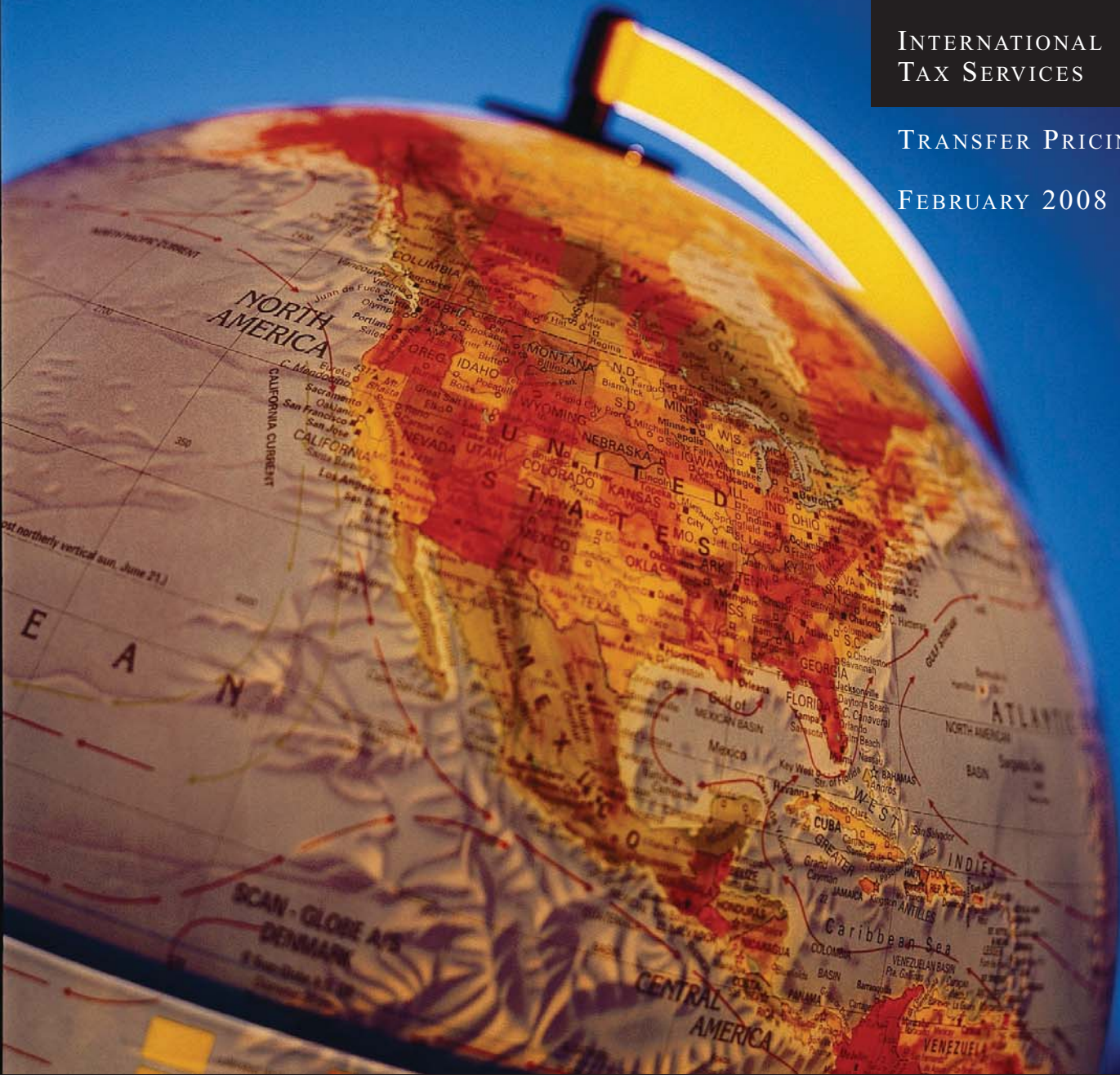


INTERNATIONAL  
TAX SERVICES

TRANSFER PRICING

FEBRUARY 2008



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# Transfer Pricing Global Reference Guide



# Transfer Pricing Global Reference Guide

Planning transfer pricing strategies, working to limit tax exposures, and defending a company's return position and transfer pricing practices on a global basis requires knowledge of a complex web of country tax laws, regulations, rulings, methods, and requirements.

The Ernst & Young *Transfer Pricing Global Reference Guide* is a tool designed to enable international tax executives to quickly identify the transfer pricing rules, practices, and approaches that have been adopted by over 40 countries. These various approaches must be understood in order to complete both compliance and planning activities.

The Guide outlines basic information for the covered countries regarding their transfer pricing tax laws, regulations and rulings, Organisation for Economic Co-operation and Development (OECD) Guidelines treatment, priorities and pricing methods, penalties,

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the potential for relief from penalties, documentation requirements and deadlines, Statute of Limitations, required disclosures, audit risk, and opportunities for Advanced Pricing Agreements (APAs).

A web-based version of this brochure can be found at [www.ey.com/transferpricingguide](http://www.ey.com/transferpricingguide). Please check this web page periodically for late-breaking country developments. Commentaries from transfer pricing professionals are also available at this site.

For a more detailed discussion of any of the country-specific transfer pricing rules, or to obtain further assistance in addressing and solving intercompany transfer pricing issues, please contact your local Ernst & Young office, the relevant country contact listed at the back of this brochure, or post an e-mail query at [www.ey.com/transferpricingguide](http://www.ey.com/transferpricingguide).



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# Transfer Pricing Global Reference Guide Legend

*All rules are current as of June 2007*

**Taxing Authority and Tax Law:** Name of taxing authority and statutory provisions currently in effect in each country.

**Relevant Regulations and Rulings:** Current transfer pricing rules and regulatory provisions in effect in each country.

**OECD Guidelines Treatment:** Consideration given by the taxing authority to the OECD Transfer Pricing Guidelines.

**Priorities/Pricing Methods:** Transfer pricing methods allowed, and the priority of each method.

**Transfer Pricing Penalties:** Discussion of potentially applicable transfer pricing penalties if a taxpayer is determined by the taxing authority.

**Penalty Relief:** Potential ways in which penalties may be reduced or avoided.

**Documentation Requirements:** Governing tax authority requirements or recommendations that taxpayers prepare and maintain written documentation to confirm that the amounts charged in related party transactions are consistent with the arm's length standard.

**Documentation Deadlines:** Deadline for preparing transfer pricing documentation.

**Statute of Limitations on Transfer Pricing Assessments:** Discussion of applicable Statute of Limitations regarding transfer pricing examination and assessments.

**Return Disclosures/Related Party Disclosures:** Information on disclosures required by taxpayers regarding related party transactions.

**Audit Risk/Transfer Pricing Scrutiny:** Discussion of the level of risk for the tax authority scrutinizing related party transactions.

**APA Opportunity:** Discussion of the availability of obtaining an advance pricing agreement with the tax authority.

# Argentina

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## **Taxing Authority and Tax Law**

Income tax law (ITL) Regulations have been amended by Executive Orders No. 290/00, 1037/00, 115/03, and 916/04. The Administración Federal de Ingresos Públicos–Dirección General Impositiva (AFIP-DGI) is the Argentine taxing authority. Tangible goods (exports and imports) between independent parties: ITL Section 8, ITL Regulations Sections 10 & 11. Transactions between related parties and deemed related parties (including tax haven entities): ITL Sections 14, 15, 15.1, 129 & 130. ITL Regulations, Sections 19, 20, 21, 21.1-21.2, 21.3, 21.4, 21.5, 21.6, 21.7, 21.8, 21.9, 21.10, 21.11. ITL has been amended by Law No. 25,063, Law No. 25,239, and Law No. 25,784.

ITL Regulations have been amended by Executive Orders No. 290/00, 1037/00, 115/03, and 916/04.

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## **Relevant Regulations and Rulings**

Currently in effect: AFIP-DGI Regulation No. 1,122 (Published 31 October 2001, but applicable for fiscal years beginning from 31 December 1999) amended by AFIP-DGI Regulations No. 1,227/02; No. 1,296/02; No. 1,339/02; No. 1,590/03; No. 1,670/04; No. 1,918/05, and No. 1,958/05. AFIP-DGI Regulation No. 1,375/02 (Information program) as amended by Regulations No. 1,417/03, No. 1,463/03; No. 1476/03; No. 1,508/03, No. 1,517/03, No. 1,524/03, and No. 1,530/03. In force before December 31, 1999: AFIP-DGI Regulation No. 702 amended by No. 1007/01. Binding tax rulings for general application are not provided for. Opinions from Tax Authorities are scarce and non-binding.

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## **OECD Guidelines Treatment**

Argentina is not an OECD member, and the OECD Transfer Pricing Guidelines are not referenced in Argentina's Tax Law and Regulations. However, the Tax Authorities usually recognize the Guidelines in practice as long as they do not contradict the Law and Regulations.

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## **Priorities/Pricing Methods**

The tested party must be the local entity (i.e., entity based in Argentina). The most appropriate method is selected by the taxpayer, but the Tax Authorities may oppose the selection. For exports and imports of tangible goods between related and independent parties where there is an international price in transparent markets, the market price is used, unless there is evidence to the contrary. For transactions between related parties (tax haven entities included), Tax Authorities will accept Comparable Uncontrolled Price (CUP), Resale Price, Cost Plus, Profit Split, and Transactional Net Margin Methods (TNMM) (the methods permitted by ITL). Export and import transactions between independent parties are subject to information requirements if the amount of transactions exceed an annual value of AR\$1,000,000. The requirements depend on different levels of transaction, and in some cases include calculation of profit margins. In addition, a new specific method applies to companies that operate through international intermediaries, who are not the final consignees of the goods. Such goods include grains, oleaginous products, other soil products, oil and gas, and in general all goods with well-known prices in transparent markets. In these cases, the price to be applied is the price in those markets on the day the goods are loaded for shipment, or the agreed-upon price if higher. This method may be non-applicable if the local exporter is able to prove the substance of the operations of the consignee abroad. AFIP-DGI has the power to limit the application of this method or extend it to other transactions based on the characteristics of such transactions. ITL does not provide priority of methods, while the most appropriate one must be used. In some cases, Tax Authorities have not favorably viewed the TNMM method.

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## **Transfer Pricing Penalties**

Interest is applicable on unpaid tax balances (as from 1 July 2006 the rate is 2% on a monthly basis; 3% upon lawsuit filing). For unpaid taxes related to international transactions, the taxpayer is fined 100% to 400% of the unpaid tax. Penalties for fraud are two to 10 times the unpaid taxes. Criminal tax law stipulates imprisonment for two to six years if the tax balance exceeds AR\$100,000 for each tax and fiscal year. If the tax balance exceeds AR\$1,000,000, the prison term shall increase, ranging from three-and-a-half to nine years. For the late filing of tax returns concerning international transactions (export/import of goods) with independent parties, the taxpayer is fined AR\$9,000. For the late filing of tax returns concerning other international transactions, the taxpayer is fined AR\$20,000. For the application of penalties related to late filing or lack of filing, it is irrelevant whether the transactions are arm's length or not. For non-compliance with formal duties of furnishing information requested by AFIP-DGI the taxpayer faces fines up to AR\$45,000. The same applies to a failure to keep vouchers and evidence of prices on available files, and failure to file tax returns upon request. If tax returns are not filed after the third request, and the taxpayer has income amounting to more than AR\$10,000,000, the fine is increased from AR\$90,000 to AR\$450,000.

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# Argentina (continued)

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## Penalty Relief

Concerning underpayment and fraud, if the taxpayer voluntarily amends its return before a special notice (vista) from AFIP-DGI, the penalty is reduced to one-third of the minimum fine. If the taxpayer amends the return within 15 days of receiving the notice, the penalty is reduced to two-thirds of the minimum fine as long as the taxpayer is not recidivist. If the non-recidivist taxpayer accepts the adjustments made by AFIP-DGI and pays the amounts due, then the penalties are set at the minimum amount. If the taxes due do not exceed AR\$1,000 and are paid voluntarily, or within 15 days from the special notice, then no penalty shall be applied.

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## Documentation Requirements

Transfer pricing regulations require extensive documentation. Taxpayers are required to submit and keep all the documents evidencing that prices, amounts received, and profit margins have been correctly determined in the tax return. Furthermore, taxpayers are required to keep an Annual Transfer Pricing Study for transactions with related parties, deemed related parties, and independent parties' transactions subject to transfer pricing methods.

In addition, taxpayers are required to file with the Tax Authorities the following documentation:

- A Special Report including the key elements of the Transfer Pricing Study
- Audited financial statements for the last three fiscal years
- An independent Certified Public Accountant's (CPA's) certification of certain contents of the Special Report
- Annual Form 743 return
- Form 742 return (for the first six-month period of each fiscal year)
- Semi-annual Form 741 return
- Annual Form 867 return for exports and imports with independent parties
- Annual Form 740 return for fiscal years governed by AFIP-DGI Regulation No. 702/99

AFIP-DGI Regulation No. 1375/02 set forth an information program for economic transactions entered into between Argentine residents and representatives of foreign individuals or entities. Moreover, parties participating in those transactions as service providers must comply with this regime. Representatives must register with AFIP-DGI and file "Tri-Annual Form 886" return, and service providers must complete "Tri-Annual Form 887."

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## Documentation Deadlines

The transfer pricing documentation must be ready for filing with the Tax Authorities by the date the corresponding transfer pricing return filings are due.

The Special Report, financial statements, and certification must be filed with the tax authorities within the eighth month after the end of the fiscal year. The annual transfer pricing returns must be filed within the eighth month after the end of the fiscal year. The semi-annual returns must be filed within the fifth month after the end of the relevant six-month period. The annual return for exports and imports with independent parties must be filed within the seventh month after the end of the fiscal year.

