

# TRANSFER PRICING CARD

Effective 1 January 2020

**SORAINEN**

Comparison of the main  
transfer pricing regulations  
in the Baltics and Belarus

## GENERAL RULES

- Transfer pricing (**TP**) regulations are in line with the Organisation for Economic Cooperation and Development (**OECD**) TP Guidelines, while some provisions on TP documentation are borrowed from EU Joint Transfer Pricing Forum recommendations. OECD TP Guidelines can be used to implement domestic TP regulations as long as they are in line with Estonian tax law.

## DEFINITION OF RELATED PARTY

- Persons are assumed to be related parties if 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, 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.

## TP 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.

## MANDATORY TP DOCUMENTATION CONTENT

- Regulation No. 53 on TP provides the structure for TP documentation, which essentially follows the recommendations of the EU Joint Transfer Pricing Forum Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union, i.e. documentation should consist of two parts – a master file and a country-specific file. In practice the required information on a group or a particular taxpayer can be provided in one TP documentation file.
- TP documentation can be in a language other than Estonian; however, the documents must be translated into Estonian if so requested by the tax authorities.
- TP documentation must be presented to the tax authorities within 60 days from the request.

## RECOGNISED TP METHODS

- TP methods in use: comparable uncontrolled price (**CUP**) method, resale price, cost plus, profit split, transactional net margin method (**TNMM**) or any other sufficiently substantiated method.

## TAX AUDITS AND PENALTIES

- In the case of failure to file a declaration as required or failure to correct errors in the declaration, the tax authority can 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 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% yearly) 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).

## EXTENT OF ENFORCEMENT

- 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 initiated.
- TP cases are not enough to generalise as to what extent penalties are enforced in practice.

## ADVANCE PRICING AGREEMENTS (APA)

- APAs are not available in Estonia.

## GENERAL RULES

Transactions with related parties should be at arm's length. TP rules are set in accordance with Latvian tax law and OECD TP Guidelines.

## DEFINITION OF RELATED PARTY

- Under domestic tax law the arm's length requirement applies to transactions:
  - between parent and subsidiary companies;
  - with 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.

## TP DOCUMENTATION REQUIREMENTS

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

| Transaction party  | When is a Master File required?   | When is a Local File required?                          | Submission deadlines to tax authorities  |
|--|---|---|--|
| Foreign related party or blacklisted jurisdiction company  | If the transaction amount > EUR 15 m; or if turnover > EUR 50 m and the transaction amount > EUR 5 m. | If the transaction amount > EUR 5 m                     | <b>Mandatory submission within 12 months after the end of taxation year.</b>   |
|  | If turnover is < EUR 50 m and the related party transaction amount is from EUR 5 m to EUR 15 m.       | If the transaction amount is from EUR 250 k to EUR 5 m. | Prepared within 12 months after the end of taxation year and submitted to the tax authorities <b>within 1 month upon request.</b>                |
| Latvian related party (only if transactions take place within one supply chain with a foreign related party) | N/A   | If the transaction amount > EUR 250 k                   | Should be prepared only if required by tax authorities. Submission within <b>90 days after receiving a request</b> (may be extended by 30 days). |

- TP documentation must be revised and updated every year. However, if the situation of the company does not change significantly it need update only certain sections of the documentation and financial data used in the analysis. The whole TP documentation must be revised once every 3 years. Additionally, analysis is not required for transactions below EUR 20,000.
- Companies not reaching these thresholds must also be able to prove that their related-party transactions are arm's length in the case of tax audit.
- 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)<sup>4</sup>. 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).

- Although the SRS generally requires taxpayers to submit any tax-related information in Latvian, the master file may be submitted in English.

## MANDATORY TP DOCUMENTATION CONTENT

- Mandatory TP documentation should include the following information:
  - industry analysis;
  - company analysis;
  - functional analysis;
  - economic analysis of transactions between related parties, including description of the transaction, selection of TP method & a benchmarking study (if applicable).

## RECOGNISED TP METHODS

- OECD TP guidelines may be used for application of TP methods.
- Five TP methods are recognised:
  - CUP method;
  - resale price;
  - cost-plus;
  - TNMM; and
  - profit split.

## TAX AUDITS 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.
- TP adjustments made during audit might trigger value added tax (**VAT**) adjustments, without the right to adjust corresponding input VAT.
- 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.

## EXTENT OF ENFORCEMENT

- If the SRS thinks that a transaction is not arm's length, it will adjust transaction values and impose penalties.
- When TP documentation and other supporting documents have been prepared, the SRS disputes the contents and applicability of the analysis.

