidelines is an applicable one.**
- 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
  - 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 the case of an individual who 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 making transactions with other legal entities which are under the control of the same administrator/representatives of the company management.
- Two **individuals who are spouses or relatives** up to the third degree 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 intercompany transactions.
- **Obligation for the annual preparation transfer pricing documentation** applies only **to large taxpayers that engage in intragroup transactions exceeding certain thresholds.** For **other** taxpayers **– only during fiscal audit, upon request of tax authority.**
- Large taxpayers are nominally defined via an administrative order issued by the President of the National Agency for Tax Administration (more specifically Order 3609/2016 on the organization of activities of managing large taxpayers).

- **Large taxpayers** must prepare transfer pricing documentation if they engage in intragroup transactions with a total annual value equal to or 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.
- Transfer pricing documentation must be prepared at a specific request by the following:
  - large taxpayers not subject to the above criteria, and
  - **small and medium-sized taxpayers** who engage in intragroup transactions with a total annual value equal to or 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 documentation 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 (like: information on the taxpayer's industry and group, an overview of the taxpayer, presentation of intercompany transactions, including the amounts of the transactions, related parties involved, functions performed, risks borne, assets engaged, method used and **economic analysis).**
- Economic analysis is a selection and application of a transfer pricing method (as part of the benchmarking analysis). All taxpayers must perform analyses for all documented transactions. There are no materiality thresholds provided for in the legislation that would introduce derogations from documenting transactions that fall below a certain value. If a taxpayer must prepare the documentation, all intercompany transactions are within the scope of a transfer pricing analysis (assessment against the arm's length concept).

Safe harbours

- No.

Transfer pricing audit procedures and penalties

- **For large taxpayers** who exceed the above-mentioned specific thresholds, the **deadline** for preparing the transfer pricing file is the **legal deadline for filing the annual corporate income tax return** (i.e. 25 March of the following year), for each fiscal year. Moreover, these taxpayers must submit the transfer pricing documentation to the tax authorities within **10 days after the request**, but not earlier than 10 days from the expiration of the preparation deadline.
- For taxpayers who must 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 for up to 30 days.
- Documentation **must be** prepared in the **Romanian language.**
- **Transfer prices adjustments**/estimates to a company's profits are subject to a **16% corporate income tax and late payment interest and penalties.**
- What is more, **large and medium taxpayers** may be subject to a **fine of € 2,400 – € 2,900** for failure to prepare the transfer pricing file under the conditions and terms imposed by the competent authorities. The fine for **small taxpayers and natural persons is €400 – €720.**

Transfer pricing adjustments

- The Romanian tax authorities will adjust transfer prices if they do not follow the arm's length principle.
- The Romanian tax authorities will estimate transfer prices if they are not or are incompletely documented.
- The adjustment/estimation is made based on the median value of the interquartile range according to Art. 9 of the Order 442/2016. In the event that comparability samples are composed of no more than three observations, the arithmetical average of such observation is used as an adjustment point. There are no exceptions to the rule.

Cost Contribution Agreements (CCAs)

- Local legislation has no specific provisions addressing CCAs.
- Taxpayers must disclose their participation in any CCAs in their transfer pricing documentation.

Advanced Pricing Agreements (APAs)

- An APA made 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**. The fee for modifying a valid 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. There are no official / public guidelines stating the procedure of APA extension.
- Unilateral APAs should be issued within **12 months** and bilateral and multilateral APAs within **18 months**.

Implementation of BEPS

- The structure of the transfer pricing documentation reflects to a great extent the structure recommended under Annex I (Masterfile) and Annex II (Local file) of Chapter V in the OECD Guidelines (2017 edition). However, a Romanian resident entity is expected to present both information covering the Masterfile and the Local file, as per the provisions of the Order 442/2016.
- Romania has enacted legislation with regard to CbCR.

1. Is the CUP method preferred (should the CUP method be rejected with the proper justification if another method is applied?)?	No. The method to be applied is the most suitable one for determining market prices from among the ones in the Tax Code. There is no obligation to justify absence of application of CUP if other methods are applied. Experience shows that CUP method is accepted for financial transactions, licensing of rights to use intangible assets and trading of commodities, provided comparability is fully observed under all relevant aspects. During tax audits, the most widely used method is the transactional net margin method.
2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?	The transfer price documentation must 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? **If the local benchmark is preferred, is it enough to include the local market within the search strategy or is it required to have local comparables in a final sample?**	When performing a benchmarking analysis the territorial criterion has to be observed in the following priority: national, European Union, Pan-European, international. It is sufficient to perform a search on the domestic market and document that it did not yield results, in order to move to the next geographic level. Local comparables are not a prerequisite in the benchmarking sample.
4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures? **Is the full range (minimum-maximum) acceptable as a market range?**	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 adjusts the transfer price at the central tendency of the market range. The central tendency of the market range is reflected by the median value of the interquartile range. If the comparability sample is no larger than three observations, the central tendency is reflected by the arithmetic mean. Based on the legal provisions, the interquartile range should always be applied. In practice, tax authorities may accept a minimum-maximum range in the case of applying CUP based on internal comparables.

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 law value adding 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 must be determined, if possible. If not, the arithmetic mean should be used.

Mark-ups for services need to be supported by benchmarking studies. Tax authorities will examine whether the level of mark-up falls within the interquartile range.

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

Romanian tax authorities do not use secret comparables. To the extent that Romanian tax authorities identify deficiencies to the benchmarking sample they are very likely to redo the entire benchmark and produce their own benchmarking sample or they can examine the entire benchmarking set and put forward a benchmarking sample that is composed of different comparables (not fully overlying with the sample of the taxpayer). The process is described in detail during the tax audit report and/or its annexes.

7. What is tax authorities approach to accept entities with loss (aggregated or incurred in particular years) or extremely high results in the benchmarking study? Do they accept such entities within the benchmarking study?

Generally, loss making entities are excluded from the comparability sample. This is the case especially with companies reporting consecutive losses (3 years of operating losses).

Loss-making comparables can be accepted in special conditions (start-ups or companies that work under special economic contexts).

Generally, tax authorities tend to accept that affiliated companies can post losses if the benchmarking sample can support that similar companies record losses during the period reviewed.