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## Statute of Limitations on Transfer Pricing Assessments

The general statute of limitations for federal tax matters is five years for registered taxpayers or for those who are exempt from registration, and 10 years for unregistered taxpayers. These periods begin on January 1 of the year following the one in which the tax return is due. The transfer pricing documentation must be kept by the taxpayer and provided upon AFIP-DGI request for up to five years after the period established by the statute of limitations.

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# Argentina (continued)

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**Return Disclosures/  
Related Party  
Disclosures**

AFIP-DGI requires annual and semi-annual returns for transactions subject to transfer pricing rules. Semi-annual returns for tangible goods and exports and imports with independent parties are not subject to transfer pricing methods. However, in some cases, information about the profit margins of exports and imports with independent parties must be provided.

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**Audit Risk/Transfer  
Pricing Scrutiny**

Transfer pricing audits are becoming more frequent and intensive. It is likely that Argentine tax authorities will try to increase revenue and strictly enforce penalties with companies that are not complying with transfer pricing requirements.

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**APA Opportunity**

APAs are not specifically addressed.

# Australia

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## Taxing Authority and Tax Law

Australian Taxation Office (ATO); Division 13 of Part III of Income Tax Assessment Act and relevant provisions of double tax treaties.

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## Relevant Regulations and Rulings

Taxation Ruling (TR) TR92/11, TR94/14, TR95/23, TR97/20, TR98/11, TR98/16, TR1999/1, TR1999/8 (replaced by TR 2007/1), TR2000/16, TR2001/11, TR2001/13, TR2002/2, TR2002/5, TR2003/1, TR 2004/1, and TR 2005/11. TR 2007/1 *Income tax: international transfer pricing: the effects of determinations made under Division 13 of Part III of the Income Tax Assessment Act 1936, including consequential adjustments under Section 136AF of that Act*, was recently released and replaces TR 1999/8.

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## OECD Guidelines Treatment

The ATO accepts the principles of the OECD Guidelines and indicates in the relevant ATO transfer pricing tax rulings where there are “differences in emphasis or extensions of OECD principles.” The ATO will consider the use of all of the OECD-recognized transfer pricing methods and will also consider broader (i.e., other) methods for particular facts and circumstances.

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## Priorities/Pricing Methods

The ATO seeks to adopt the “most appropriate” method. Methods outlined in ATO rulings include traditional transaction methods (CUP, Resale Price, Cost Plus) and profit methods (Profit Split and TNMM). Although traditional transaction methods (e.g., CUP) may be preferred by the ATO, the TNMM is accepted as an appropriate method by the ATO in circumstances where traditional transaction data is not available, comparable, or reliable.

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## Transfer Pricing Penalties

If the Commissioner applies Division 13 and the relevant section of the International Tax Agreement and it is determined that there is a transfer pricing adjustment resulting in a tax shortfall, a penalty of 25% applies, but is reduced to 10% where the taxpayer can demonstrate that they have a reasonably arguable position (RAP). Where the Commissioner can demonstrate that the sole or dominant purpose is tax avoidance, a penalty rate of 50% applies, but is reduced to 25% where the taxpayer can demonstrate that they have a RAP.

The taxpayer may have a RAP “if it would be concluded in the circumstances, having regard to relevant authorities, that what is argued for is about as likely to be correct as incorrect, or is more likely to be correct than incorrect.”

Penalties could increase by a further 20% if the taxpayer “took steps to prevent or obstruct” the ATO from discovering the tax shortfall or if a penalty was imposed for a previous accounting period.

For 2004-05 and later income years, a Shortfall Interest Charge (SIC) will apply to any amount of tax shortfall from the day on which income tax under the first assessment for that income year was due and payable to the day on which Commissioner gave notice of an assessment. SIC applies regardless of whether or not the taxpayer is liable for any shortfall penalty. The SIC rate is the base interest rate plus an uplift factor of three percentage points.

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## Penalty Relief

Penalties will be reduced by 20% for voluntary disclosure after notification of an audit, or by 80% for voluntary disclosure before notification of an audit. As noted above, where the taxpayer has contemporaneous documentation (i.e., prepared prior to or at the time of lodging the company’s annual tax return and Schedule 25A) to support a RAP the penalty may be reduced. Additionally, the Commissioner of Taxation has discretionary power to remit penalties to zero where he considers it fair and reasonable to do so. A taxpayer with an APA will not incur penalties except in relation to non-arm’s length dealings that are not covered by the APA, or non-compliance with the terms and conditions of the APA.

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# Australia (continued)

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<b>Documentation Requirements</b>	The ATO has outlined a four-step process in TR98/11 to assist companies in satisfying contemporaneous documentation requirements. This process is not mandatory but is highly recommended. The documentation should record the transfer price setting process and, in particular, verify the outcome of those transactions against the arm's length standard. The documentation should include business, economic, and industry analyses. In addition, taxpayers are expected to implement a review process to ensure that transactions and outcomes are reviewed at appropriate intervals and to ensure that the impact of material changes in the business are considered and documented. The documentation should be relevant to the Australian operations (i.e., country- and company-specific).
<b>Documentation Deadlines</b>	Documentation should be contemporaneous (see below). Documentation is generally only required to be submitted to the ATO following a specific notification, for example, during an ATO transfer pricing documentation review or audit, and it is expected to be provided within two weeks of an ATO request.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	There is no statute of limitations with respect to transfer pricing adjustments. The tax legislation specifically empowers the Commissioner of Taxation to make amendments to tax assessments in respect of any year for transfer pricing adjustments.
<b>Return Disclosures/Related Party Disclosures</b>	The ATO requires a Schedule 25A to be lodged with each tax return. Information disclosed on the Schedule 25A includes (1) industry classification code(s), (2) countries with which the taxpayer has related party transactions, (3) international related party transaction types and quantum, (4) percentage of transactions covered by contemporaneous documentation that has been prepared in accordance with the four-step process, (5) transfer pricing methodologies selected and applied, and (6) interests in foreign companies or foreign trusts.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	<p>In determining whether an Australian taxpayer's transfer pricing should be reviewed or audited by the ATO, the ATO generally gives consideration to the size and nature of the related party dealings, the quality of any transfer pricing documentation, and whether or not the taxpayer's results appear to be commercially realistic. Related party transactions undertaken in connection with the following may receive particular attention by the ATO:</p> <ul style="list-style-type: none"><li>■ Royalties</li><li>■ Intangibles (both Australian and foreign-owned)</li><li>■ Management services</li><li>■ Interest-free loans</li><li>■ Companies undergoing supply chain restructurings</li></ul> <p>The ATO also focuses on taxpayers whose overall operations do not achieve a commercially realistic result (e.g., incur losses or low returns in any particular year or over a range of years). Additionally, the ATO has been focusing on when an Australian resident carrying on business overseas or a non-resident carrying on business in Australia is deemed to have a Permanent Establishment (PE) as well as how profits should be attributed to the PE. In particular, the ATO has been focusing on the potential creation of PEs in the implementation of certain supply chain restructuring arrangements.</p> <p>The ATO focuses on a range of industries each year including mining, energy and utilities, motor vehicles, pharmaceuticals, distributors, banking, and insurance. The ATO continues to conduct transfer pricing record reviews (documentation reviews) and transfer pricing audits. These reviews and audits target small and medium-sized enterprises as well as large enterprises.</p>
<b>APA Opportunity</b>	The ATO actively promotes the use of APAs and has a well-established program for both unilateral and bilateral APAs. Circumstances that the ATO has indicated may be unsuitable for an APA include those where (1) timely agreement is unlikely to be reached with respect to the methodology, comparable data, and overall arm's length outcome, (2) there is a lack of materiality in the dealings in the context of the business, (3) there is insufficient complexity to warrant the level of certainty that is provided by an APA, or (4) obtaining a tax benefit in Australia or overseas was a principal element of the dealings.

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# Austria

<b>Taxing Authority and Tax Law</b>	Ministry of Finance (MF). § 6(6) Income Tax Act, § 8(2) Corporate Income Tax Act, § 138 Federal Tax Code.
<b>Relevant Regulations and Rulings</b>	Income Tax Guidelines 6.13.3, 2511 - 2513; Corporate Income Tax Guidelines 14.8.2, 1147; ministerial decrees AÖF Nr. 114/1996, 122/1997, 155/1998, 171/2000; several published opinions regarding selected transfer pricing issues.
<b>OECD Guidelines Treatment</b>	The guidelines state that the financial authorities will apply the principles of the OECD Transfer Pricing Guidelines. According to ministerial decree BMF-010221/0626-IV/4/2006, it is planned to enact national transfer pricing guidelines based on the OECD Transfer Pricing Guidelines in the near future.
<b>Priorities/Pricing Methods</b>	Based on the OECD Transfer Pricing Guidelines, the MF accepts CUP, Resale Price, Cost Plus, Profit Split, and TNMM. However it greatly prefers traditional transaction methods.
<b>Transfer Pricing Penalties</b>	If the income is increased because the arm's length criterion has not been met, non-deductible interest in the amount of 2% points above the base rate is levied on any prior year's corporate income tax payments. Lack of, or insufficient, transfer pricing documentation does not lead to specific penalties but increases the risk that the tax authorities will regard a transaction as non-compliant with the arm's length criterion and estimate a tax base adjustment.
<b>Penalty Relief</b>	If the taxpayer provides formerly lacking or insufficient documentation to the tax authorities, the tax authorities are obliged to base their considerations upon such documentation. However, the interest will become due regardless of whether there is sufficient documentation or not.
<b>Documentation Requirements</b>	Transfer pricing documentation is required. There are no specific documentation rules, however, following the OECD Transfer Pricing Guidelines or the annex to the code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU) is recommended.
<b>Documentation Deadlines</b>	It is strongly recommended that documentation be prepared contemporaneously. The documentation should be available upon request of the tax authorities within two to three weeks following the request.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The statute of limitation on a transfer pricing adjustment usually is six years after the end of the calendar year in which the relevant fiscal year ends. The term may be extended up to 10 years.
<b>Return Disclosures/Related Party Disclosures</b>	No specific continuous disclosure is required in the annual tax return. In case of a tax audit, the auditors usually ask for a description of major related party transactions as well as for disclosure of all contracts in place with related parties and transfer pricing studies available. In some cases an extensive questionnaire is discussed.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	Tax authorities regularly examine related party transactions and transfer prices charged. There is a noticeable trend towards increased awareness of transfer pricing problems among tax auditors.
<b>APA Opportunity</b>	APAs are currently not available. It is possible to get a non-binding unilateral ruling for simple transfer pricing issues only.

# Belgium

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## Taxing Authority and Tax Law

The taxing authority responsible for transfer pricing in Belgium is the Belgian Administration of Direct Taxes, which is part of the Federal Public Service Finance.

While no specific transfer pricing legislation exists in Belgium, the Belgian Income Tax Code (ITC) contains various provisions which directly or indirectly relate to transfer pricing. The arm's length principle was formally introduced in Belgian tax law through the law of 21 June 2004, introducing Article 185, § 2 (entered into force on 19 July 2004). This article's content is equivalent to Article 9, § 1 and § 2 of the OECD Model Treaty.

Other provisions relevant for transfer pricing can be found in articles 26, 49, 54, 55, 79, 207, 344, and 345 of the Belgian ITC. These articles indirectly embody this arm's length principle, the deductibility of expenses and/or aim at avoiding the shifting of profits. Finally, it should be noted that the general provisions of the Belgian ITC, e.g., regarding penalties, late interest payments, also apply in transfer pricing matters.

A general advance ruling regime was introduced through the law of December 24, 2002 and became effective as of 1 January 2003.

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## Relevant Regulations and Rulings

The Belgian tax administration has issued various guidelines on transfer pricing:

- Administrative guidelines on the offensive aspects of transfer pricing, issued in 1999
- Administrative guidelines on the defensive aspects of transfer pricing, issued in 2000 and 2003
- Administrative guidelines providing the tax authority's view on the interpretation of Article 185, §2 of the Belgian ITC, which introduced the arm's length principle in Belgian tax law, issued in July 2006
- Administrative guidelines on transfer pricing documentation, the transfer pricing code of conduct, and transfer pricing audits, issued in November 2006

Currently, rulings are provided on the basis of a general ruling practice (see APA Opportunity). Such APAs are provided on an individual basis, taking into account the specifics of each case. Traditional Belgian safe harbor rulings (e.g., coordination center, service center, and distribution center regimes) have been phased out.

As an alternative for coordination centers, the Belgian government has implemented a regime which provides, for tax purposes, a deduction on risk capital, also known as a Notional Interest Deduction. In addition, the Belgium government also contemplates introducing a special tax deduction for income derived through the use of patents. As a result of this deduction, patent-related income would be subject to an effective Belgian tax rate of 6.8%.

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## OECD Guidelines Treatment

The Belgian tax authorities have indicated in their administrative guidelines at several instances to generally follow the guidance as mentioned in the OECD Guidelines.

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## Priorities/Pricing Methods

Although taxpayers are in principle free to choose any OECD transfer pricing method as long as the method chosen results in arm's length pricing for the transaction, conceptually, transaction-based methods are preferred over profit-based methods.

Taxpayers are not required to use more than one method, although they should be able to support their decision to apply a particular method.

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## Transfer Pricing Penalties

The general tax penalty framework applies to transfer pricing adjustments. These penalties vary from 0% up to (in very exceptional cases) 200% of the additional tax; the rate depends on the degree of intent to avoid tax or the degree of the company's gross negligence.

Furthermore, interest for late payments is due on additional tax assessments (including assessments resulting from a transfer pricing adjustment).

