

GLOBAL TRANSFER PRICING 2015: WORLD OVERVIEW

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UKRAINE

What's new

During 2014, extensive discussions in Ukraine focused on reforming and improving the transfer pricing regulations, which entered into effect as of 1 September 2013. The International Monetary Fund and the World Bank took an active role in this process, providing feedback and recommendations. As a result of the reform work conducted in 2014, significant amendments were introduced into Ukraine's transfer pricing legislation as of 1 January 2015. These changes bring Ukrainian legislation closer in line with the OECD's transfer pricing guidelines, but at the same time they make the regulations more fiscal in nature

Acceptable methods

The Tax Code provides five methods for transfer pricing analysis: the comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

Commissionaire arrangements

Are commissionaire arrangements allowed?

Yes, but a series of tax implications (transfer pricing, permanent establishment, VAT) would have to be considered before implementing such an arrangement. Export sales through nonresident commissionaires are automatically subject to the transfer pricing regulations, regardless of whether the sale is made to a related or an unrelated party.

Cost sharing agreements

Are Cost Contribution Arrangements (CCA) or Cost Sharing Agreements (CSA) accepted?

Generally no. Recharges made to Ukrainian entities under a CCA or a CSA would not be deductible for tax purposes in Ukraine. Moreover, currency control regulations would likely make it impossible to make payments outside Ukraine under a CCA or a CSA. Alternative approaches to the calculation of recharged amounts must be considered when implementing such structures in Ukraine.

Tax return disclosures

Taxpayers must complete a special appendix to the corporate income tax return to disclose any transfer pricing adjustments they make. Starting with the 2015 income tax return (to be filed in 2016), another annex will be required to provide details regarding controlled transactions.

Documentation requirements

Two types of documentation are required:

- Report on controlled transactions, due 1 May of the year following the reporting one; and
- Transfer pricing documentation, due one month after a request from the tax authorities (two months for large taxpayers). The request may be issued by the authorities no earlier than on 1 May of the year following the reporting one. A calendar year is a reporting period for transfer pricing purposes

FRANCE

What's new

The highlights of France's transfer pricing developments for 2014 included the issuance of a specific form to comply with the annual "light" transfer pricing documentation requirement, which going forward, will have to be filed electronically, and an increase in the penalties imposed for failure to comply with the general transfer pricing documentation requirements. In essence, situations may now arise whereby a company could receive a significant penalty even if no transfer pricing adjustment is made, only because of the omission of documentation or lack of compliance.

Methods and comparables

The comparable uncontrolled profits (CUP) method, the resale price method, the cost plus method, the profit split method, and the transactional net margin method (TNMM).

Documentation and tax return disclosures

Companies with fiscal year-ends after September 8, 2013, must file a specific transfer pricing form (CERFA 2257-SD) with the French tax authorities on an annual basis within six months following the filing of their annual tax return (under article 223 quinquies B of the French Tax Code). The form must include a description of the taxpayer's transfer pricing method, as well as details regarding the cash flows per type of transactions (for aggregate amounts of more than €100,000 per type of transactions).

Documentation requirements

Yes, dynamic and contemporaneous documentation requirements are in place as of January 2010 following the adoption of procedures under articles L.13 AA and L.13 AB. Article L.13 AA also requires that rulings granted to related parties by foreign tax authorities must be disclosed to the FTA.

Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?)

Must comparables be refreshed or a new search performed? Contemporaneous documentation

requirements have been in place since January 2010, and a specific transfer pricing form now must be submitted to the French tax authorities within six months following the filing of the annual tax return. Thus, this information must be updated annually. Comparables data should also be refreshed, given that a new analysis should be prepared from time to time (for example, every three years) to ensure that the results and conclusions remain valid.

GERMANY

What's new

In 2014, Germany implemented the Authorized OECD Approach (AOA) in domestic law. In this regard, Germany followed for the most part the recommendations published by the OECD in the OECD's 2010 Report on the Attribution of Profits to Permanent Establishments, and even focused more closely on particular facts, such as the determination of dotation capital and – deviating from the standards set by the OECD – the rebuttable presumptions set forth in the German law on the profit allocation to permanent establishments, as well as specific arrangements for permanent establishments for construction, assembling, and mining.

Methods and comparables

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the transactional net margin method (TNMM), and profit split methods. There is a hypothetical arm's length test in case the other methods do not apply. The hypothetical arm's length test must be observed, especially in the case of transactions involving intangibles.