Tax authorities accept the benchmarking set to exclude companies with 'unnatural' results (high positive results). There is no rule on what the 'unnatural' results actually mean.

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). Tax audits usually cover the prescription period and the transfer pricing file covering this entire period can be requested. If the transfer pricing file is requested, the tax authority must mention the period for which such a 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-year period is preferred.

Due to differences in interpretation of the commencement of the statute of limitations between taxpayers and tax authorities, it is highly frequent that tax audits are conducted for periods extending to 6 years.

9. Are there any requirements for updating a benchmarking analysis? If yes, how often the benchmarking analysis should be updated? Is it enough to update only the financial results of comparable entities from the final sample, or the whole analysis have to be updated?

Starting 2016, large taxpayers exceeding defined thresholds in intercompany transactions must prepare TP documentation and file it annually.

All other companies must prepare and file 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 documentation during tax audits. Thus, many companies prepare and update the transfer pricing documentation / benchmark studies voluntarily to be on the safe side.

There is no rule on updating the analysis. It is preferred to update the whole benchmarking set and to provide a full picture of what was available at the time of documentation filing. Interactions with tax authorities show that this approach resonates with them.

However, it happens that the update of benchmarking analysis involves only the update of the financial data of the original companies included in the initial benchmarking set. Such an approach involves more risk and less transparency as opposed to providing an entirely redone benchmark.

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?

The taxpayer is expected to document compliance with the arm's length concept in the transfer pricing documentation.

If the documentation is incomplete (it fails to provide essential data enabling tax authorities to verify actual compliance/non-compliance) or if the documentation has deficiencies identified by the tax administration, the burden of proof shifts to the tax administration. In such cases, the tax administration will prepare its own transfer pricing analysis (benchmarking) and/or highlight the flaws of the documentation submitted by the taxpayer.

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 must be translated into Romanian.

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

Self-initiated adjustments are not covered by any legal provisions.

Self-initiated adjustments take the form of filing tax returns that reflect tax base compliant with the arm's length concept. The accounting records are not corrected under this scenario.

Nevertheless, in the case of self-adjustments, the calculation method of the tax authorities in case of adjustments (see item 4.) should be considered to avoid interpretation discrepancies.

An area of contention may arise when making self-initiated adjustments with regard to the adjustment point. Taxpayers consider it fair to make the adjustment up to the level of the 1st quartile (lower bound of the market range), whereas tax auditors choose to consider that the adjustment should be made at the level of the median of the market range.

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

Romania has signed the MCAA and has bilateral exchange of information on CbCR with 62 jurisdictions. The most notable exception is the US.

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?

Penalties for not filing the TP Documentation can range between ca. EUR 400 and EUR 2,900, depending on the size of the company.

Romanian tax authorities also 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.

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?

Yes. Tax authorities systematically conduct risks assessments and single out companies with losses or with low operating results that are part of MNE groups and have material intercompany transactions.

Generally, prior to an official request for the transfer pricing documentation, a risk assessment is made by the tax authorities. This takes the form of a simplified benchmarking study highlighting financial years where the company stands below the market range. These findings are usually communicated to the taxpayer along with the imminence of a future tax audit covering transfer prices.

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

APAs are not very popular. The most recent public data (for financial year 2017) shows that there were 10 APAs valid at the end of 2017.

18. Do the regulations in your country provide some special, local reporting obligations (for example a special declaration for transfer pricing purposes)?

No. During a tax audit, tax authorities may request a sworn statement from the company officials that list the affiliated entities.

19. Do the regulations in your country provide any safe harbor procedures? If so, please provide us with the further details, i.e.: information on which transactions the procedures may be applied and what conditions must be met and also what simplifications the procedures result in. Are there any reporting requirements to the tax authority with relation to apply safe harbour procedure?	No.
20. Please provide us with information, if COVID-19 situation affect transfer pricing regulations in your country for instance extension of the deadline for transfer pricing obligations.	No.
21. Is there a reference in your local transfer pricing regulations to the possibility of re-characterization or non-recognition of transactions, are tax authorities use such tools in practice within the tax audit?	Line 1 of article 11 of the Romanian Tax Code enables tax authorities to re-characterize or derecognize transactions that have no economic substance. In respect of transfer pricing documentation, such characterizations are very rare, but they still possible.
22. In case of financial transactions, what is the value of transaction within the meaning of transfer pricing regulations, for example in case of loan the value of transaction which need to be compare to the threshold will be interests or loan capital?	In the case of financial transactions, the focus of the legislation rests with the interest rate. For example, Order 442/2016 groups taxpayers into various classes with different obligations in the area of transfer pricing documentation. The value of financial transactions is based on the value of interest paid/received in relation to affiliated entities.

SLOVAK REPUBLIC

Regulations and rulings

- **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:

  Article 18 (1) of the Income Tax Act.

  The arm's length principle here is based on the comparison of 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 a related party:

  Article 2 letter n) (definition of a related party) and r) (definition of a 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 transfer pricing documentation according to article 18 (1) of the Income Tax Act.

OECD guidelines treatment

- 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.

Definition of related parties

According to the 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 a 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 members of statutory bodies, the members of supervisory bodies or 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 decreasing tax base or increasing tax loss,
- the term **"non-resident related party"** shall mean a situation whereby 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 for 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.

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**.
- 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 prioritized methods are non-applicable, but it is still strongly recommended. It can be requested 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.

Transfer pricing documentation requirements

- As of 1 January 2015, the duty to keep transfer pricing documentation is extended to **domestic entities**. The Guidance distinguishes 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 must be observed for a particular documentation:
  - company size,
  - transaction type (domestic, foreign – contracting[1]/non-contracting state),
  - special circumstances,
  - materiality.

- The documentation scope is defined depending on the risk rate of subjects. Low-risk subjects should not be subject to redundant administrative burden and they must 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 (hereinafter "the 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 circumstances occurred. Foreign controlled transactions with contracting countries are considered to be less risky than transactions with non-contracting countries.

  All intragroup transactions must be documented. The difference is the extent.

  Taxpayers who keep shortened documentation must provide the list of all controlled transactions. It comes with the 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 keep 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 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 may **require the submission of the transfer pricing documentation at any time** (not only during a tax audit), and the filing deadline was shortened to **15 days** from the request serving date.