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# Belgium (continued)

<b>Penalty Relief</b>	Since additional tax assessments depend on the degree of intent to avoid taxes or on the company's gross negligence, penalties can be reduced or eliminated if the taxpayer can demonstrate its intent to establish transfer prices in accordance with the arm's length principle (e.g., through its documentation efforts).
<b>Documentation Requirements</b>	<p>No legislative guidance regarding the nature and contents of proper transfer pricing documentation exists. However, the 1999 Guidelines state that documentation should demonstrate that the taxpayer's pricing complies with the arm's length principle to avoid an in-depth transfer pricing audit. These 1999 Guidelines recommend that documentation include, at a minimum:</p> <ul style="list-style-type: none"><li>■ Activities of the group (including competitive position, level of market, economic circumstances, business strategies, etc.);</li><li>■ Identification and characterization of intercompany transactions and contractual relationships among affiliates;</li><li>■ Functional analysis (including an overview of the functions; risks and intangibles);</li><li>■ Transfer pricing methods used; and</li><li>■ Economic analysis.</li></ul> <p>The 2006 Guidelines on transfer pricing confirm Belgium's agreement with the principles outlined in the EU Code of Conduct. Therefore, the information expectation contained in this Code of Conduct should also be considered from a Belgian transfer pricing documentation perspective.</p>
<b>Documentation Deadlines</b>	Given the absence of any formal transfer pricing documentation requirements, there is no deadline for the preparation of transfer pricing documentation. However, since, upon a tax audit, a taxpayer has a one-month period (which can be prolonged if valid reasons exist) to provide all information requested, including all information that allows verification of its taxable income and therefore of the arm's length nature of the transfer prices, it is recommended that each transaction be documented at the time it is executed. Additionally, the 1999 Guidelines provide that if the taxpayer can demonstrate upon a tax audit that it has made sufficient efforts to prepare transfer pricing documentation, the tax inspector does not need to carry out an in-depth tax audit.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The general rules regarding the statute of limitations apply to transfer pricing assessments. Therefore, generally speaking, the tax authorities are entitled to make additional assessments during a period of three years starting from the closing of the accounting year. However, in the case of fraud, the tax authorities have the right to adjust the income during a five-year period, provided that the taxpayer receives prior notice of serious indications of fraud.
<b>Return Disclosures/Related Party Disclosures</b>	No specific disclosure requirements exist for filing the tax return.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	<p>The transfer pricing audit risk may be regarded as medium-high. The introduction of Article 185 § 2, the creation of the Transfer Pricing Knowledge Group within the Belgian central tax authorities, and the creation of a specific transfer pricing audit group within the field services (it selects its own audit targets and supports other field inspectors, and its involvement in all transfer pricing audits was recently confirmed through administrative guidelines) demonstrate an increased focus on transfer pricing during tax audits. The transfer pricing audit group is currently sending transfer pricing questionnaires to taxpayers.</p> <p>In addition to the increased transfer pricing audit activity through the special transfer pricing audit team, tax inspectors are also increasing their focus on transfer pricing during general tax audits, leading to further inquiry and increasing the depth of the audit.</p> <p>Finally, the 2006 Guidelines contain a list of instances which are considered to constitute a high transfer pricing risk. The instances which lead to increased audit scrutiny include structural losses, business reorganizations, migration of businesses, the use of tax havens, or low-tax rate countries, back-to-back operations, circular structures, sending of invoices for services at the end of the year (in particular for management services). This list is not exhaustive and does not preclude other situations that may be subject to an in-depth audit.</p>

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# Belgium (continued)

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## **APA Opportunity**

The 2003 corporate tax reform introduced a general ruling practice under Belgian tax law. Additional guidance in this respect is provided through various Royal Decrees. Rulings are published anonymously. As a result of the law of 21 June 2004, the Service for Advance Decisions became an autonomous department (led by a committee of four) as of 1 January 2005. More than 60 specialists in various domains of taxation, including transfer pricing, assist the committee. The new service has increased flexibility in the ruling process and shortened the decision period (usually less than three months from the filing date for unilateral APAs). This committee is also able to rule prospectively on corresponding downward profit adjustments under new Article 185, § 2, thus offering significant transfer pricing planning opportunities.

# Brazil

<b>Taxing Authority and Tax Law</b>	Brazilian Internal Revenue Service (IRS); Internal Revenue Code by Decreto 3000, March 26, 1999 (RIR99).
<b>Relevant Regulations and Rulings</b>	<ul style="list-style-type: none"><li>■ Normative Instruction No. 243, 11 November 2002; changed application of Resale Minus 60% and consolidating Normative Instruction 32/01</li><li>■ Normative Instruction No. 32, 30 March 2001; consolidated Normative Instructions 38/97 and 32/01</li><li>■ Normative Instruction No. 113, 19 Decembe, 2000; clarified application of Resale Minus 60%</li><li>■ Law No. 9.959, 27 January 2000; introduced new method: Resale Minus 60% (applicable for raw materials)</li><li>■ Normative Instruction No. 38, 30 April 1997; clarified application of Brazilian rules</li><li>■ Law No. 9.430, 27 December 1996; introduced Transfer Pricing Rules in Brazil</li></ul>
<b>OECD Guidelines Treatment</b>	Brazil's transfer pricing rules deviate significantly from international standards (including the OECD Guidelines) in that there are no profit-based methods. Intercompany transactions need to be documented on a strict transactional basis, and fixed statutory profit margins (generally not arm's length) apply. No functional or industry analyses are required. Instead, the local subsidiary will have to document for each imported (or exported) product and/or service that it complies with at least one of Brazil's statutory transactional methodologies (CUP, Resale Minus, or Cost Plus).
<b>Priorities/Pricing Methods</b>	As a first step in the transfer pricing documentation process, Brazilian companies have applied the Brazilian Resale Price less Profit Method (Método do Preço de Revenda menos Lucro, or (PRL)) to document a company's transfer prices. Brazilian companies have started the documentation process with the PRL because the method relies entirely on import cost, local production cost, and resale price information available internally, relieving the company of the burden of soliciting data from its foreign-related suppliers. In addition, since the PRL is the method favored by Brazilian Tax Authorities in the case of an audit, this approach provides a reliable estimate of Brazil's potential transfer pricing exposure.
<b>Transfer Pricing Penalties</b>	Since there are no special penalties for transfer pricing, general tax penalties are applicable. The amount of the penalty may be up to 20% of the omitted tax (or 0.33% per day) if the taxpayer pays the related taxes late but before an audit. Meanwhile, if the Tax Authorities assess the taxpayer as part of a transfer pricing audit, the applicable penalties may range from 75% to 150% of the omitted taxes.
<b>Penalty Relief</b>	Not applicable.
<b>Documentation Requirements</b>	<p>Brazilian taxpayers are required to document their international intercompany transactions on an annual basis. The Brazilian annual tax declaration (DIPJ) contains five specific forms that require taxpayers to disclose detailed information regarding their main intercompany import and export transactions. As part of these contemporaneous documentation requirements, taxpayers need to disclose the total transaction values for the most traded products, services or rights, the names and locations of the related trading partners, the methodology used to test each transaction, the calculated benchmark price, the average annual transfer price, and the amount of any resulting adjustment.</p> <p>Given the detailed transactional focus of the Brazilian regulations and the absence of any basket approach, taxpayers are required to document their transfer prices product code by product code, service type by service type, and right by right. In this context, product code refers to a company's internal product codes used for inventory management purposes and not the much broader fiscal nomenclature used for customs and indirect tax purposes.</p> <p>Taxpayers are expected to have the calculations and documentation necessary to support the information filed as part of the annual tax declaration ready for potential inspection by the tax authorities as of the declaration's filing date, i.e., usually the end of June of the ensuing calendar year.</p>

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# Brazil (continued)

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<b>Documentation Deadlines</b>	The contemporaneous documentation required as part of the DIPJ usually has to be filed by the end of June of the following fiscal year. Taxpayers are expected to have the detailed calculations and documentation necessary to support the information filed as part of the DIPJ ready for potential inspection as of the declaration's filing date.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	A general statute of limitations applies, which is five years from the later of either: <ul style="list-style-type: none"><li>■ The tax return due date</li><li>■ The date the return was actually filed</li></ul>
<b>Return Disclosures/ Related Party Disclosures</b>	The transfer pricing adjustments must be effected in December and reflected in the annual income tax return (June of next year), when the company will also have to disclose the transfer pricing method chosen and related information.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	<p>In an effort to expedite audits in Brazil's data-intensive transfer pricing documentation environment, Brazilian audit teams have been equipped with new computers and specialized software applications, including internally developed systems capable of analyzing and auditing large volumes of accounting and transaction data.</p> <p>Brazilian Tax Authorities expect the International Affairs Special Office (the DEAIN) and the regional audit groups to continue to increase their numbers of specialized transfer pricing auditors. It is believed that the DEAIN and the regional transfer pricing auditors are becoming increasingly sophisticated in their audit approaches as they grow in number and experience.</p> <p>There is a growing concern that many transfer pricing auditors, because of their particular training and tools, tend to rely on mechanical approaches to audits, while they ignore, or are unaware, of possible underlying business economics. While efforts are being made to increase auditors' knowledge of economics, it is expected that this approach to audit will continue for the next few years.</p>
<b>APA Opportunity</b>	Not applicable.

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# Canada

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## Taxing Authority and Tax Law

Section 247 of the Income Tax Act (Canada) (ITA) received Royal Assent on 18 June 1998, and is generally applicable to taxation years that began after 1997. It constitutes Canada's transfer pricing legislation and deals with the determination of transfer pricing adjustments, the recharacterization of transactions, penalties, records/documents required to be made or obtained, contemporaneous requirements, and timing of provision to the Minister when requested, plus Ministerial discretion regarding acceptance of downward adjustment requests.

The Canada Revenue Agency (CRA) is responsible for ensuring that taxpayers meet the requirements of the law.

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## Relevant Regulations and Rulings

The CRA does not set out its views and positions on transfer pricing issues by legal doctrine or in detailed fashion or examples. The CRA prefers to outline its views in general principles.

It provides its administrative interpretations and guidance with respect to Section 247 and its application through the release of Information Circulars (IC), Transfer Pricing Memoranda (TPM), and pronouncements at public conferences, symposia, and conventions. ICs usually address major subjects from a general perspective, while TPMs typically provide supplementary detailed explanations and guidance on specific issues related to the major subject.

CRA's current key pronouncements on transfer pricing are:

- IC87-2R, International Transfer Pricing, 27 September 1999
- IC94-4R, International Transfer Pricing: Advance Pricing Arrangements (APAs), 16 March 2001
- IC94-4R (Special Release), Advance Pricing Arrangements for Small Businesses, 18 March 2005
- IC71-17R5, Guidance on Competent Authority Assistance Under Canada's Tax Conventions, 1 January 2005

CRA is a member of the Pacific Association of Tax Administrators (PATA). Relevant guidance is issued by PATA from time to time on topics of mutual interest, e.g., the PATA Transfer Pricing Documentation Package, released March 2003.

Additional information and guidance on transfer pricing related matters can be obtained from the CRA's website: <http://www.cra-arc.gc.ca/tax/nonresidents/comp/menu-e.html>

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## OECD Guidelines Treatment

While no mention is made of the OECD Guidelines in Section 247 of the ITA, the legislative provision is intended to reflect the arm's length principle as set out in the OECD Guidelines. The CRA has also endeavored to harmonize its administrative guidance and approach to transfer pricing with the OECD Guidelines. As noted in IC87-2R: "This circular sets out the Department's views on transfer pricing and also provides the Department's position with respect to the application of the...OECD Guidelines."

When dealing with transfer pricing issues domestically, reliance is typically placed on the relevant Canadian statutory provisions. CRA's related ICs and other administrative guidance are considered instructive but not definitive. Moreover, the OECD Guidelines are not usually recognized as authoritative; however, courts and other dispute resolution channels (e.g., competent authority) may consider the international principles and standards established by the OECD in reaching a decision.

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# Canada (continued)

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## Priorities/Pricing Methods

The CRA accepts the transfer pricing methods recommended in the OECD Guidelines when such methods are applied correctly and result in an arm's length price or allocation. These transfer pricing methods include the:

- CUP
- Resale Price
- Cost Plus
- Profit Split (Residual/Contribution) and
- TNMM

However, the CRA considers the use of the Profit Split method(s) as a last resort.

The CRA considers, notwithstanding that Section 247 does not so stipulate, that there is a natural hierarchy in the application of the above-noted transfer pricing methods, with the CUP method providing the most reliable indication of an arm's length transfer price or allocation, and the Profit Split method(s) providing the least reliable indication of an arm's length result.

The CRA does not require or impose a "best method" rule. The CRA believes that the most appropriate method to be used in any situation will be that which provides the highest degree of comparability between transactions, following an analysis of the hierarchy of methods.

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## Transfer Pricing Penalties

Subsection 247(3) of the ITA causes a taxpayer to be liable for a penalty of 10% of the net upward transfer pricing adjustments made under subsection 247(2) of the ITA, if such transfer pricing adjustments exceed the lesser of 10% of the taxpayer's gross revenue for the year and 5 million CAD.

A taxpayer will be deemed not to have made reasonable efforts to determine and use arm's length transfer prices or allocations unless the taxpayer has prepared or obtained records or documents which provide a description that is complete and accurate in all material respects of the items listed in subsection 247(4) of the ITA, and such documentation is in existence as of the tax filing due date. In the case of Canadian corporate entities, such documentation must exist six months after the year end. For partnerships, the due date is five months after the year end. Further, a taxpayer will be deemed not to have made reasonable efforts to determine and use arm's length transfer prices or allocations if the taxpayer does not provide the noted records or documents to the CRA within three months of the issuance of a written request to do so.