## ADVANCE PRICING AGREEMENTS (APA)

- The taxpayer at its own initiative or by agreement with the SRS can enter into an APA with the SRS on determining the market price for a transaction or certain types of transaction with a related foreign company if the transaction amount (actual or planned) exceeds EUR 1.43 million annually.
- The SRS charges a fee of EUR 7,114 for evaluating a taxpayer's application for APA.

## GENERAL RULES

- Lithuania follows the OECD TP Guidelines and provisions of double tax treaties. Taxpayers may follow OECD TP Guidelines unless these contradict domestic law.

## DEFINITION OF RELATED PARTY

- The following parties are regarded as related for transfer pricing purposes:
  - an entity and its shareholders and members;
  - an entity and the members of its managing bodies;
  - an entity and the spouses, fiancés, cohabitantes, 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;
  - 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, cohabitantes, 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;
  - 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, cohabitantes, 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.
- TP rules also apply to transactions with associated parties, which are broadly defined as other entities having an influence on each other.

## TP DOCUMENTATION REQUIREMENTS

- Taxpayers must 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.
- 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”).
- TP documentation can be made in a language other than Lithuanian; however, the documents must be translated into Lithuanian if so requested by the tax authorities.

## TERMS

- 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 executed only among Lithuanian subjects, then a term for preparing transfer pricing documentation is not set but documentation must be submitted within 30 days from a request by the 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.

## MANDATORY TP DOCUMENTATION CONTENT

TP documentation should include:

- industry analysis;
- company analysis;
- functional analysis;
- economic analysis of transactions between related parties, including a description of the transaction, selection of TP method & a benchmarking study (if applicable).

Apart from the usual information, it is necessary to disclose the group's functional analysis, to provide data on the group's intangible assets, to explain the group's funding policy, reorganisations, agreements with the tax administrator and other aspects in the master file.

Additional information on an international group of companies (as far as the controlled transaction is concerned), performance analysis of the company, as well as detailed information on the reorganization (and its alternatives), agreements with the tax administrator should be described **in the local file**.

## RECOGNISED TP METHODS

- TP methods in use: CUP method, resale price and cost-plus methods, TNMM and profit split methods. If equal opportunities exist to apply any of those methods, priority is given to traditional methods, i.e. the first 3 methods (especially the CUP method). A combination of methods may be used in all cases to support transfer prices. The possibility of using financial valuation techniques has been introduced.

## TAX AUDITS AND PENALTIES

- Tax audits can go back 5 years. (From 2020-01-01, the general term for tax audit will change to 3 years with some exceptions. For TP the tax audit term will remain the same at 5 years).
- A fine of 10-50% of underpaid tax is imposed.
- Late payment interest applies at 0.03 % daily.
- Failure to file TP documentation attracts a warning or a fine of EUR 1,820 to 6,000. The fine is imposed on the head of the company.

## EXTENT OF ENFORCEMENT

- Tax authorities mainly target companies with significant cross-border related party transactions.
- If the tax authorities think that a transaction is not at arm's length, they will adjust the transaction values and impose fines and late payment interest.
- Where the administrative sanction for failure to have TP documentation is imposed, there is a risk that the Company could be listed as an unreliable taxpayer. Taxpayers that fail to meet the "reliable taxpayer" criteria will not be able:
  - (i) to participate in public procurement under Lithuanian Law;
  - (ii) to receive beneficiary status under Lithuanian law on charities and sponsorships;
- Information about unreliable taxpayers will be listed publicly;
- In line with the Memorandum signed between the State Tax Inspectorate and the Association of Lithuanian Banks, compliance with "reliable taxpayer" criteria will also be taken into account when the company is seeking bank financing.

## ADVANCE PRICING AGREEMENTS (APA)

- APAs are available at no charge.
- An application for an APA may be filed only in respect of a future transaction or an operation to be carried out after the application is filed and if the situation and TP issues are complex.
- The deadline for issuing an APA by the tax authorities is 60 days, extendable by 60 days.
- An APA binds the tax authorities throughout the entire period of the transaction but no longer than 5 calendar years after the year in which the decision was adopted.
- The APA is not binding on the taxpayer.