- **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 from 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 another language, usually English, may be accepted.

Safe harbours

- There is no simplified approach applicable to low value-adding intra-group services.
- There are no special rules on safe harbours.

Transfer pricing audit procedures and penalties

- The Slovak central tax authorities have built transfer pricing departments and are more focusing on tax audits. This prompts a growing number of transfer pricing audits of all types of businesses.
- The tax administration may impose, 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.

Transfer pricing adjustments

- 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 this 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 in such a case is the explanatory note to the filing of the Corporate Income Tax Return.
- The Income Tax Act also addresses 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.

Cost Contribution Agreements (CCAs)

- 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 taxpayer's activities (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 a subsidiary 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.

Advanced Pricing Agreements (APAs)

- 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 signed 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.

Implementation of BEPS

- **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 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 lists 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.
- **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 made. 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 one.

[1] Contracting countries are those which 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 with the proper justification 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 law, but highly recommended. May be required by the tax authorities in practice, thus the taxpayer must 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?** **If the local benchmark is preferred, is it enough to include the local market within the search strategy or is it required to have local comparables in a final sample?**	Pan-European benchmark and 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?** **Is the full range (minimum-maximum) acceptable as a market range?**	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 law value adding services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?**	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.	**What is tax authorities approach to accept entities with loss (aggregated or incurred in particular years) or extremely high results in the benchmarking study? Do they accept such entities within the benchmarking study?**	Accepted in general 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? If yes, how often the benchmarking analysis should be updated? Is it enough to update only the financial results of comparable entities from the final sample, or the whole analysis have to be updated?**	Not required by law. In practice benchmark analyses 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, the 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 documentation be in another language, usually in English.
13.	**Do the tax authorities accept self-initiated adjustments?**	Generally, tax authorities accept self-initiated adjustments, upon request.

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

Yes.

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 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 impose, 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).

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?

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.

17. 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, Slovak tax authority does not publish APA data in the form of an annual report or through public disclosure.

18. Do the regulations in your country provide some special, local reporting obligations (for example a special declaration for transfer pricing purposes)?

There are no special local reporting obligations, except for CbC reports.

19. Do the regulations in your country provide any safe harbor procedures? If so, please provide us with the further details, i.e.: information on which transactions the procedures may be applied and what conditions must be met and also what simplifications the procedures result in. Are there any reporting requirements to the tax authority with relation to apply safe harbour procedure?

There is no safe harbour procedure in the transfer pricing regulation.

20. Please provide us with information, if COVID-19 situation affect transfer pricing regulations in your country for instance extension of the deadline for transfer pricing obligations.

The TPD must be completed by the deadline for filing the income tax return. The deadline is extended until the end of calendar month following the end date of COVID emergency situation.

21. Is there a reference in your local transfer pricing regulations to the possibility of re-characterization or non-recognition of transactions, are tax authorities use such tools in practice within the tax audit?

There are some principles in the Tax Procedure Act:

- The tax audit is based on the actual content of the legal action or other facts decisive for the tax administration.
- The tax administration does not take into account legal proceedings and other facts decisive for the administration of taxes, the predominant purpose of which is to obtain a tax advantage contrary to the meaning and purpose of the tax legislation.

In practice, both the abovementioned principles are followed by tax authorities.

22. In case of financial transactions, what is the value of transaction within the meaning of transfer pricing regulations, for example in case of loan the value of transaction which need to be compare to the threshold will be interests or loan capital?

In the case of financial transactions, the amount of interest must be compared to the threshold.

SLOVENIA

Regulations and rulings

- **Regulations**
  - Corporate income tax act (ZDDPO-2) and Personal income tax act (ZDoh-2)
  - Tax procedure act (ZDavP)
  - Rules on transfer pricing (Uradni list RS, št. 141/06 in 4/12)
  - Rules on the implementation of the Tax Procedure Act (Uradni list RS, št. 80/19)
  - Rules on corporate income tax returns (Uradni list RS, št. 109/13, 83/14, 101/15, 79/17 in 80/19)
  - Slovene accounting standards (SRS)
- **Arm's length principle and definition of related party**

  Article 16-19 of ZDDPO-2 and Article 16 of the ZDoh-2 introduce the arm's length principle, providing the definition of a related party ("affiliation") and the ownership and other rules for determining when parties are related (associated).
- **Transfer pricing documentation**

  Article 382 of ZDavP introduces guidance regarding transactions which are subject to documentation requirements.

OECD guidelines treatment

- The Slovene transfer pricing regulations do not refer to the OECD Guidelines directly;
- Nevertheless, the tax authorities and the courts often refer to the OECD Guidelines when applying transfer pricing principles.

Definition of related parties

<u>A resident and a non-resident are related parties provided that:</u>

- The taxpayer directly or indirectly holds at least 25% of the value or number of shares or equity holdings, shares in management or control or voting rights of a foreign person, or controls the foreign person on the basis of a contract or the transaction conditions differ from the conditions that have been or would be reached between non-associated enterprises in equal or comparable circumstances; or
- The foreign person directly or indirectly holds at least 25% of the value or number of shares or equity holdings, shares in management or control or voting rights of the taxpayer, or controls the taxpayer on the basis of a contract or the transaction conditions differ from the conditions that have been or would be reached between non-associated enterprises in equal or comparable circumstances; or
- The same person at the same time directly or indirectly holds at least 25% of the value or number of shares or equity holdings, shares in management or control of the taxpayer and the foreign person or of two taxpayers, or controls them on the basis of a contract or the transaction conditions differ from the conditions that have been or would be reached between non-associated enterprises in equal or comparable circumstances; or

- The same individuals or their family members directly or indirectly hold at least 25% of the value or number of shares or equity holdings, shares in management or control of the taxpayer and foreign person or of two residents, or control them on the basis of a contract, or the transaction conditions differ from the conditions that have been or would be reached between non-associated enterprises in equal or comparable circumstances.

A family member is deemed to be a person's spouse or person with whom the individual lives in a long term committed relationship that has, under the Act regulating marriage and family relations, the same legal consequences as marriage; or a partner with whom the individual lives in a registered same-sex partnership under the Act regulating civil partnership registration; children, adopted children and step-children or children of the person with whom the individual lives in a long term committed relationship that has, under the Act regulating marriage and family relations, the same legal consequences as marriage; or children of a partner with whom the individual lives in a registered same-sex partnership under the Act regulating civil partnership registration; and parents or adoptive parents of an individual.