Transfer pricing related penalties are exacted without reference to the taxpayer's income or loss for the relevant reporting year and are not tax deductible.

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## Penalty Relief

If a taxpayer, subject to an upward adjustment of its transfer prices or allocations, was considered to have made reasonable efforts to determine and use arm's length transfer prices or allocations with respect to such adjustments, no penalty would be applicable to such adjustments.

As required by TPM-07, all proposed reassessments involving transfer pricing penalties are required to be referred to the Transfer Pricing Review Committee (TPRC) for review and recommendation for final action. The TPRC, after consideration of the facts and circumstances and representations by the relevant taxpayer, will conclude whether or not a transfer pricing penalty is justified.

No transfer pricing adjustments under subsection 247(2) of the ITA should arise regarding transactions covered by an APA as long as the APA remains in effect and the taxpayer complies with its terms and conditions.

When the CRA has reassessed a transfer pricing penalty and the Canadian competent authority and relevant foreign counterpart negotiate a change to the amount of the transfer pricing adjustment, the CRA will adjust the amount of the Canadian transfer pricing penalty accordingly.

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# Canada (continued)

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## Documentation Requirements

Subsection 247(4) of the ITA requires that a taxpayer must have records or documents, as a minimum, that provide a complete and accurate description, in all material respects, of the following items:

- The property or services to which the transaction relates
- The terms and conditions of the transaction and their relationship, if any, to the terms and conditions of each other transaction entered into between the persons or partnerships involved in the transaction
- The identity of the persons or partnerships involved in the transaction, and their relationship at the time the transaction was entered into
- The functions performed, the property used or contributed, and the risks assumed by the persons or partnerships involved in the transaction
- The data and methods considered and the analysis performed to determine the transfer prices, the allocations of profits or losses, or contributions to costs, as the case may be, for the transaction
- The assumptions, strategies, and policies, if any, that influenced the determination of the transfer prices, the allocations of profits or losses, or contributions to costs, as the case may be, for the transaction

In addition, although its views are not law, the CRA indicates in its Information Circular 87-2R that it expects a taxpayer's documentation to include certain additional information (e.g., details of cost contribution arrangements, translations of foreign documents, and other general guidance).

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## Documentation Deadlines

Taxpayers must prepare or obtain records and documents which provide a description that is complete and accurate in all material respects of the items listed in subsection 247(4) of the ITA, and such documentation must be in existence as of the tax filing due date. In the case of Canadian corporate entities, such documentation must exist six months after the year end. For partnerships, the due date is five months after the year end.

Taxpayers must provide documentation to the CRA within three months of the issuance of a written request.

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## Statute of Limitations on Transfer Pricing Assessments

Under subsection 152(4) of the ITA, the Minister may not ordinarily reassess after the normal reassessment period as defined in subsection 152(3.1) of the ITA. For most taxpayers, that period is three years beginning after the earlier of the day of mailing of a notice of an original assessment for the year and the mailing of an original notification that no tax is payable for the year, unless the taxpayer has made misrepresentations, committed a fraud, or filed a waiver, in which case the Minister may reassess a taxpayer at anytime. Where a Notice of Reassessment is issued at a later date, the first assessment notice is still viewed as the original assessment for the purposes of determining the normal reassessment period under subsection 152(3.1) of the ITA.

With respect to transactions involving non-arm's length dealings with non-residents, the reassessment period is extended to seven years. This time period may be further extended when taxpayers provide CRA with a waiver, i.e., authorization by the taxpayer to the CRA to waive the normal reassessment period in respect of a taxation year, as defined in subsection 152(3.1) of the ITA, within which the Minister may assess, reassess, or make additional assessments under subsection 152(4) of the ITA.

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## Return Disclosures/Related Party Disclosures

Taxpayers are required to file form T106 annually, reporting the non-arm's length transactions they had with non-residents during the taxation year.

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# Canada (continued)

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**Audit Risk/Transfer Pricing Scrutiny**

The CRA continues to receive additional funding for its audit of international activities and to focus its audit resources on the examination of international transactions, especially transfer pricing.

Canadian companies with cross-border dealings with related parties can expect a request from the CRA for their required transfer pricing documentation prior to or during the course of an audit. As noted in TPM-05, "Contemporaneous Documentation," effective October 2004, it is mandatory for field auditors to issue a formal written request to taxpayers for their transfer pricing documentation prior to commencement of the audit or when cross-border non-arm's length transactions with non-residents are identified during the course of an audit.

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**APA Opportunity**

The CRA launched its APA program in July 1993. As set out in its Information Circular 94-4R, it offers taxpayers the opportunity to pursue unilateral, bilateral, or multilateral APAs. In addition, the CRA has made a small business APA program available to Canadian taxpayers under certain conditions.

The CRA charges taxpayers only travel costs it incurs in the pursuit of an APA.

An updated version of IC94-4R is expected to be released shortly.

# Czech Republic

<b>Taxing Authority and Tax Law</b>	Ministry of Finance. The Income Tax Act § 23(7)—arm's length principle, and § 38nc—APA scope and procedures.
<b>Relevant Regulations and Rulings</b>	<p>Directive D-258 discusses the application of international standards in the taxation of transactions between associated companies—i.e., transfer prices. D-258 confirms the applicability of the OECD Transfer Pricing Guidelines for both international and domestic transactions (with certain exceptions).</p> <p>Directive D-292 outlines requirements concerning § 38nc of the Income Tax Act. D-292 comments on the principles of binding assessments, which correspond to the preliminary price agreement principles within the meaning of the OECD Transfer Pricing Guidelines.</p> <p>Directive D-293 outlines requirements on the expected scope of documentation of a transfer pricing method agreed between related persons. D-293 comments on the scope and nature of transfer pricing documentation in accordance with the EU Transfer Pricing Documentation requirements created by the EU Joint Transfer Pricing Forum.</p> <p>Directives D-258, 292, 293 are not legally binding but are usually followed in practice by the Czech tax authorities.</p>
<b>OECD Guidelines Treatment</b>	Based on Directive D-293 (not legally binding) the OECD Transfer Pricing Guidelines as well as the Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the EU are generally accepted in the Czech Republic. This directive also mentions that transfer pricing documentation prepared in accordance with the Code of Conduct “should be sufficient” for substantiating the method of calculation of the arm's length price.
<b>Priorities/Pricing Methods</b>	The Ministry of Finance follows the OECD Transfer Pricing Guidelines and prefers the traditional transactional methods due to their simplicity and their accordance with the Guidelines. Use of profit-based methods must be substantiated.
<b>Transfer Pricing Penalties</b>	There are no specific transfer pricing penalties. Generally, upon a successful challenge of transfer pricing prices by the tax authority, a penalty of 20% of the unpaid tax may be applied. Thereafter, interest is assessed at 14% above the “repo rate” (or repurchase agreement rate) of the Czech National Bank.
<b>Penalty Relief</b>	There is no specific relief or reduction of penalties for transfer pricing. It is at the discretion of the Ministry of Finance to decrease penalties.
<b>Documentation Requirements</b>	<p>There are no specific statutory requirements in place. It is crucial for the taxpayer to have supporting documentation in case the transactions are audited by the Czech tax authorities, as the burden of proof remains with the taxpayer. Czech tax authorities have great discretion in deciding what level and nature of documentation is sufficient. During the tax audit, authorities may request any documentation that reasonably substantiates the actual character and substance of the transaction, its benefits for taxpayers, the appropriateness of the level of the fees, and the transfer pricing method selected. The analysis of a controlled transaction and the identification of comparables could be useful. Therefore, a high level of formal evidence may be necessary to support various aspects of the transaction. Deadlines for submitting the required documentation may be shortly after a request is made.</p> <p>D-258 describes the documentation that is expected and may be required by the tax authorities. Nevertheless, as the directive is not legally binding, there is no legal requirement to prepare documentation.</p> <p>D-293 sets out documentation that should serve as an initial basis for filing the application for issuance of a binding assessment. The submitted documentation should contain information on the group, information on the company, information on the business relationship, information on other circumstances affecting the business relationship, and information on the transfer pricing method.</p>

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# Czech Republic (continued)

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**Documentation Deadlines**

There is no specific deadline to prepare documentation, since no specific statutory documentation requirement exists.

In the event of a transfer pricing challenge, the taxpayer must file information before the statutory deadline for tax proceedings. This is generally within 15 days of the receipt of a request by the tax authorities. This time limit may be extended at the discretion of the tax authorities, if a request is made by the taxpayer.

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**Statute of Limitations on Transfer Pricing Assessments**

The general statute of limitations applies. The limit is three years from the end of the taxable period during which the duty to file a tax return arose. However, if the Czech tax authority undertakes an act directed at the assessment of tax, then the three-year time limit begins again. The limit will also be prolonged if the supplementary tax return for the respective period is filed or if a tax loss carryforward may be utilized in the particular period. Tax may not be assessed, however, later than 10 years or 17 years if tax losses were incurred (15 years in case of tax losses incurred in 2004 and onwards).

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**Return Disclosures/ Related Party Disclosures**

Effective from 1 January 2001, the executives of a controlled entity are required to complete a memorandum with respect to relations and transactions to companies in the group. This does not apply if a controlling agreement is concluded. Note that this is based on commercial legislation rather than tax legislation and the memorandum has no direct tax impact or tax aspects. The taxpayers must provide documentation of transactions with related parties in the corporate income tax return.

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**Audit Risk/Transfer Pricing Scrutiny**

The risk of transfer pricing issues being reviewed under an audit is medium. Czech authorities adopt a global approach. Audit subjects are selected based on complex criteria and transfer pricing is only one aspect among many others. Intangibles, royalties, and service fees are seen as the most likely transfer pricing audit issues. Although no specific country is targeted for transfer pricing audits, transactions with tax haven countries are closely scrutinized.

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**APA Opportunity**

APA regulations were established under § 38nc of the Income Tax Act, which became effective on 1 January 2006. Upon the tax entity's request, the tax administrator decides whether a taxpayer has chosen a transfer pricing method that would result in a transfer price determination on an arm's length basis. The binding assessment can only be issued for transactions effective in a particular tax period, or that will be effective in the future. It is impossible to apply for a binding assessment of business relationships that have already effected the tax liability. The D-292 details the procedure for issuing binding assessment and the necessary particulars for the application. The tax administrator is not bound by law to issue the decision within a certain deadline.

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# Denmark

<b>Taxing Authority and Tax Law</b>	Ministry of Taxation (MT). Section 2 of the Tax Assessment Act; Sections 3B, 14(4) and 17(3) of the Tax Control Act; and Sections 26 and 27 of the Tax Administration Act.
<b>Relevant Regulations and Rulings</b>	Regulation no. 42 of 24 January 2006, pertains to the documentation of the pricing of the intercompany transactions and guidelines for preparation of written documentation. The Regulation sets forth the minimum requirements. Guidelines for tax assessment and for disclosing information exist.
<b>OECD Guidelines Treatment</b>	The MT will, for the purpose of its assessment, apply the principles of the OECD Transfer Pricing Guidelines.
<b>Priorities/Pricing Methods</b>	The MT accepts CUP, Resale Price, Cost Plus, Profit Split, and TNMM. However, the MT prefers the traditional transactional methods to profit-based methods.
<b>Transfer Pricing Penalties</b>	<p>Fines were introduced for income years commencing on or after 2 April 2006, in cases of lacking or insufficient transfer pricing documentation. If, in addition, the income is increased because the arm's length criterion has not been satisfied, the minimum fine will be increased by an amount equal to 10% of the income increase.</p> <p>In case of income adjustments, a 5.8% (5.3% for 2006, 5.4% for 2005, 5.7% for 2004, and 10% for 2002-2003) non-deductible surcharge on all adjustments of prior years' corporate taxes payable will be levied. Furthermore, a non-deductible interest of 0.6% (0.5% for the income years 2005-2006, and 0.6% for the income years 2002-2004) for each month since the due date for the corporate tax payable for the income year in question is applicable.</p>
<b>Penalty Relief</b>	If the taxpayer prepares the lacking or insufficient documentation and ensures that the documentation meets the requirements, the fine (except that which is related to the increase of taxable income) will be reduced to half of the original amount.
<b>Documentation Requirements</b>	<p>The documentation must be available upon request from the tax authorities within 60 days' notice. The transfer pricing documentation requirements affect both domestic and foreign intercompany transactions. The transfer pricing documentation requirements are eased for small and medium-sized companies (measured at group level), as well as for entities subject to tonnage tax.</p> <p>The documentation requirements were tightened as of 2006. According to Regulation no. 42, the documentation should include:</p> <ul style="list-style-type: none"><li>■ A description of the group, including the legal group structure, the history of the group, including a description of restructurings, operational structure and primary business activities, as well as a description of the industry in which it operates</li><li>■ A description of the Danish entity, its intercompany transactions and the other entities involved (primary business activities and three years' key financials for all entities involved)</li><li>■ A description of each intercompany transaction including (1) parties, types of products/services/assets transferred and the volumes involved, (2) an analysis of functions and risks undertaken and assets employed by the entities involved, (3) contractual terms, (4) economic conditions, and (5) business strategies</li><li>■ Comparability analysis per intercompany transaction, including (1) information about the transfer pricing policy and method applied and how the transfer pricing principles are implemented in practice, e.g., whether year-end adjustments are made, and (2) an analysis of how the transfer prices satisfy the arm's length principle</li><li>■ A list of any written intercompany agreements entered into by the Danish entity, and a copy of any written agreements in place with foreign tax authorities regarding transfer prices</li></ul> <p>According to the new tightened documentation requirements, a taxpayer must, within 60 to 90 days' notice, provide external comparable searches as part of the arm's length analysis upon request from the Danish tax authorities.</p>

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# Denmark (continued)