## GENERAL RULES

- Transactions subject to local transfer pricing rules are:

| Controlled transactions  | Threshold - the sum of all sales to a counterparty out of indirect taxes or the sum of all purchases from a counterparty out of indirect taxes in a calendar year |                                    |
|--|---|------------------------------------|
|  | Standard threshold  | Threshold for large taxpayers*     |
| Transactions on sale or purchase of real estate and housing bonds with related parties or parties enjoying a special tax regime                  | No threshold  | No threshold                       |
| Transactions with related parties concluded in the course of foreign trade activity  | BYN 400,000 (approx EUR 175,000)  | BYN 2,000,000 (approx EUR 875,000) |
| Transactions with offshore residents (even not related) concluded in the course of foreign trade activity  | BYN 400,000 (approx EUR 175,000)  |                                    |
| Transactions on sale/purchase of strategic goods determined by the Government (mostly natural resources) in the course of foreign trade activity | BYN 2,000,000 (approx EUR 875,000)  |                                    |
| Domestic transactions with parties exempted from corporate income tax  | BYN 400,000 (approx EUR 175,000)  | BYN 2,000,000 (approx EUR 875,000) |

\*Belarusian companies are treated as large taxpayers if their income in the previous calendar year is not less than BYN 180,000,000 (approx EUR 80,500,000) and if at least one of the following criteria is met:

- total taxes and duties accrued in the previous calendar year exceeded BYN 14,000,000 (approx EUR 6,150,000);
- the difference between total input VAT for the previous calendar year and total output VAT for the previous calendar year is more than BYN 14,000,000 (approx EUR 6,150,000).

## DEFINITION OF RELATED PARTY

- The definition of related party includes:
  - parties that are founders (shareholders) of one company, if the direct and (or) indirect participation share of each party in that company is not less than 20%;
  - a party (together with individuals mentioned in the last paragraph below) that is a founder (shareholder) of another company, if its direct and (or) indirect participation share in that company is not less than 20%;
  - companies, if one party directly and (or) indirectly participates in those companies and their participation share is not less than 20%, and when their beneficial owner is the same individual;
  - companies where the collective body or board of directors (supervisory board) consists of more than 50% of the same individuals (together with individuals mentioned in the last paragraph below);

# BELARUS

- relationships of one party are directly or indirectly controlled by another party;
- individuals in marital relations, proximity of blood or in-law relationship, adoption or custody.

## TP DOCUMENTATION REQUIREMENTS

- TP documentation requirements include notifying and preparing an economic rationale of the transaction price and/or TP documentation. These must be submitted to the tax authority on request.
- Taxpayers must notify the tax authority of each controlled transaction and transaction with a related party by entering information on those transactions into an electronic invoice and sending the invoice by means of a special portal to the Ministry of Taxes and Duties.

## MANDATORY TP DOCUMENTATION CONTENT

- TP documentation should include:
  - information on the parties to the transaction;
  - a description of the economic activity of the parties to the controlled transaction and the functions that the parties performed in the transaction;
  - information on the field of taxpayer's activity (tendencies, competitive situation in the market);
  - group structure of the taxpayer with information on the managing company;
  - information on the controlled transaction (price, aim, payment methods);
  - information on the price of identical (similar) goods/works/services, including those posted on the web, where a link to the site or a screen shot of the page would suffice;
  - information on the interdependence between the taxpayer and the other party to the transaction including information on their participation share;
  - description of the transaction subject, including the trade nomenclature of foreign trade activity;
  - transfer pricing methods used;
  - other information that may prove that the transaction was carried out in line with the arm's length principle.

## RECOGNISED TP METHODS

- The following TP methods are used in Belarus:
  - comparable uncontrolled price method;
  - resale price method;
  - cost plus method;
  - transactional net margin method;
  - profit split method
- A combination of two and more methods can be used.

## TAX AUDITS AND PENALTIES

- Tax audits normally go back 5 years.
- No special liability is set for breach of transfer pricing rules. General norms apply on administrative liability for non-payment of corporate income tax. Administrative fines vary depending on the circumstances accompanying the administrative offence on non-payment of taxes and may be up to 40% of unpaid corporate income tax.

## EXTENT OF ENFORCEMENT

- The tax authorities monitor all controlled transactions carried out by taxpayers and may decide on an audit or require additional TP documentation from the taxpayer if prices in controlled transactions do not comply with the arm's length principle.
- If an audit reveals that the tax base of corporate income tax to be paid by the taxpayer is not in line with that calculated by the tax authorities under the arm's length principle, the tax authorities may calculate additional amounts of corporate income tax and late payment interest to be imposed on the taxpayer.

## ADVANCE PRICING AGREEMENTS (APA)

- Large taxpayers or taxpayers that exceeded the transfer pricing threshold of BYN 2,000,000 (approx EUR 875,000) in a calendar year can apply for an APA with the tax authorities.
- The tax authorities charge a fee of 500 Belarusian basic units, which is currently BYN 12,750 (approx EUR 6,000) for evaluating a taxpayer's application for APA.

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