Documentation requirements

The economic and legal basis for arm's length prices and conditions in cross-border transactions with related parties must be documented. Details are set out in the decree-law on the manner, content, and extent of documentation in the sense of section 90 para. 3 of the General Tax Code (GAufzV). Further details on documentation requirements are outlined in the administrative principles of April 12, 2005, issued by the Federal Ministry of Finance.

Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?)

Must comparables be refreshed or a new search performed? There is no specific requirement to prepare annual transfer pricing reports (except for extraordinary transactions). Regarding the update of benchmarking studies there is no strict rule in the law, decree-law, or administrative principles, so the general principles for a reasonable economic analysis apply. In practice, benchmarking studies are often fully updated every three years (basically, a new search is performed) with only financial updates being run in the interim periods.

UNITED STATES

What's new

The United States' transfer pricing regime did not experience any substantive developments in 2014. On February 14, 2014, the Internal Revenue Service did

release the Transfer Pricing Audit Roadmap to the public which recommends and outlines new policies and procedures for transfer pricing audits. The roadmap provides examination teams, in particular IRS persons involved in the audit of transfer pricing issues, with a broad set of tools and audit techniques to assist with the planning, execution, and resolution of transfer pricing examinations.

Methods and comparables

For tangible property: comparable uncontrolled price method, resale price method, cost plus method, comparable profits method, profit split method, and unspecified methods. For intangible property: comparable uncontrolled transaction method, comparable profits method, profit split method, and unspecified methods. For platform contributions (buy-ins): comparable uncontrolled transaction method, income method, acquisition price method, market capitalization method, residual profit split method, and unspecified methods. For services: services cost method, comparable uncontrolled services price method, gross services margin method, cost of services plus method, comparable profits method, profit split method, and unspecified methods.

Documentation requirements

Contemporaneous documentation is required for penalty protection. Treas. Reg. §1.6662-6. Contemporaneous documentation is also required for all cost sharing arrangements. Treas. Reg. §1.482-7(k)(2).

Are the documentation requirements annual requirements? If so, what do they involve each year (for example, a complete report, a memo identifying any changes and the updated transaction values?)

Must comparables be refreshed or a new search performed? Documentation is optional; however, if the taxpayer wants to have penalty protection, then the taxpayer must have contemporaneous documentation, which means the taxpayer must update its transfer pricing documentation on an annual basis.

UNITED KINGDOM

What's new

Transfer pricing in the UK remains an issue of political and public importance. This is reflected in the UK government's proposed adoption of OECD/G20 base erosion and profit shifting (BEPS) recommendations. From 1 April 2015, a new tax will apply to arrangements that divert profit from the UK – the “diverted profits tax.” Advance pricing agreements and advance thin capitalization agreements now include the option for the UK tax authorities to terminate the agreements in the event of changes to UK legislation or OECD transfer pricing guidelines arising from BEPS actions. UK tax authority audit activity in 2014 suggests a more thematic approach to risk assessment in certain areas. Intragroup procurement arrangements, for example, appear to be the subject of a more coordinated UK tax authority challenge.

Acceptable methods

The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the profit split method (residual analysis, contribution analysis), the transactional net margin method (TNMM), and

unspecified methods (provided the derived result satisfies the arm's length principle).

Documentation requirements

Taxpayers should keep records to support details in the tax return. However, note the comments in the "Deadline to prepare documentation" section below. Records should be retained for the later of (a) six years from the end of the relevant accounting period; (b) the date when the enquiry into the return is completed; or (c) the date on which HMRC are no longer able to open an enquiry (TIOPA 2010, Part 4).

UK legislation provides for penalties of up to £3,000 per tax return for failure to compile and retain transfer pricing documentation (FA 1998, Sch 18, para 23(1)).

Are the documentation requirements annual requirements? If so, what do they involve each year (for

example, a complete report, a memo identifying any changes and the updated transaction values?)

Must comparables be refreshed or a new search performed? There is no obligation for a taxpayer to submit its transfer pricing documentation with its annual tax return. However, the tax authorities can request that evidence of compliance with the arm's length principle be made available as per the record-keeping requirements detailed in International Manual 483030. HMRC expect the taxpayer to prepare and retain documentation that demonstrates the taxpayer's compliance, in accordance with the UK Corporation Tax Self-Assessment regime. This means that contemporaneous transfer pricing documentation must be prepared in support of every tax return annually. This documentation must be made available at the request of the tax authorities within the time specified.