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<b>Documentation Deadlines</b>	The deadline for preparing documentation is the same as the deadline for filing the tax return. Documentation must be provided upon request. Sixty days notice is given.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The statute of limitation for a transfer pricing assessment is 1 May in the sixth year after the end of the calendar year replacing the income year.
<b>Return Disclosures/ Related Party Disclosures</b>	Form 05.021 discloses information on all controlled transactions and whether the company is qualified for relaxed documentation requirements.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	The risk of transfer pricing issues being reviewed under an audit is high. Six transfer pricing audit centers have been established by the tax authorities with the single purpose of carrying out transfer pricing audits. Consequently, we see a strong focus on transfer pricing. Also, we see a tendency towards most normal tax audits being initiated with requests related to transfer pricing.
<b>APA Opportunity</b>	<p>The Danish legislation provides for unilateral APAs only. There is no APA regime in place, but the MT has entered into a limited number of bilateral APAs.</p> <p>We expect this to be an area that will develop significantly within the next few years.</p>

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# Ecuador

<b>Taxing Authority and Tax Law</b>	Internal Revenue Service (Servicio de Rentas Internas, or SRI); Master Tax Code Art. 91.
<b>Relevant Regulations and Rulings</b>	Executive Decree No. 2430 concerns reforms to the regulations for the application of the Ecuadorian income tax law: Articles 4, 66.1 to 66.6. SRI Resolution NAC-DGER 2005-0640 established the transfer pricing exhibit and transfer pricing integral report contents requirements. Resolution NAC-DGER 2005-0641 established the median calculation and arm's length standard. The OECD Transfer Pricing Guidelines are applicable as an indices technique.
<b>OECD Guidelines Treatment</b>	SRI considers the OECD Guidelines as a technical reference on analyzing intercompany transactions. All OECD methods are considered to be valid analyses frameworks.
<b>Priorities/Pricing Methods</b>	SRI accepts CUP, Resale, Cost Plus, Profit Split, Residual Profit Split, and TNMM. There is not a best method rule.
<b>Transfer Pricing Penalties</b>	There are no specific penalties for transfer pricing purposes. The SRI will apply the same penalty that applies to errors or omissions on the annual income tax return established by the Master Tax Code (US\$263 maximum approximately). The annual income tax return includes a field to be filled with transfer pricing adjustments to the taxable base.
<b>Penalty Relief</b>	Currently, there are no regulations in Ecuador regarding transfer pricing methods, penalties, or audit frameworks. Regulations are planned to be developed in the next few years based on the analyses and experiences of SRI and the reports filed by taxpayers.
<b>Documentation Requirements</b>	<p>SRI requires a Transfer Pricing Annex report to be filed, detailing all transactions with foreign related parties, methods applied in analyzing each transaction, and calculated adjustments for each transaction, using an electronic form. Additionally, the Transfer Pricing Integral Report must be presented to SRI. This Report must substantiate the analyses made of all transactions reported on the Annex. Both documents must be filed by companies with accumulated transactions with related parties exceeding US\$300,000 in the reported fiscal year.</p> <p>The Transfer Pricing Annex requires the following information:</p> <ul style="list-style-type: none"><li>■ Declaration of transactions performed by the company with foreign related parties</li><li>■ Complete name of each related party</li><li>■ Related party physical address and country of location</li><li>■ Related party taxpayer's identification numbers</li><li>■ Type and amount of transaction</li><li>■ Type of relationship between the company and the related party</li><li>■ Method used to establish arm's-length values</li><li>■ Difference (adjustment) obtained on each reported transaction</li></ul> <p>The Transfer Pricing Integral Report requires:</p> <ul style="list-style-type: none"><li>■ Economic and business environment analysis</li><li>■ Documentation of functions, assets, risk, organizational structure, business description</li><li>■ Detailed and functional information for each type of operation held with foreign related parties</li><li>■ Financial statements of the company declaring any adjustment made for analysis purposes</li><li>■ Reason for selecting a method</li><li>■ Search and filtering methodology</li><li>■ Reason for rejection of searched comparable companies</li><li>■ Accepted comparable companies activities description and financial statements</li><li>■ Analysis description and conclusion</li><li>■ Other relevant information</li></ul>

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# Ecuador (continued)

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<b>Documentation Deadlines</b>	The Transfer Pricing Annex must be filed five days after filing the annual income tax return (April). The Transfer Pricing Integral Report must be submitted six months after filing the annual income tax return (October).
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The statute of limitations is three years from the date of the income tax return filing, and six years if overall tax compliance was not accomplished.
<b>Return Disclosures/ Related Party Disclosures</b>	The obligation to disclose related parties has been established in SRI Resolution NAC-DGER2005-0640.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	The Transfer Pricing Unit has been created to continuously audit transfer pricing reports and behavior. The efficiency of the Unit will be measured by its results in terms of extra tax obtained. For this reason, we believe the Unit is going to be aggressive in its audit processes.
<b>APA Opportunity</b>	APAs are not available at this time. Their implementation is part of the provenance of the Transfer Pricing Unit.

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# Estonia

<b>Taxing Authority and Tax Law</b>	Tax and Customs Board. The new rules of transfer pricing are applicable from 2007. Transfer pricing issues are regulated by the Estonian Income Tax Act: in Article 50 subsections 4 – 6 (resident legal persons), Article 34 (self-employed entrepreneurs), and Article 53 subsection 4'6 (permanent establishments). The documentation requirements are stipulated in the Income Tax Act, Article 50, subsection 7.
<b>Relevant Regulations and Rulings</b>	The regulation of transfer pricing, which is applicable to residents and non-residents and which came into force on 1 January 2007, was issued by the Regulation of Ministry of Finance on 11 November 2006. In addition, there is a monthly obligation for legal persons to report transactions between related parties on their tax returns (form TSD). There have not been substantial court rulings or tax proceedings on transfer pricing issues in Estonia yet.
<b>OECD Guidelines Treatment</b>	The Estonian tax authorities follow the OECD Transfer Pricing Guidelines.
<b>Priorities/Pricing Methods</b>	The Tax and Customs Board accepts CUP, Resale Price, Cost Plus, Profit Split, and TNMM. The methods are hierarchical, and are all treated as equal.
<b>Transfer Pricing Penalties</b>	There is no penalty for not having documentation regardless of whether the transfer pricing is arm's length or non-arm's length. If the required documentation or the relevant tax return is not submitted in time, the fine is up to 50,000 EEK (ca. €3200). In the case of the intentional submission of wrong information in the tax return, there is imposed a criminal penalty, and the fine is up to 250 million EEK (ca. €16 million). If tax is assessed, interest from the tax amount at the rate of 0.06% per day will be imposed retroactively as of the date when the tax was supposed to be paid.
<b>Penalty Relief</b>	There is no penalty relief if a taxpayer has the necessary documentation but the transfer pricing is determined to be non-arm's length, and there is an income tax adjustment. However, imposing a fine is probably more an exception than a rule. An interest for the delay of the tax (fine) payment is always enforced.
<b>Documentation Requirements</b>	<p>The documentation requirement is imposed in the following cases:</p> <ul style="list-style-type: none"><li>■ Resident credit institution, finance institution, insurance agency and listed company</li><li>■ If one party of the transaction is a resident of a low tax rate territory<ul style="list-style-type: none"><li>(a) Resident legal person: who has more than 250 employees, including associated persons</li><li>(b) Whose turnover, including associated persons, on the previous financial year was at least €50 million</li><li>(c) Whose consolidated net assets were at least €43 million</li></ul></li><li>■ Non-resident who has a permanent establishment in Estonia and<ul style="list-style-type: none"><li>(a) Who has more than 250 employees, including associated persons</li><li>(b) Whose turnover, including associated persons, on the previous financial year was at least €50 million</li><li>(c) Whose consolidated net assets were at least €43 million</li></ul></li></ul> <p>Categories of documentation required:</p> <ul style="list-style-type: none"><li>■ Company analysis</li><li>■ Industry analysis</li><li>■ Functional analysis</li><li>■ Economic analysis</li></ul>
<b>Documentation Deadlines</b>	<p>Deadline to prepare the documentation: There is no deadline for preparing transfer pricing documentation.</p> <p>Deadline to submit the documentation: Taxpayers are obliged to submit the documentation within 60 days of the date from when the tax authorities request it.</p>

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# Estonia (continued)

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**Statute of Limitations on Transfer Pricing Assessments**

The statute of limitation period for making an assessment of tax is three years. In the event of intentional failure to pay or withhold an amount of tax, the limitation period for making an assessment of tax is six years. A limitation period begins to run from the due date for the submission of the tax return which was not submitted or which contained information which caused an amount of tax to be calculated incorrectly.

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**Return Disclosures/Related Party Disclosures**

An annual report including a description of transactions with related parties is required to be filed within six months from the end of the relevant financial year. In addition, taxpayers are required to inform tax authorities monthly when filling in a tax return (form TSD) whether they have had related party transactions, and whether they are subject to the transfer pricing documentation. If the taxpayer has the obligation to keep the necessary documentation, the necessary analysis must have been made. The documentation does not have to be filed with the tax return.

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**Audit Risk/Transfer Pricing Scrutiny**

Taxpayers in Estonia run a high risk that transfer prices will be scrutinized during a tax audit.

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**APA Opportunity**

Currently, the Estonian tax laws do not provide for an opportunity to conclude APAs.

# France

<b>Taxing Authority and Tax Law</b>	French Tax Authority (FTA) generally, or also Direction Générale des Impôts. French Tax Code: Articles 57 and 238A. French Procedure Code: Articles L13B and L188A. Case law application of Abnormal Management Act theory.
<b>Relevant Regulations and Rulings</b>	Administrative Doctrine on Articles 57 and 238A of the French Tax Code, and Article L 13B of the French Procedure Code.
<b>OECD Guidelines Treatment</b>	The French Tax Authorities consider the French transfer pricing regulations to be wholly consistent with OECD Guidelines.
<b>Priorities/Pricing Methods</b>	The FTA accepts CUP, Resale Price, Cost Plus, Profit Split, and TNMM, but prefers transactional methods.
<b>Transfer Pricing Penalties</b>	<p>After an adjustment (added profit) is made, the added profit is analyzed as deemed dividends:</p> <ul style="list-style-type: none"><li>■ When the beneficiary is located outside of France and no double tax treaty applies, the distribution is subject to a 25% withholding tax</li><li>■ When the beneficiary is located outside France and a double tax treaty applies, the application of a withholding tax depends on the tax treaty provisions (see the dividends clause or the other incomes clause)</li><li>■ The late payment interest is applied particularly in cases of tax reassessments in application of Article 57 of the French Tax Code. Beginning on 1 January 2006, the late payment interest rate is 0.40% per month (4.80% per year)</li><li>■ Supplementary penalties are applicable if the taxpayer has acted in bad faith (40%) or fraudulently (80%)</li></ul> <p>Specific transfer pricing penalties are also applicable in situations where the taxpayer has failed to answer the tax authority's request for documentation (Article L 13 B of the French Procedural Tax Code). Failure to provide complete information can result in a reassessment of the company's taxable profit, based on information the tax administration possesses, and a penalty of €10, 000 for each year that is audited.</p>
<b>Penalty Relief</b>	During a tax audit and before the tax authorities send the notice of reassessment, taxpayers are allowed to correct their errors or omissions in consideration of a reduced late interest rate payment, equal to 70% of the actual tax rate (3.36% per year). In this respect, taxpayers must file a complementary tax return and pay the corresponding additional taxes at the same time.
<b>Documentation Requirements</b>	<p>There is no formal obligation to document transfer prices. However, given the short delay granted by the law to submit the documentation, the large scope of documentation to be provided, and the new modifications of the corporate law to French companies, a de facto documentation obligation exists in France.</p> <p>On 10 November 2005, the European Commission adopted a code of conduct aimed at harmonizing transfer pricing documentation across Europe. The code recommends the use of a master file documentation coupled with specific documentation for each country involved in intercompany transactions. Although there is no official position from the FTA, it is likely that in the future they will follow the recommendations provided by the code.</p> <p>Upon request the taxpayer must provide the following documentation:</p> <ul style="list-style-type: none"><li>■ Method selected</li><li>■ Analysis of controlled transactions</li><li>■ Identification of comparables</li><li>■ Economic analysis</li><li>■ Functional analysis</li></ul>

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# France (continued)

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## Documentation Requirements (continued)

- Legal and management accounts
- Description of the tax regime applied to the subsidiaries of the audited French company
- Nature of the relations with the related parties
- Activity of the related parties
- Business overview
- Organizational structure
- Index

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## Documentation Deadlines

As mentioned above, there is no formal requirement to provide the FTA with contemporaneous documentation without a specific request.

However, in the case of a tax investigation, transfer pricing documentation requested by the FTA should be provided within a short time period. If a specific request is made from the FTA (Article L 13 B of the French Procedural Tax Code), then the documentation must be submitted within 60 days, though it may be possible to obtain a 30-day extension in exceptional circumstances.

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## Statute of Limitations on Transfer Pricing Assessments

The statute of limitations on assessment for transfer pricing adjustments is the same as for all corporate tax assessments: three years following the year for which the tax is due. In cases where a mutual agreement procedure to avoid double taxation under a tax treaty or the European Arbitration Convention is initiated following a proposed tax adjustment, tax collection is suspended during the entire mutual agreement process and is postponed until the competent authorities reach a decision. Suspension of tax collection can be requested for mutual agreement procedures initiated as of 1 January 2005, which means that these procedures can be related to tax adjustments proposed prior to 1 January 2005.