Two residents are related parties:

- if they are associated in capital, management or control in such a way that one resident directly or indirectly holds at least 25% of the value or number of shares or equity holdings, shares in management or control or voting rights of other resident or controls the other resident on the basis of a contract in a manner that differs from relations between non-associated enterprises;
- if the same legal entities or individuals or their family members hold in two residents directly or indirectly at least 25% of the value or number of shares or equity holdings, shares in management or control or voting rights or control the two residents on the basis of a contract in a manner that differs from relations between non associated enterprises.

Transfer pricing methods

- The **transfer pricing methods** accepted by the tax authorities 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;
- In determining whether the correct transfer pricing method has been selected the tax authorities will consider:
  - the advantages and disadvantages of each method;
  - the suitability of each method depending on the nature of the associated transactions, which is determined on the basis of analysis of the functions performed by any person in an associated transaction (taking into account the assets used and risks assumed);
  - the availability of reliable data necessary for the application of the chosen method for determining comparable market prices, and

- the degree of comparability between associated and non-associated transactions and the reliability of any of the adjustments of comparable non-associated transactions necessary to eliminate the differences between them.

- According to Rules on transfer pricing, for the use of the chosen method for the determination of comparable market prices, internal comparisons are more appropriate than external ones;
- Where the comparable market price may be determined with the same reliability, using the traditional transaction methods or methods of transaction profit, then the use of traditional transaction methods shall have priority.

Transfer pricing documentation requirements

- Resident taxpayer conducting any transactions with associated entities non-residents or residents (in case one of them is in a tax loss position, exempt from CIT or pays 0% CIT) must prepare transfer pricing documentation and submit it to the tax authorities upon request (irrespective of the value because there are no materiality thresholds beyond);
- Transfer pricing documentation must include a master file and a local file;
- general documentation (master file), which may be uniform for a group of associated enterprises as a whole, and shall include at least the following:
  - description of the taxable person, structure of organisation at the global level and types of association (equity-based, contractual, personal) of the taxable person's transfer pricing system, general description of business activities and strategies, general economic and other factors, and competitive environment;
- country-specific documentation (local file) must comprise of at least the following
  - information about transactions with associated enterprises (description, nature, type, value, time limits and terms and conditions)
  - information about the performance of comparability analysis for transactions concerning the following:
    - characteristics of assets and services,
    - functional analysis performed (performed tasks in respect of funds invested or services and risks assumed),
    - conditions of contract,
    - economic and other conditions affecting transactions,
    - business strategies,
    - other influences important for the performance of the transaction,
    - information about the application of the transfer pricing method and about transfer pricing in accordance with arm's length prices,
    - other documentation proving the compliance of transfer prices with arm's length prices.

Safe harbours

- Pursuant to Slovene regulations, interest accrued on loans to related parties can be deducted from the tax base up to the last published, known at the time of transaction, recognized interest rate without any further analysis or reporting obligation. Any exceeding interests will not be recognized for tax purposes. However, they may be recognized if the taxpayer can prove that such interest rate would have been determined between associated entities.

Transfer pricing audit procedures and penalties

- Taxable persons must provide transfer pricing documentation on a regular basis for individual transactions; however, at the latest by the date of submission of a self-assessment tax return. If there is no significant difference between transactions, taxable persons may also provide the documentation for two or more transactions, provided, however, that they make adjustments for possible differences among them.
- Taxable persons must place the documentation at the disposal of the tax authority at its request during a tax audit. Taxable persons must as a rule make the documentation available without delay. If taxable persons are unable to provide the documentation without delay, the tax authority lays down a time limit for complying with this obligation. This time limit may not be less than 30 and more than 90 days with due regard to the volume and complexity of data.
- Taxable persons shall keep the transfer pricing documentation 10 years following the end of the year to which it relates.
- Transfer pricing documentation shall be submitted in Slovene language.
- The penalty for small and medium enterprises range between EUR 1,200 to EUR 15,000. The penalty for a large company ranges between EUR 3,200 to EUR 30,000. In addition, the responsible person may be liable for penalty ranging from EUR 600 to EUR 4,000. The tax authorities do not generally impose penalties in case of transfer pricing adjustment made by them.

Transfer pricing adjustments

Adjustment by the taxpayer:

- Slovene tax legislation allows for only an upwards adjustment via the corporate tax return adjustment procedure. There is no reference with regards to downward adjustments, which are not possible by way of corporate income tax return.
- Downward or upward adjustment in Slovenia are generally allowed and are carried out by the issuing of new invoices, credit notes or debit notes. The tax authorities, however, often challenge downward adjustments in a tax audit.

Adjustment by the tax authority:

- **Primary adjustment (article 16 ZDDPO-2)**
  - In establishing a taxpayer's revenue, transfer prices with associated enterprises shall be taken into account for assets, including intangible assets, and services; however, revenues at least up to the amount which is established by taking into account the prices of such or comparable assets or services which, in equal or comparable circumstances, is reached or would be reached on the market among non-associated enterprises
  - In establishing a taxpayer's expenditure, transfer prices with associated enterprises shall be taken into account for assets, including intangible assets, and services; however expenditure at least up to the amount established by taking into account comparable market prices.
- **Secondary adjustment (article 74 ZDDPO-2)**
  - Following ZDDPO-2, hidden profit distribution made to a person who directly or indirectly holds at least 25% of the value or number of shares or holdings in the capital, management or control of the payer or controls the payer on the basis of a contract or in a manner different from relations between non-associated enterprises, are subject to 15% withholding tax. According to the law, hidden profit distribution are any fees guaranteed by the payer to the related person, especially the provision of all forms of assets and provision of services, including release from a debt, without payment or at a price lower than the comparable market price, or payment for the purchase of all forms of assets and services at a price higher than the comparable market price, or payment for assets and services where assets were not acquired or services were not provided. Furthermore, hidden profit distribution shall be interest on loans granted at a lower or received at a higher interest rate than the recognised interest rate, and interest on the surplus of loans according to the thin capitalization rule.