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## Return Disclosures/Related Party Disclosures

In the case of a specific request from the FTA (Article L13 B of the French Procedural Tax Code), there is an obligation to disclose the nature of the relations with the related parties (i.e., the links of dependence between the French audited entity and the related parties). This article also states an obligation to disclose the activities of the related parties. An annual report is required if the party files an APA.

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## Audit Risk/Transfer Pricing Scrutiny

The risk of transfer pricing issues being scrutinized during a tax authority audit is high. The number of tax audits in transfer pricing is increasing considerably, and the French tax authorities are becoming more extensive and accurate in their queries since they now also use economic arguments.

Transfer pricing issues that receive the greatest scrutiny are:

- Product sale prices (under or over estimated prices)
- Management fees
- Agents and commissionaire schemes (e.g., conversion of a distributor into an agent)

Following a tax reassessment, a taxpayer can request relief on the basis of a mutual agreement procedure in a tax treaty or the European arbitration convention in order to avoid double taxation. On February 23, 2006, the FTA published administrative guidelines which specify the area of application and the conditions of implementation of such procedures. One of the main measures is the suspension of the deadline of tax collection from the opening of the procedure until a solution is reached (Article L 189 A of the French Tax Procedure Code).

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## APA Opportunity

Bilateral and, under certain circumstances, unilateral APAs are available under French Procedural Tax Code, Section L 80 B 7°. The section was released by the Finance Amendment Act for 2004 and is effective as of 1 January 2005. It incorporates existing procedures as described by French administrative guideline 4 A-8-9 dated 7 September 1999.

On 28 November, 2006, the FTA released a new administrative guideline (Instruction 4 A-13-06) adding a simplified APA procedure for small and medium enterprises, and presenting an online guide with respect to transfer pricing methods.

# Germany

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## Taxing Authority and Tax Law

The Federal Central Tax Office (Bundeszentralamt für Steuern), as well as state tax authorities. German tax law addresses the arm's length principle for intercompany transactions in Section 1, Foreign Tax Act. Other relevant provisions for transfer pricing issues are Section 8 (3) German Corporate Income Tax Act (hidden profit distribution) and Directive R40 of the German Corporate Tax Directives (hidden capital injection), as well as Sections 90 (3), 162 (3), (4) German General Tax Code, and the Executive Order Law to Section 90 (3) German General Tax Code.

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## Relevant Regulations and Rulings

German tax authorities have issued a circular called *Principles Governing the Examination of Income Allocation between Multinational Enterprises* in 1983, known as the Administration Principles. The Administration Principles do not constitute binding law for the taxpayer or the courts, but are binding for the tax authorities, and thus, serve as an indication to the taxpayer as to how tax authorities will treat specific intercompany transactions between related parties. The purpose of the Administration Principles can be interpreted as providing a directive concerning the tax audit treatment of transfer pricing cases and to ensure the uniform application of rules and methods by the tax authorities.

In addition to the Administration Principles, administration circulars concerning income allocation with regard to cross-border secondment, costs contribution arrangements, permanent establishments, and procedures have been published since December 1999.

The Federal Ministry of Finance, IV C 5 - S-1341 - 4/83, 23 February 1983, Federal Gazette I 1983, 218 issued a circular called *Principles for the Examination of Income Allocation in the Case of Internationally Associated Enterprises* (Administration Principles).

The Federal Ministry of Finance, IV B 5 - S-1341 - 20/01, 9 November 2001, Federal Gazette I 2001, 796 issued a circular called *Principles for the Examination of Income Allocation in the Case of Secondments in Internationally Associated Enterprises* (Administration Principles - Secondment).

The Federal Ministry of Finance, IV B 4 - S-1341 - 14/99, 30 December 1999, Federal Gazette I 1999, 1122 issued a circular called *Principles for the Examination of Income Allocation through Cost Contribution Arrangements between Internationally Associated Enterprises*.

The Federal Ministry of Finance, IV B 4 - S-1300 - 111/99, 24 December 1999, changed on 20 November 2000, Federal Gazette I 1999, 1076 and Federal Gazette I 2000, 1509 issued a circular called *Administration Principles relating to the Examination of Apportionment of Income in Case of Permanent Establishments of Internationally Operating Enterprises* (Permanent Establishment Administration Principles).

The Federal Ministry of Finance, IV B 4 - S-1341 - 1/2005, 25 April 2005, Federal Gazette I 2005, 570 issued a circular called *Principles for the Examination of Income Allocation in the Case of Internationally Related Parties in Relation to the Duties of Determination and Cooperation, Adjustments of Income, Mutual Agreement and EU Arbitration Procedures* (Administration Principles - Procedures).

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## OECD Guidelines Treatment

German tax authorities consider its transfer pricing laws and regulations to be consistent with OECD Guidelines. The OECD Guidelines provide support for domestic use; however, German transfer pricing regulations and practices differ with regard to certain issues, e.g., reluctance to use transactional profit methods, and documentation requirements for secondments.

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# Germany (continued)

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## Priorities/Pricing Methods

The German Tax Authorities prefer transaction-based methods: CUP, Resale Price, and Cost Plus, although an update to parts of the Administration Principles and the Administration Principles—Procedures circulars acknowledges the application of transactional profit methods in narrow and clearly defined circumstances.

The Transactional Net Margin Method is applicable only if all of the following requirements are met:

- None of the traditional transaction methods can be used because of insufficient information
- Pricing is to be determined to be for an entity with only routine functions
- At least a limited degree of comparability with the comparables companies can be established

According to the circular dated 12 April 2005, the Profit Split Method may be applicable as a method of last resort if the traditional transaction methods cannot be applied or if their application would lead to unreliable results. An example would be an enterprise involved in global trading where entrepreneurship is shared among several entities.

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## Transfer Pricing Penalties

If the taxpayer fails to submit transfer pricing documentation, the documentation is insufficient, or the documentation for extraordinary business transactions is not prepared contemporaneously, a surcharge of 5% -10% on an income adjustment will be applied, with a minimum surcharge of €5,000. For late filing, the taxpayer faces a penalty up to €1 million (minimum penalty of €100 per day of delay). Penalties are imposed after the closing of a tax audit. The aforementioned penalties constitute non-tax deductible expenses.

Interest is assessed on tax payments (6% p.a., which is non-deductible for tax purposes).

There are also penalties for tax evasion.

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## Penalty Relief

The law provides that penalties may not be imposed if the taxpayer is not or only insignificantly responsible for the lack of appropriate documentation.

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## Documentation Requirements

Section 90 of the German General Tax Code contains transfer pricing documentation requirements. An Executive Order Law (effective 30 June 2003) prescribes general requirements and the documentation required in special circumstances. The circular dated 12 April 2005 provides the tax authorities' interpretation of the requirements set out in the General Tax Code and in the Executive Order Law.

General documentation requirements:

- General information: shareholder relationships, organizational and operative group structure, and operations
- Description of intercompany transactions: manner and extent of transactions, intercompany contracts, and a list of important intangibles
- Functions and Risks Analysis: description of functions and risks the taxpayer bears within the intercompany transaction, contractual terms, business strategies, and value chain
- Transfer Pricing Analysis: selection of the transfer pricing method, appropriateness of the method selected, calculation of the transfer price, list of comparables, and documentation of adjustment calculations

Special documentation requirements:

The taxpayer has to document special circumstances which are used to substantiate the arm's length nature of the price determined, including: special business strategies, cost allocation agreements, overview of APAs and mutual agreement procedures, information on transfer price adjustments, causes for losses from intercompany transactions, as well as countermeasures (if losses occur in more than three consecutive financial years).

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# Germany (continued)

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**Documentation  
Deadlines**

Contemporaneous documentation requirements exist only for exceptional business transactions. For extraordinary business transactions (e.g., legal restructuring within the group) the documentation must be contemporaneous, i.e., prepared within six months after the end of the business year in which the transaction has been carried out. However, the preparation of contemporaneous documentation is strongly recommended for all cross-border transactions.

Documentation must be submitted within 60 days upon receipt of the tax authority's request. In general, the request is made in the course of a tax audit.

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**Statute of Limitations  
on Transfer Pricing  
Assessments**

There are no special time limit provisions applicable if intercompany transactions are involved. The general regime of the statute of limitations applies in accordance with the General Tax Code. Accordingly, each case has to undergo careful consideration to determine the specific statute of limitations. Most taxes are levied by way of assessment. Assessments can only be made within the statutorily prescribed assessment period, which is subject to the statute of limitations for assessments. The assessment period for taxes (Section 169 General Tax Code) is four years. For customs duties it is shorter, and in case of grossly negligent evasion of taxes or tax fraud it is much longer (10 years in case of tax fraud). These periods commence at the end of the calendar year in which the tax liability arose. The assessment period, however, does not start prior to the end of the calendar year in which the taxpayer has submitted the tax return (but not later than three years after the year the tax liability has arisen). There are a number of statutory exceptions to the above statute of limitations for assessments, e.g., it should be kept in mind that the limitation period is interrupted when a tax audit begins.

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**Return Disclosures/  
Related Party  
Disclosures**

There are no specific disclosure requirements.

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**Audit Risk/Transfer  
Pricing Scrutiny**

The risk of transfer pricing issues being scrutinized during a tax audit is high. Due to the new documentation requirements, it is expected that transfer pricing issues will attract more attention in tax audits than in the past. It is expected that transactions qualifying as exceptional business transactions under the documentation provisions, such as the transfer of functions and risks, will particularly attract the tax auditor's attention.

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**APA Opportunity**

APAs are generally available. The German Ministry of Finance issued an APA circular on October 5, 2006 which defines the APA procedures and provides guidance with regard to the negotiation of APAs. Additionally, the Annual Tax Act 2007 has introduced fees for APAs. The administrative expertise for APAs is centralized in the Federal Central Tax Office. The APA process typically takes from at least 1.5 years from application to conclusion. An agreement reached between the two competent authorities will be made conditional in two regards: the taxpayer must consent to the intergovernmental agreement, and must waive its right to appeal against tax assessments to the extent they are in line with the contents of the APA.

# Hungary

## Taxing Authority and Tax Law

The organization responsible for dealing with tax issues in Hungary is the Hungarian Tax and Financial Control Office (tax authority).

The following transfer pricing legislation is effective in Hungary:

- Sections 4.23 (definition of related party for Corporate Income Tax (CIT) purposes) and Section 18 (correction of prices applied between related parties) of the Act LXXXI of 1996 on Corporate Income Tax and Dividend Tax (Act on CIT)
- Section 1.8 (definition of fair market price), Section 23(4)(b) (reporting related party at the tax authority), Section 132/A and 132/B (provisions on the Hungarian APA), and Section 178.17 (definition of related party) of the Act XCII of 2003 on Tax Procedure (Act on Tax Procedure)
- Section 13(1)5 (definition of independent party for VAT purposes) of the Act LXXIV of 1992 on Value Added Tax (Act on VAT)
- Section 3.69 (definition of independent party for Personal Income Tax (PIT) purposes) of the Act CXVII of 1995 on PIT
- Ministry of Finance Decree 18 of 2003 on the fulfillment of transfer pricing documentation obligations;
- Ministry of Finance Decree 38 of 2006 on the administrative procedure for obtaining APA

## Relevant Regulations and Rulings

2004/37 Guideline issued by the Hungarian tax authority on fulfillment of the transfer pricing documentation requirement.

## OECD Guidelines Treatment

Hungarian legislation does not prioritize transfer pricing methods. As a general rule, the arm's length price should be determined by one of the traditional transaction methods described by the OECD including CUP, Resale Price, or Cost Plus Methods. Any other method may be applied if the traditional methods are not applicable. If a non-traditional method is applied, the reasoning for using the method must be provided by the taxpayer.

## Transfer Pricing Penalties

A penalty of 50% of unpaid tax may be imposed, as well as a late payment interest charge at double the prime rate of the National Bank of Hungary in line with general rules. A default penalty of HUF 2 million (approximately €8,200) may be levied for not fulfilling, or not properly fulfilling, the content and formal documentation requirements. According to the latest interpretation, this penalty can be levied by documentation.

## Penalty Relief

Not applicable.

## Documentation Requirements

The Act on CIT states that companies which do not qualify as small companies (small companies are defined as employing less than 50 persons and having less than €10 million in total turnover) must document the methods they used to determine the fair market prices as well as the facts and circumstances supporting them. The detailed documentation obligation must be applied for all agreements in effect in 2007. The details of the documentation obligation are regulated by the Ministry of Finance Decree 18 of 2003. Foreign entities (usually foreign taxpayers carrying out business activities through a Hungarian permanent establishment) are also subject to the documentation obligation. However, according to the relevant transfer pricing regulation there is an option to submit simplified documentation if the value of the transactions covered by definite term contracts does not exceed HUF 50 million (approximately €205,000).

The compulsory Hungarian transfer pricing documentation requirements are consistent with the OECD transfer pricing guidelines.

The following list outlines the requirements for Hungarian transfer pricing documentation purposes:

- Name, registered seat (official location), and tax number of the related party
- Content of the agreement that is entered with the related party, which includes:
  - Subject of the agreement
    - Signing date (amendment date) of the agreement
    - Period during which the agreement is effective
    - Characteristics of the service provided, and/or goods sold (functional analysis)
    - Method and terms of the fulfillment of the agreement
    - Analysis of the market (industry analysis), etc.
- The method applied for establishing the arm's length price
- Reasons for selecting the method applied

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# Hungary (continued)

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<b>Documentation Requirements (continued)</b>	<ul style="list-style-type: none"><li>■ Description of comparable services and goods transactions</li><li>■ Factors affecting the arm's length price; margin or profit; the extent of any necessary adjustments</li><li>■ The arm's length price/margin</li><li>■ Information on pricing agreements and court procedures</li><li>■ Preparation date of the documentation</li></ul>
<b>Documentation Deadlines</b>	The transfer pricing documentation for contracts effective in a given tax year is required to be prepared by the deadline for filing the annual corporate income tax return (i.e., within 150 days from the year-end).
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The general rules are applied. The statute of limitations lapses on the last day of the fifth calendar year calculated from the tax year in which taxes should have been declared or reported, or paid in the absence of a tax return or reporting.
<b>Return Disclosures/Related Party Disclosures</b>	Within 15 days of concluding its first contract with a related party, the taxpayer must report the name, registered seat, and tax number of the contracting party to the tax authority. In the CIT return, the tax base should be adjusted if the price used in the related party transaction differs from the fair market price. According to the Hungarian transfer pricing regulations, the taxpayer is not required to file the transfer pricing documentation to the tax authority; however, the taxpayer needs to present the documentation during a tax audit.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	The risk of transfer pricing issues being scrutinized during a tax authority audit is steadily growing. Since the decree on the documentation obligation came into force, the tax authority checks the existence of the documentation. Based on our experience, the tax authority usually inspects whether the content and formal requirements are fulfilled in the documentation. From the beginning of 2007, the tax authority started to train transfer pricing specialists. The tax authority's knowledge on the application of transfer pricing methods is expected to increase during the tax audits.
<b>APA Opportunity</b>	As of 1 January 2007, a formal APA regime was introduced in Hungary. Unilateral, bilateral, and multilateral APAs are available according to the new provision. APAs requested for future transactions can be used for three to five years, and they can be extended for a further three years. The application fees for APAs range from HUF 5 million (approximately €20,500) to HUF 50 million (approximately €204,500) depending on the type of the APA and the transaction value. The tax authority is responsible for the establishment of APAs and dealing with other transfer pricing-related issues.

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# India

<b>Taxing Authority and Tax Law</b>	Income Tax Department. Section 40A (2), Sections 92-92F, Section 271, 271AA, 271BA, and 271G of the Income Tax Act, 1961.
<b>Relevant Regulations and Rulings</b>	Rule 10 to 10E of the Income Tax Rules, 1962.
<b>OECD Guidelines Treatment</b>	The Indian legislation is broadly based on the OECD Guidelines. In conformity with the OECD Guidelines, the legislation prescribes the same five methods to compute the arm's length price. Further, the revenue authorities generally recognize the OECD Guidelines and refer to the same for guidance, to the extent they are not inconsistent with the domestic law.
<b>Priorities/Pricing Methods</b>	<p>The Indian legislation prescribes the following methods: CUP, Resale Price, Cost Plus, Profit Split, and TNMM. The legislation also grants the power to the Central Board of Direct Taxes (CBDT) to prescribe any other method. No other method has been prescribed by the CBDT to date.</p> <p>No hierarchy of methods exists. The most appropriate method should be applied.</p>
<b>Transfer Pricing Penalties</b>	For inadequate documentation, the taxpayer is fined 2% of the transaction value. For not furnishing sufficient information or documents requested by the tax officer, the taxpayer is fined 2% of the transaction value. If due diligence efforts to determine the arm's length price have not been made by the taxpayer, then 100% to 300% of incremental tax on transfer pricing adjustments may be levied by the tax officer. For not furnishing an Accountant's Certificate (Form 3CEB) along with the return of income, the taxpayer is fined US\$2,200.
<b>Penalty Relief</b>	Penalties may be avoided if the taxpayer can demonstrate that it exercised good faith and due diligence in determining the arm's length price. This is also demonstrated through proper documentation and timely submission of documentation to the revenue authorities during assessment proceedings.
<b>Documentation Requirements</b>	<p>A detailed list of mandatory documents are listed in Rule 10D (1). The categories of documentation required are:</p> <ul style="list-style-type: none"><li>■ Ownership structure</li><li>■ Profile of the multinational group</li><li>■ Business description</li><li>■ The nature and terms (including prices) of international transactions</li><li>■ Description of functions performed, risks assumed and assets employed</li><li>■ Record of any financial estimates</li><li>■ Record of uncontrolled transaction with third parties and comparability evaluation</li><li>■ Description of methods considered</li><li>■ Reasons for rejection of alternative methods</li><li>■ Details of transfer pricing adjustment</li><li>■ Any other information or data relating to the associated enterprise which may be relevant for determination of the arm's length price</li></ul> <p>A list of optional documents is provided in Rule 10D (3). The taxpayer is required to obtain and furnish an Accountant's Certificate (Form 3CEB) regarding adequacy of documentation maintained.</p>

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# India (continued)

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<b>Documentation Deadlines</b>	<p>The information and documentation specified should, as far as possible, be contemporaneous and exist by the specified date of filing the income tax return, which is usually 31 October following the end of the financial year.</p> <p>Although an Accountant's Report must be submitted along with the tax return, the taxpayer is not required to furnish the transfer pricing documentation with the Accountant's Report at the time of filing the tax return. Transfer pricing documentation must be submitted to the tax officer within 30 days of the notice during assessment proceedings.</p>
<b>Statute of Limitations on Transfer Pricing Assessments</b>	<p>The Finance Bill 2007 proposes that all tax assessments (where a matter has been referred to the transfer pricing officer) are to be completed within three years and nine months from the end of the financial year (1 April to 31 March). However, if the revenue authority determines that income has escaped assessment, an assessment may be re-opened within seven years from the end of the financial year.</p>
<b>Return Disclosures/ Related Party Disclosures</b>	<p>Under Section 92E, an Accountant's Report is required to be provided along with the tax return. The accountant certifies whether proper documentation is maintained by the taxpayer.</p> <p>In accordance with Indian Accounting Standard 18, the company is required to disclose related party transactions in its financial statements.</p>
<b>Audit Risk/Transfer Pricing Scrutiny</b>	<p>Internal guidelines have been issued by the revenue authorities, pursuant to which companies with related party transactions in excess of US\$1.10 million are being scrutinized (with a proposal to increase the threshold to US\$3.30 million). In most cases, the revenue authorities do not seem to have adopted a centralized or coordinated approach to audits, with officers in different locations taking divergent positions on similar taxpayer fact patterns. Substantial documentation is being requested in the course of audit proceedings. The information technology, business process outsourcing, banking, and pharmaceutical sectors have received particular attention. The revenue authorities have sought an updated analysis using data that may not be available to the taxpayer at the time of preparation of contemporaneous documentation. Furthermore, the officers have insisted on unbundling transactions in cases where the taxpayer has adopted an "aggregate" or "combined" approach to its transfer pricing documentation. During recent audits, the approach adopted by the taxpayer in the selection of comparable data has received considerable attention from the revenue authorities.</p>
<b>APA Opportunity</b>	<p>APAs are not available yet, but may become available as India increases its third-party comparables databank and gains more experience in cross-border transfer pricing issues.</p>

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# Indonesia

<b>Taxing Authority and Tax Law</b>	Indonesian Tax Authority. Article 18 of the Indonesian income tax law.
<b>Relevant Regulations and Rulings</b>	A new income tax law implemented on 1 January 2001 contains transfer pricing provisions in Article 18, but implementing regulations have not yet been issued. The only regulations issued to date (Director General of Tax Circular Letter No.SE-04/PJ.7/1993) are old and predate the new income tax law. Indonesia's transfer pricing rules apply to both domestic and cross-border transactions between parties that have a special relationship. Domestic transfer pricing rules apply because there is no grouping of tax losses in Indonesia.
<b>OECD Guidelines Treatment</b>	Indonesia is not a member of the OECD, but generally favors its principles and methods.
<b>Priorities/Pricing Methods</b>	The CUP is favored. Other allowable methods include Cost Plus, Sales Minus, Resale Price, and those accepted by the OECD (usually profit-based methods).
<b>Transfer Pricing Penalties</b>	There is a penalty of 2% per month, up to a maximum of 48%, on any tax underpayment discovered during a transfer pricing audit.
<b>Penalty Relief</b>	Not applicable.
<b>Documentation Requirements</b>	There are no formal documentation requirements at this time. However, the tax authorities usually require the production of invoices and agreements as a minimum requirement.
<b>Documentation Deadlines</b>	Not applicable.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	Not applicable.
<b>Return Disclosures/Related Party Disclosures</b>	Disclosure of related party transactions in the tax return has been required since 1 January 2002. Domestic and international related party transactions are required to be disclosed. The information that must be disclosed includes the type of transaction, the value of the transaction, the transfer price, and the method used to determine the transfer price.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	<p>There is no specialized investigation unit in the Indonesian tax authority and most transfer pricing queries arise during regular tax audits. The number of transfer pricing adjustments increased significantly in recent years, especially in cases where Indonesian entities have suffered losses, or where the export prices to related entities differs from the local sale price. In the past, the Indonesian Tax Authority's efforts have traditionally concentrated on intangibles and services (e.g., management fees, royalties, service fees, and interest), but recent experience shows an increasing interest in the transfer pricing of tangible goods.</p> <p>In practice, taxpayers that exhibit the following characteristics are more at risk of being subject to a transfer pricing audit:</p> <ul style="list-style-type: none"><li>■ A large number of related party transactions</li><li>■ Losses for more than two consecutive years</li><li>■ An increase in gross revenue or receipts but no change in net profit</li><li>■ Erratic profit and loss histories</li><li>■ Associated parties in tax havens</li><li>■ Lower net profit in comparison to the industry average or other similar enterprises</li></ul>
<b>APA Opportunity</b>	The income tax law of 2001 contains bilateral and unilateral APA mechanisms. The income tax law suggests that an APA is only for cross-border transactions, but conflicting statements have been made by senior tax officials that an APA may also apply to domestic transactions.

# Israel

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## Taxing Authority and Tax Law

Israeli Tax Authority (ITA). Income Tax Ordinance § 85A and Income Tax Regulations (Determination of Market Terms), 5767-2006.

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## Relevant Regulations and Rulings

The ITA Income Tax Regulations (Determination of Market Terms) were drafted pursuant to § 85A of the Israeli Income Tax Ordinance. Final regulations were adopted in November 2006. The Israeli Transfer Pricing (ITP) Regulations apply to all international intercompany transactions entered into following the 29 November 2006 release of the ITP Regulations. The regulations apply to all transactions carried out subsequent to their validation. The ITP Regulations are based upon a combination of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) and the US Transfer Pricing Regulations.

Taxpayers are required to comply with the proper timing for the submission of documentation (i.e., 60 days from official demand by a tax inspector), thereby shifting the burden of proof to the tax authorities if the prices do not appear to be at arm's length.

As a transitional provision, an arm's length study documented prior to the publication of the ITP Regulations will be accepted for a period of two years from their publication provided that the documentation was conducted based on the OECD Guidelines or guidelines published by its members (e.g., US).

The ITA requires that commencing with fiscal year ending 2006, Israeli annual tax returns include a form, specific to transfer pricing, that will delineate the intercompany transactions, the price of the transactions, and if the transaction price differs from the market price, the reasonable market price that should be reported therein.

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## OECD Guidelines Treatment

The ITA considers its transfer pricing laws and regulations to be wholly consistent with the OECD Guidelines and the US Treasury Regulations under §1.482. For domestic use, the OECD Guidelines do not provide support, and would not be directly relevant to the application of any pricing methods. However, an arm's length study documented prior to the publication of the ITA Regulations will be accepted for a period of two years from the regulations' publication provided that the documentation was conducted based on the OECD Guidelines or guidelines published by its members.

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## Priorities/Pricing Methods

To determine whether an international transaction is at arm's length terms, the ITP Regulations require the taxpayer to apply one of the following methods in the following hierarchy:

- CUP or Comparable Uncontrolled Transaction (CUT) method
- Comparing profitability
  - Cost Plus or Resale Price
  - CPM/ TNMM
  - Profit Split Method as appropriate
- Other methods

An international transaction is at arm's length if through the application of an approved method, the result falls within a defined interquartile range. As an exception, the entire range of values will apply when the transfer pricing method applicable is a CUP or CUT, and no adjustments were performed. If the international transaction is outside the range of comparable transactions, the median should be applied as the transaction's price.

Additionally, the ITP Regulations stipulate the use of several profit level indicators (PLIs) depending on the particular industry and environment. For example:

- A cost-plus mark-up may be applied to a company's direct costs when this is the most acceptable method in the tested party's field of operations
  - A gross profit margin may be applied when this is the most acceptable method, based on sales
  - The operating profit or loss applicable for comparable transactions
  - The profit/loss derived as a proportion of the firm's assets or liabilities or capital
  - Other measures considered appropriate in the circumstances.
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# Israel (continued)

<b>Transfer Pricing Penalties</b>	The ITA has not specified any penalties with regard to its transfer pricing regulations. However, general tax penalties applied by the ITA, with regard to a tax deficit, will also apply on transfer pricing adjustments.
<b>Penalty Relief</b>	Not applicable.
<b>Documentation Requirements</b>	<p>A taxpayer is required to file a transfer pricing report with the Tax Assessing Officer, at the Tax Assessing Officer's request, within 60 days from the application date. Documentation is required to include the following data:</p> <ul style="list-style-type: none"><li>■ Details of the taxpayer, including group structure, the parties to the international transaction, their residency, and special relations between the taxpayer and the other transaction parties</li><li>■ The contractual terms, including specifications of the asset, the service granted, the price paid, the loan and credit terms, and related guarantees</li><li>■ The taxpayer's area of activity and any relevant developments</li><li>■ The economic environment in which the taxpayer operates and the related risks</li><li>■ Details of all transactions entered into by the taxpayer with a related party</li><li>■ An economic analysis</li></ul> <p>The taxpayer is also required to attach additional documents that corroborate the data submitted such as transaction contracts, and any other contracts between the related parties, and tax returns filed with foreign tax authorities.</p>
<b>Documentation Deadlines</b>	A taxpayer is required to file a transfer pricing report with the Tax Assessing Officer, at the Tax Assessing Officer's request, within 60 days from the application date. A special form should be attached to the annual tax return detailing the international intercompany transactions, the price for those transactions, and if different from the market price, the market price should be reported in that form.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The Israeli Income Tax Ordinance has general rules for auditing a tax return. As such, the statute of limitations is usually three years (or four if the commissioner extends the time period) beginning at the end of when the relevant fiscal year tax return was filed.
<b>Return Disclosures/Related Party Disclosures</b>	Pursuant to § 131 of the Israeli Income Tax Ordinance, as part of the annual tax return filed, a company must provide disclosure for international transactions, including arm's length prices and conditions according to a special form to be established for that purpose.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	The risk of transfer pricing scrutiny during a tax audit has increased exponentially following the issuance of the ITP Regulations. Transfer pricing will now be monitored with greater regularity and with increased ITA experience. In order to cope with the changing transfer pricing climate in Israel, the ITA has established a new division to enforce and regulate the ITP Regulations.
<b>APA Opportunity</b>	The Israeli Income Tax Ordinance's § 85A, which governs the ITP Regulations, stipulates in article 85A(d) the condition under which an APA may be conducted, delineating the scope of an APA. The process starts with a detailed application filed by the taxpayer that includes all the relevant details. Under the APA process, the ITP must respond within 120 days (though the time can be extended up to 180 days) otherwise the application will be approved automatically and the intercompany policy will be deemed as providing reasonable arm's length prices.