Cost Contribution Agreements (CCAs)

- According to the Rules on transfer pricing, a cost contribution agreement is deemed to be an agreement between two or more associated enterprises that share the costs and risks of research and development, production or acquisition of assets, services or rights, and that determine the type and volume of the shares of each participant in this.
- According to the law, the proportional share of each participant to the full agreed contribution must be consistent with the proportional share of the participant in the expected benefits from the arrangement in a manner such as non-associated enterprises would be prepared to contribute – in the same or comparable circumstances – according to the reasonable expected benefits of the arrangement. The share of each participant in the operating results (benefits) of the activities of a cost-sharing arrangement must be determined in the manner that applies or would apply in the same or comparable circumstances between non-associated enterprises.

Advanced Pricing Agreements (APAs)

- The APA procedures are established in 14.a-14g of the Tax Procedure Act.
- APAs in Slovenia may apply to transactions that have not yet been made or transactions that are in progress at the time the taxpayer submits an application for an APA. Under the Slovene 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, in the amount of EUR 15,000.
- 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 procedure act applies to the APA.
- APA may be executed for the time period of 5 years and may later be extended for an additional fee of EUR 7,500
- The tax authority must, within 3 months, since the application for APA, issue a decision whether it will continue with the APA procedure. Formally, there can be no appeal against this decision.

Implementation of BEPS

- Slovenia has enacted legislation implementing BEPS Action 13 requirements, with regards to structure of transfer pricing documentation (local file, master file, CbCR)
- According to Slovene legislation each company liable for transfer pricing must prepare transfer pricing documentation (local and master file). A resident parent company of an international group must also submit a CbC report.

1. Is the CUP method preferred (should the CUP method be rejected with the proper justification if another method is applied?)?	CUP method is preferred by the Slovene tax authorities as long as its application produces viable and accurate results. Formally, there is no preference explicitly stated provided a method gives viable results and takes into account all of the relevant data. However, it should be noted that internal comparables are preferred over external ones. Additionally, traditional methods are preferred over transactional ones.
2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?	There are no such formal requirements. But the taxpayer must explain why the methods used are the best fit for the analysis and why the results are accurate (in practice the tax authorities expect that this includes also the explanation why the prioritized methods were not applied).
3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one? **If the local benchmark is preferred, is it enough to include the local market within the search strategy or is it required to have local comparables in a final sample?**	Pan-European analysis is accepted yet the local benchmark is preferred. There is no formal requirement to include local comparables in the final sample. If the taxpayer only includes the Pan-European analysis, without local comparables, it should be explained why the local comparables are not included and how the analysis is still accurate and applicable for the company at hand.
4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures? **Is the full range (minimum-maximum) acceptable as a market range?**	Interquartile range is preferred by the Slovene tax authorities. Where data and documentation used in the transfer pricing analysis are less reliable or accurate, the interquartile range is a formal legal requirement. Yes. However, interquartile range must be determined by subtracting 25% of the lower external values and 25% of the upper external values from the total range. If the result of using the method or methods for determining a comparable market price is more than one relatively reliable value, where relatively reliable or accurate data and documentation have been used to determine a comparable market price, the value in the range that best reflects the comparable market price shall be used.

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 law value adding services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?**	Median is preferred. Tax authorities will likely accept any level of mark-up for low value adding services as long as it falls within the interquartile range and meets all other transfer pricing requirements. However, there are no specific rules addressing low value adding services.
6. Does your tax administration use secret comparables for transfer pricing assessment purposes?	We are unaware of any use of secret comparables by the Slovene tax authorities. However, the possibility that the tax authorities will use secret comparables cannot be excluded.
7. What is tax authorities approach to accept entities with loss (aggregated or incurred in particular years) or extremely high results in the benchmarking study? Do they accept such entities within the benchmarking study?	There are no guidelines or rules prescribed in this respect. If the methods applied in the transfer pricing analysis and the comparables used are correct, then such benchmark study should be accepted. The tax authorities will, however, evaluate this on a case-by-case basis.
8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?	There is no specific guidance or prescribed rule in this respect. According to tax authorities, a time period applied must ensure the analysis is as accurate as possible.
9. Are there any requirements for updating a benchmarking analysis? If yes, how often the benchmarking analysis should be updated? Is it enough to update only the financial results of comparable entities from the final sample, or the whole analysis have to be updated?	There is no specific guidance or prescribed rule in this respect. However, as a general rule the benchmark analysis should be updated for each separate year, as long as this would contribute to better accuracy of the analysis. Generally, it should be enough to update only the financial results of comparable entities from the final sample. However, this will depend also on other factors (e.g. market changes, etc.)
10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?	Formally, such a threshold has not been determined. Tax authorities will evaluate each scenario on a case-by-case basis, taking into account the participation rights, contracts, or any other forms of potential control.

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.
12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?	The local file of transfer pricing documentation must be prepared in a local language. The master file may be prepared in a different language but must be translated into Slovene if requested by tax authorities and within a given deadline.
13. Do the tax authorities accept self-initiated adjustments?	Yes, tax authorities may accept self-initiated adjustments if taxpayer acted in good faith and the adjustment is due to a substantial change in circumstances or facts which the taxpayer should be able to and will need to explain in a tax audit. The adjustment is generally made by issuing new invoices, credit notes or debit notes or by the adjustment correction in the corporate tax return. Please note that only an upwards adjustment is possible via the corporate tax return adjustment procedure. Additionally, the tax authorities often challenge downward adjustments made by the issuing of invoices, credit notes or debit notes.
14. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?	Yes.
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?	The penalty for small and medium enterprises ranges between EUR 1,200 and EUR 15,000. The penalty for a large company ranges between EUR 3,200 and EUR 30,000. The penalties for responsible persons range from EUR 600 to EUR 4,000.
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?	Transfer pricing is currently a priority for tax authorities. The types of transactions that are most often reviewed and disputed are the cross-border supplies of intra-group services. Usually a 5 year period is controlled.
17. Are APAs popular in your country? How many APAs have been issued?	APAs are not popular in Slovenia. We estimate that less than 5 have been issued so far.

18. Do the regulations in your country provide some special, local reporting obligations (for example a special declaration for transfer pricing purposes)?	The taxpayer must provide tax authorities with transfer pricing documentation on request. It must also report its transactions with associated enterprises in an annual corporate income tax return. According to Slovene legislation each company liable for transfer pricing must prepare transfer pricing documentation for the ongoing fiscal year (local and master file in Slovene language). A resident parent company of an international group must also submit a CbC report.
19. Do the regulations in your country provide any safe harbor procedures? If so, please provide us with the further details, i.e.: information on which transactions the procedures may be applied and what conditions must be met and also what simplifications the procedures result in. Are there any reporting requirements to the tax authority with relation to apply safe harbour procedure?	Recognized interest rate: Pursuant to Slovene regulations, interest accrued on loans to related parties can be deducted from the tax base up to the last published, known at the time of transaction, recognized interest rate without any further analysis or reporting obligation. Any exceeding interests will not be recognized for tax purposes. However, they may be recognized if the taxpayer can prove that such interest rate would have been determined between associated entities.
20. Please provide us with information, if COVID-19 situation affect transfer pricing regulations in your country for instance extension of the deadline for transfer pricing obligations.	There have been no changes in this respect.
21. Is there a reference in your local transfer pricing regulations to the possibility of re-characterization or non-recognition of transactions, are tax authorities use such tools in practice within the tax audit?	Yes, such a reference exists in the general Tax Procedure Act. Tax authorities often make use of such tools in the tax audits.

22. In case of financial transactions, what is the value of transaction within the meaning of transfer pricing regulations, for example in case of loan the value of transaction which need to be compare to the threshold will be interests or loan capital?

This will depend on the transaction itself.

Two rules exist in Slovenia regarding the corporate tax treatment of financial transaction.

Interest limitation rule

Please see our answer under question 19.

Thin capitalization rule

banks and insurance undertakings, the interest paid on loans received from a shareholder or partner who at any time in the tax period directly or indirectly holds at least 25% of the shares or holdings in the capital or voting rights of the taxpayer shall not be recognized as tax deductible expenditure, provided that the loans exceed, at any time in the tax period, four times the amount of the shareholder's or partner's holding in the taxpayer's equity capital, established with regard to the amount and duration of the loan surplus in the tax period, unless the taxpayer provides evidence that they could have received the loan surplus from a lender who is a non-associated enterprise.

The taxpayer must prepare documentation for each financial transaction. There are no thresholds.

UKRAINE

Regulations and rulings

- **Regulations**
  - Article 39 of the Tax Code of Ukraine.
- **Arm's length principle and definition of related party**
  - Clause 1 of Article 39 of the Tax Code of Ukraine,
  - Sub-clause 14.1.159 of clause 14.1 of Article 14 of the Tax Code of Ukraine.
- **Transfer pricing documentation**
  - Sub-clauses 39.4.6 – 39.4.15 of clause 39.4 of Article 39 of the Tax Code of Ukraine.

OECD guidelines treatment

- Ukraine is not a member of the Organization for Economic Cooperation and Development, so the OECD Guidelines cannot be considered directly applicable in Ukraine.
- Yet the general methodology of transfer pricing control described in Article 39 of the Tax Code of Ukraine is fully consistent with the methodology of the OECD Guidelines. In particular in the application of methods of establishing the compliance with the conditions of controlled transaction of the "arm's length" principle, conducting functional analysis and benchmarking analysis, preparation of documentation, procedures for preliminary approval of pricing, etc.
- However, given that the OECD Guidelines are a summary of up-to-date best practices for the application of the „arm's length" principle to assess transfer pricing in the implementation of controlled transactions by the companies, they can be used by taxpayers and supervisory authorities as guidance materials in the practical application of Article 39 of the Code.

Definition of related parties

- Two legal entities are **related** parties provided that: legal entities and/or individuals and/or entities without the status of a legal entity may be recognized as related parties. Depending on the nature of the influence of one party on the other, the relations may be classified as follows:
  - influence on a legal entity through ownership of corporate rights (25% or more);
  - influence on a legal entity by controlling its management bodies (participation in management bodies, decision-making on the appointment (election) of management bodies);
  - influence due to financial dependence (the sum of all loans, reimbursable financial assistance from one legal entity (except for banks and international financial organizations) exceeds the amount of equity by more than 3.5 times (for financial institutions and companies engaged exclusively in leasing activity – by more than 10 times);
  - influence through family ties and relationships.

- Controlled transactions are business transactions that may influence the taxable item by the income tax of enterprises of the taxpayer, namely:
  - business transactions made with related parties-non-residents;
  - foreign economic transactions for the sale or purchase of goods or services through non-residents – commission agents;
  - business transactions made with non-residents registered in the states (territories) included in the list of low-tax states (territories) approved by the Cabinet of Ministers of Ukraine;
  - business transactions with non-residents who do not pay income tax (corporate tax) and/or are not tax residents of the state, in which they are registered as legal entities. The list of country-by-country (territory-by territory) forms of business entity is approved by the Cabinet of Ministers of Ukraine;
  - business transactions (including in-house settlements) made between a non-resident and its permanent establishment in Ukraine.
- Business transactions (except for transactions between a non-resident and its permanent representative body in Ukraine) are recognized as controlled if the following terms are met jointly:
  - the taxpayer's annual income from any business, determined by accounting rules, exceeds UAH 150 million (net of indirect taxes) for the relevant year;
  - the volume of such business transactions of the taxpayer with each counterparty, determined according to the accounting rules, exceeds UAH 10 million (net of indirect taxes) for the respective year.

Business transactions between a non-resident and its permanent establishment in Ukraine are recognized as controlled if their volume exceeds UAH 10 million (net of indirect taxes) for the respective year.

- Business transactions for the purposes of transfer pricing are:
  - transactions with goods;
  - transactions on purchase (sale) of services;
  - transactions with intangible assets;
  - financial transactions, including leasing, participation in investments, loans, guarantee fees, etc.;
  - transactions on the purchase or sale of corporate rights, shares or other investments;
  - transactions between a non-resident and its permanent establishment in Ukraine;
  - transactions as a result of which the amount of income or financial result of the taxpayer decreases due to the transfer of functions, benefits, risks to another person in cases where in the relationship between unrelated parties such a transfer would not be made without compensation.

Transfer pricing methods

▶ The **transfer pricing methods** accepted by the tax authorities are:

Establishing the conformity of the conditions of the controlled transaction by the "arm's length" principle is made using one of the following methods:

- ▷ comparative uncontrolled price (CUP method);
- ▷ resale prices;
- ▷ "cost-plus";
- ▷ net income;
- ▷ allocation of profits.

The priority of application of methods since 23.05.2020 has not been established. However, there are requirements for mandatory use of a particular method for controlled transactions of a certain type.

Transfer pricing documentation requirements

Transfer pricing documentation (a set of documents or a single document drafted in arbitrary form) must contain information specified in sub-clauses 39.4.6 – 39.4.15 of clause 39.4 of Article 39 of the Tax Code of Ukraine.
The documentation (local file) is submitted at the request of the tax authority within 30 calendar days after the request was served. The request may be sent no earlier than 1 October of the year following the reporting year.

A request for global documentation (master file) may be submitted no earlier than 12 months and no later than 36 months from the end of the financial year established by the international group of companies.

Global transfer pricing documentation (master file) must be provided by the taxpayer to the tax authority within 90 calendar days after the request was served.

The report in terms of countries of the international group of companies is submitted if the total consolidated income of the international group of companies, which includes the taxpayer, exceeds the equivalent of 750 million euros for the previous financial year and if one of the following circumstances occurs:

- ▶ the taxpayer is the parent company of the international group of companies;
- ▶ the parent company of the international group of companies authorizes a taxpayer – a resident of Ukraine to submit a country-by-country report to the supervisory authority;
- ▶ In accordance with the law, the location of the parent company of the international group of companies is not required to submit a report from such an international group of companies, and the parent company of such a group does not authorize another member of the international group to submit the report in another foreign jurisdiction, where its submission is provided.

Safe harbours

Safe harbor procedures are not implemented in Ukraine.

Transfer pricing audit procedures and penalties

The audit on the taxpayer's compliance with the "arm's length" principle should not exceed 18 months. Every six months the supervisory authority shall inform the taxpayer on the audit status. If information must be collected from foreign authorities or an examination is necessary, the audit period may be extended for up to 12 months.

The period subject to auditing is 2555 days (7 years). During this period, the taxpayer must secure necessary documents.

A penalty for failure to report on controlled transactions is set (approximately) at the level of EUR 20,000. Failure to submit transfer pricing documentation is subject to a penalty of 3% of the amount of controlled transactions for which no such documentation is submitted, but shall not exceed EUR 15,000 (approximately). Failure to submit global transfer pricing documentation (master file) – a penalty of about EUR 20,000. Failure to submit a country-by-country report of the international group – a penalty of up to EUR 70,000.

Transfer pricing adjustments

- Taxpayers may independently adjust the object of income tax. If adjustments for the reporting year are made by 1 October of the year following the reporting year (date of submission of the Report on Controlled Transactions), no penalties are triggered. Independent adjustments are made to the maximum or minimum value of the price range (profitability). If adjustments are made as a result of an inspection by the supervisory authority, the addition of the object of taxation is made to the median range.

Cost Contribution Agreements (CCAs)

- No practical use seen of this type of agreements.

Advanced Pricing Agreements (APAs)

- APAs are an option yet so far none has been made.
- Contracts for prior coordination of pricing in controlled transactions may be entered into by taxpayers classified as large taxpayers.
- Agreements may be unilateral (between the taxpayer and the tax authority of Ukraine) or bilateral (if a foreign tax authority is involved of the state whose resident is a party to the controlled transaction (subject to an international agreement (convention) on avoidance of double taxation between Ukraine and such state) and multilateral (two or more tax authorities of foreign countries). APA procedure is free of charge.

- With the consent of the taxpayer and the taxpayer, the agreement may be extended to cover the entire reporting period in which it is made and/or the reporting periods preceding its entry into force, if such reporting periods are not conducted and not checked for compliance by the taxpayer the arm length principle. The total term of the agreement may not exceed 5 calendar years. At the request of the taxpayer it may be extended for another 5 years. The tax authority may terminate the agreement earlier if it discovers inaccurate information or states non-performance of the agreement by the taxpayer.
- The general terms of procedures for consideration of documents before the execution of the contract are not clearly established.

Implementation of BEPS

Ukraine became an official member of BEPS on 1 January 2017.

As of October 2020, legislative changes have been made to the following steps:

- Action 3: disclosure by individuals – residents of Ukraine of their participation in foreign companies they control (CFC) and tax rules for such companies;
- Action 4: limit the costs of financial transactions with related parties;
- Action 6: prevent abuse in connection with the application of double taxation treaties;
- Action 7: prevent artificial avoidance of recognition of the status of permanent establishment;
- Actions 8-10: improving control over transfer pricing;
- Action 13: country-by-country reporting rules for international groups of companies.

The first reporting period for transfer pricing obligations is 2021.

1. Is the CUP method preferred (should the CUP method be rejected with the proper justification if another method is applied?)?	The CUP method is not a general priority from 23/05/2020. It is a priority though for transactions involving commodities. For commodities, the conditions of controlled transaction are reviewed for compliance with the "arm's length" principle using the CUP method. Price comparisons can be made with the price of comparable uncontrolled transactions or with quoted prices. The recommended list of sources of information for obtaining quoted prices is published by the State Tax Service of Ukraine on its official web portal before the beginning of the reporting year. The value of intangible assets can be determined using the method of comparative valuation, which is based on the calculation of the current value (discounted value) of future cash flows. For transactions made on the basis of a forward or futures contract, price comparison is made on the basis of price information for the date closest to the date of the contract only if the taxpayer notifies the State Tax Service of Ukraine of such a contract by submitting an electronic notification.
2. In view of method priority, is it necessary to explain in detail why prioritised methods are non-applicable?	In practice, the grounds for rejection of some method are substantiated. The legislation requires choosing the method that is most appropriate to the facts and circumstances of the controlled transaction. Except for where requirements are laid down to apply a specific method of compliance with the conditions of controlled operations of the "arm length" principle for controlled operations of a certain type (for example, for commodities). Thus, the rationale for the choice of method is to prove its greatest compliance with the conditions and circumstances of the operation.

3. Is the Pan-European analysis accepted or the local benchmark is preferred over the Pan-European one? **If the local benchmark is preferred, is it enough to include the local market within the search strategy or is it required to have local comparables in a final sample?**	There are no special requirements. One of the criteria for selecting the party under investigation is the ability to obtain documented financial information needed to calculate the financial ratio, which allows for choosing a party for analysis of a resident of Ukraine.
4. Are there any preferences (in TP rules or practice) over statistical method applied in benchmarking study, i.e. interquartile range or single figures? **Is the full range (minimum – maximum) acceptable as a market range?**	If the price or profitability is compared with the prices or profitability indicators of several comparable uncontrolled transactions or legal entities, the price range (profitability) must be used. The price range (profitability) is the value of the sample of prices (financial indicators) of comparable transactions between the lower and upper quartiles of this range. The values of the lower and upper quartiles are the minimum and maximum values of the price range (profitability).
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 law value adding services as long as it falls within the interquartile range or do they prefer a specific level of mark-up, e.g. 5%?**	If the taxpayer makes an independent adjustment of the taxable item, he/she may make adjustments to the minimum or maximum value of the range (depending on the type of transaction). If the adjustment is made by the tax authority as a result of the audit, the taxable item is adjusted to the mid-point of the range. The answer to the range calculation procedure is made above. No. A separate level of allowance for services (including intragroup) is not established by law.
6. Does your tax administration use secret comparables for transfer pricing assessment purposes?	Only in the course of own general monitoring measures. Only those sources that contain open information can be used as a source of information during an audit.
7. What is tax authorities approach to accept entities with loss (aggregated or incurred in particular years) or extremely high results in the benchmarking study? Do they accept such entities within the benchmarking study?	Only comparable legal entities that do not have losses according to the accounting (financial) statements in more than one reporting period from the periods used to calculate financial indicators are allowed to be accepted in the sample.

8. What is the duration of the tested period that is preferred by the tax authorities – 3 or 5 years?	They can analyze information for the reporting year or period. For the CUP method – only for the reporting year. There are no requirements as for the period. In practice, a period of 3 years is more common. In the case of applying a period-based analysis, instead of year-based (reporting one) it is necessary to additionally substantiate the choice of such a period.
9. Are there any requirements for updating a benchmarking analysis? If yes, how often the benchmarking analysis should be updated? Is it enough to update only the financial results of comparable entities from the final sample, or the whole analysis have to be updated?	An update to the benchmarking analysis is required. The legislation requires that the financial information of comparable legal entities be used for the reporting (tax) period (year) in which the controlled transaction was performed, or for several tax periods (years). There are no specific requirements for updating only the financial indicators of the final sample or updating the sample as a whole. In practice, in most cases, a new benchmarking analysis is performed.
10. What is the maximum threshold of share capital for the entities eligible in the set of comparable entities?	There are no requirements.
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 supervisory authority.
12. Should the transfer pricing documentation be prepared in local language or could it be prepared in English?	Transfer pricing documentation and global transfer pricing documentation (master file) are submitted by the taxpayer in Ukrainian. If documents presented in a foreign language are filed together with the documentation, the taxpayer shall also file their translations.
13. Do the tax authorities accept self-initiated adjustments?	Yes. In order to encourage independent adjustments, taxpayers may make them to the minimum or maximum value of the range. As a result of the audit, adjustments are made to the mid-point.

14. Has your country signed the Multilateral Competent Authority Agreement (MCAA) to enable automatic sharing of country-by-country information?	Ukraine plans to join the MCAA CRS Multilateral Agreement in the late 2021.
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?	Failure to submit transfer pricing documentation triggers a penalty for the taxpayer of 3% of the amount of controlled transactions for which the documentation is not submitted (but not more than EUR 15,000, approximately). Penalties for the Board are not in place. If the terms of the transactions do not follow the arm's length principle and the taxpayer makes an independent adjustment of the taxable item before 1 October of the year following the reporting year, this can be done without penalty. If later, then with a penalty of 3% or 5% – depending on the method of adjustment. If the adjustment is made as a result of the audit – the penalty is at 25% of the amount of the obligation.
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?	Transactions involving commodities.
17. Are APAs popular in your country? How many APAs have been issued?	No.
18. Do the regulations in your country provide some special, local reporting obligations (for example a special declaration for transfer pricing purposes)?	Taxpayers who made controlled transactions in the reporting year by 1 October of the year following the reporting year shall submit a Report on Controlled Transactions. The Report lists operations and indicates the method used to analyze compliance with the principle of "arm's length principle" in the context of each operation.

19. **Do the regulations in your country provide any safe harbor procedures? If so, please provide us with the further details, i.e.: information on which transactions the procedures may be applied and what conditions must be met and also what simplifications the procedures result in. Are there any reporting requirements to the tax authority with relation to apply safe harbour procedure?**

Safe harbour procedures are not implemented in Ukraine.

20. **Please provide us with information, if COVID-19 situation affect transfer pricing regulations in your country for instance extension of the deadline for transfer pricing obligations.**

A moratorium has been introduced on the number of inspections until the last calendar day of the month (inclusive), in which the quarantine established by the Cabinet of Ministers of Ukraine expires. It was introduced for the duration of measures aimed at preventing the spread of acute respiratory disease (COVID-19). The moratorium applies, inter alia, to inspections aimed at establishing compliance with the principle of "arm's length principle".

Also, penalties are not applied for violations of tax legislation committed in the period from 1 March 2020 to the last calendar day of the month (inclusive) in which the quarantine will end. This applies to cases of non-reporting or violation of deadlines for payment of tax liabilities.

21. **Is there a reference in your local transfer pricing regulations to the possibility of re-characterization or non-recognition of transactions, are tax authorities use such tools in practice within the tax audit?**

TP regulations state that if the actual conditions of the controlled transaction do not meet the terms of the (written) agreement made and/or the actual actions of the parties to the controlled transaction and the actual circumstances of its implementation differ from the terms of such an agreement, commercial and/or financial characteristics of the controlled transaction are determined in accordance with the actual actions of the parties to the transaction and the actual conditions of its conduct.

22. In case of financial transactions, what is the value of transaction within the meaning of transfer pricing regulations, for example in case of loan the value of transaction which need to be compare to the threshold will be interests or loan capital?

For financial transactions, interest rates and, accordingly, the amount of income received or expenses incurred in connection with the reflection in accounting of accrued interest.

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