# Italy

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## Taxing Authority and Tax Law

Amministrazione Finanziaria (Administration of Finance and revenue authority). Tax law is embedded in the Presidential Decree n. 917 of December 22, 1986, where transfer pricing is regulated in Article 110 (7) and Article 9 (3)-(4).

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## Relevant Regulations and Rulings

- Administration of Finance Circular Letter n. 32/9/2267 of 22 September 1980, and Circular Letter n. 42/12/1587 of 12 December 1981
  - Circular Letter n. 1 dated 20 October 1998, that outlines general methods for tax audits and includes transfer pricing in the framework of regular audits of multinational enterprises; and
  - Decision of the Italian Supreme Court (Corte di Cassazione) n. 22023 of 13 October 2006 that held the burden of proof is on the tax authorities for transfer pricing issues. According to the Supreme Court, and following the 1995 OECD Guidelines, in the jurisdictions where the burden of proof is on the tax authorities, the taxpayer is not obliged to give evidence that the transfer prices comply with the arm's length principle unless tax authorities have already proved (prima facie) that the taxpayer has not complied with the arm's length principle.
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## OECD Guidelines Treatment

The Italian transfer pricing rules are mainly provided by the tax law provisions (Article 110 (7) and Article 9 (3)-(4) of the Presidential Decree n. 917 of 22 December 1986), Administration of Finance Circular Letter n. 32/9/2267 of 22 September 1980, and Circular Letter n. 42/12/1587 of 12 December 1981.

The 1980 Circular Letter follows the 1979 OECD Transfer Pricing Guidelines and, although it was issued before the date of enforcement of Article 110 (7) mentioned above, its provisions are still fully applicable. On the other hand, the 1995-1999 OECD Guidelines have not been converted yet into specific official Italian guidelines, but only translated by the Italian Ministry of Finance.

The Decision n. 22023 of the Italian Supreme Court makes a clear reference to the OECD Guidelines to state that the burden of proof is on the tax authorities.

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## Priorities/Pricing Methods

Transactional-based methods, such as CUP, Resale Price, and Cost Plus, are preferred over profits-based methods, such as Profit Split, Profit Comparison, Economic Sector Gross Margin, and Invested Capital Profitability.

According to the Italian transfer pricing rules (particularly the 1980 Circular Letter) the profits-based methods could be used:

- When it is impossible to use the three basic methods
  - When
    - Uncertainties arise in verifying the correct use of the three basic methods
    - It is necessary to separate the differential element between two transactions which are susceptible to comparison in order to use one of the three basic methods
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## Transfer Pricing Penalties

General penalties for underpayment apply (Legislative Decree n. 471 of 18 December 1997). In particular, in a case where the tax return has been filed, general administrative penalties apply in the amount equal to a minimum of 100% up to a maximum of 200% of the additional tax or the minor tax credit assessed by Italian tax authorities. This penalty applies when, with reference to the single taxes, (1) the taxable income declared is lower than the one assessed, (2) the taxes declared are lower than those due, or (3) the tax credit declared is greater than the one due to the taxpayer. The same penalties apply where undue tax allowances or deductions from the taxable income have been declared in the tax return. Interests on taxes or additional taxes due also apply. The yearly interest rate is presently equal to 2.75% of the taxes due (Article 20 of Presidential Decree n. 602 of 29 September 1973).

Because of the relatively high amount of potential tax revenue in a transfer pricing audit, tax officers often refer assessments to public prosecutors to explore possible criminal tax law ramifications, as permitted under Legislative Decree n. 74 of 10 March 2000.

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## Penalty Relief

There is no provision concerning penalty relief.

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# Italy (continued)

<b>Documentation Requirements</b>	<p>There are no specific documentation requirements provided. However, the documents should adhere to the OECD Transfer Pricing Guidelines. All income and deduction items should be adequately substantiated. According to Article 32 of Presidential Decree n. 600 of 20 September 1973, Italian tax authorities may require taxpayers to produce or send deeds and documents (in the form of questionnaires) concerning the assessment to which they are subject. Taxpayers are required to comply with tax authorities' requests.</p> <p>Italian substantive and procedural law does not contain specific rules on the relevance of the documentation. Taxpayers are only obligated to submit the compulsory accounting books and other documents specifically required by the tax authorities (a completely different approach must be followed under the Italian anti-tax-haven provisions where legally, the burden of proof shifts to the taxpayer).</p>
<b>Documentation Deadlines</b>	<p>There is no statutory deadline. However, the deadline cannot be less than 15 days from the notification of the tax authorities documentation request, in accordance with Article 32 of Presidential Decree n. 600 of September 29, 1973. The tax authority retains discretion over extension requests.</p>
<b>Statute of Limitations on Transfer Pricing Assessments</b>	<p>There is no specific statute of limitations on assessment for transfer pricing. The general statute of limitations period for tax purposes applies. Therefore, tax assessments must be noticed to the taxpayer by 31 December of the fourth year following the year for which the tax return has been filed. If the tax return has been omitted or is treated as null and void, the assessable period for the relevant year is extended by one additional year. Furthermore, for companies that do not benefit from the 2002/2003 Italian Tax Amnesty, the assessable period is extended by two additional years.</p>
<b>Return Disclosures/ Related Party Disclosures</b>	<p>Italian companies must officially communicate (in documents, correspondence, register of companies) whether they are managed and controlled by another company and the name of the related company (Article 2497-bis of the Italian Civil Code). Financial statements should include essential data of the managing/controlling company's financial statement and relations with related parties (Articles 2424, 2427, 2428, and 2497-bis of the Italian Civil Code). The tax return should disclose transactions with tax havens concerning costs and expenses.</p>
<b>Audit Risk/Transfer Pricing Scrutiny</b>	<p>The risk of transfer pricing scrutiny during a tax audit is very high. In fact, transfer pricing receives the greatest scrutiny. Italian tax authorities usually challenge the price of intercompany transactions that do not comply with the arm's length principle or that result in a mismatch between the characterization of entities and their remuneration. There appears to be a tendency toward challenging transfer pricing in combination with issues related to tax havens and permanent establishments (especially since the Italian Supreme Court's "Philip Morris" case decision in 2002, Ministry of Finance (Tax Office) v. Philip Morris (GmbH). Case 7682/05 of May 25, 2002).</p> <p>In addition, there is generally greater tax audit activity and particular attention paid to major taxpayers, where the Italian tax authorities are devoting greater resources in intelligence and monitoring activities on multinationals (see also, Italian Tax-Police Command, <i>Results of the first eleven months of the 2002 and future strategies</i>, Press release of December 19, 2002). According to Article 42 of the Financial Law of 2000 (n. 388 of 23 December 2000), beginning from 2002, taxpayers with a business volume or turnover not lower than about €26 million are expected to be systematically audited at least once every two years, while the taxpayers with a business volume not lower than €5.2 million will be audited at least once every four years. These audits may be complete and extensive or just focus on specific items.</p> <p>This approach of the Italian tax authorities has also been confirmed by the Circular Letter n. 3/E of 29 January 2004 that, in order to provide the priorities to be achieved by the revenue officers in the 2004, stressed a special focus on tax havens, reorganizations, rulings, and fiscal units. For these goals, the Italian tax authorities will increase the exchange of information with the foreign tax authorities.</p>
<b>APA Opportunity</b>	<p>The Italian government introduced a new unilateral ruling system mainly relating to transfer pricing, dividends, and royalties. The law has been enacted with the "Provvedimento del Direttore dell'Agenzia delle entrate," dated 23 July 2004. This document provides a number of practical guidelines to apply and conduct the ruling program. Previously, APAs were not permitted in Italy. Instead, taxpayers obtained rulings from Italian tax authorities when the interpretation of the tax law was unclear.</p>

# Japan

<b>Taxing Authority and Tax Law</b>	National Tax Agency (NTA). Special Taxation Measures Law (STML) Article 66-4 (Special Provisions for Taxation of Transactions with Foreign Related Persons), and Article 68-88 (Special Taxation Measures of Transactions between Consolidated Corporations and Foreign Related Persons).
<b>Relevant Regulations and Rulings</b>	STML-Enforcement Order 39-12, STML Enforcement Regulations Art. 22-10, STML-Circular 66-4-(1)-1 to 66-4-(8)-2, Commissioner's Directive on the Establishment of Instructions for the Administration of Transfer Pricing Matters (Administrative Guidelines), Commissioner's Directive on the Establishment of Instructions for the Administration of Transfer Pricing Matters for Consolidated Corporations (Administrative Guidelines for Consolidated Corporations), Commissioner's Directive on Mutual Agreement Procedures.
<b>OECD Guidelines Treatment</b>	The NTA refers to the OECD Guidelines for direction and the Japanese transfer pricing Administrative Guidelines contain the following: "In light of the importance of a common understanding regarding transfer pricing by each country's tax authorities for the resolution of international double taxation that arises due to taxation pursuant to the transfer pricing tax system, appropriate administration shall be carried out by referring to the OECD Transfer Pricing Guidelines to the extent necessary in examinations and in reviews of requests for advance confirmations." (Para. 1-2(3)). However, tax examiners often point out that Japan is not bound by the OECD Guidelines and that they will follow their interpretation of Japanese tax laws and regulations even where there may be a disagreement over whether their approach is consistent with the OECD Guidelines. On the other hand, the most recent US-Japan tax treaty explanation refers extensively to the OECD Guidelines, and suggests greater harmonization in the future.
<b>Priorities/Pricing Methods</b>	In general, transaction-based methods are preferred over profit-based methods. The tax authorities prescribe CUP, Resale Price, Cost Plus, and other methods (Profit Split and Transactional Net Margin Method). The TNMM is available for fiscal years starting on or after 1 April 2004. When these methods are not applicable, similar (unspecified) methods may be used.
<b>Transfer Pricing Penalties</b>	<p>Transfer pricing assessments are subject to the same penalties that apply to general corporate tax assessments. There are two types of penalties: underpayment penalty tax and delinquency tax (interest). Underpayment penalty tax is computed as 10% of the additional tax due up to 500,000 Yen, or the amount of the original reported tax (whichever is greater), and 15% of the additional tax beyond this amount.</p> <p>Delinquency tax (interest) accrues in two parts. First, there is delinquency tax which accrues for one year following the due date of the original tax return at a rate of 4% per year, plus the official discount rate as of 30 November of the prior fiscal year. The second part of the delinquency tax accrues from the date following the date of the assessment notice until the date the additional tax is paid. For the first three months following the date of the assessment notice (including the one-month period from the date of the notice until the payment deadline and two months following the deadline) the rate of delinquency tax is 4% per year plus the official discount rate as of 30 November of the prior fiscal year. For any delinquency tax accruing after this period, the rate increases to 14.6% per year.</p> <p>There is no separate penalty for failure to produce transfer pricing documentation. Note, however, that the government may announce documentation requirements within the near future, and there may be new penalties for failure to produce documentation.</p>
<b>Penalty Relief</b>	There are no specific provisions for reductions in penalties.
<b>Documentation Requirements</b>	There are currently no statutory documentation requirements. However, the government may announce documentation requirements within the near future. The documentation that will be examined during a transfer pricing audit is disclosed in the Administrative Guidelines. Failure to provide such documentation in a timely manner upon request can trigger the tax examiner's authority to collect transactional data from comparable firms to use as a "secret comparable" for the taxpayer. That is, the comparables are not disclosed to the taxpayer because the transactional data of the companies are confidential.

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# Japan (continued)

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<b>Documentation Deadlines</b>	The taxpayer is required to provide the tax authority with documentation (i.e., information and records) relevant to the establishment of the arm's length price in a timely manner upon request. There is no exact deadline specified. If new documentation requirements are announced in the near future (as some expect), there may be new deadlines for creating documentation and for submitting documentation upon request.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The statute of limitations on transfer pricing assessments is six years.
<b>Return Disclosures/Related Party Disclosures</b>	The taxpayer must file Schedule 17-3, <i>Detailed Statement Concerning Foreign Affiliated Persons and Related Party Transactions</i> . For fiscal years beginning on or after 1 April 2003, the taxpayer must state its transfer pricing methods used for intercompany transactions.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	Audit risk is generally medium-high for large taxpayers with significant related party transactions. The risk is increased for taxpayers who meet any of the following criteria: <ul style="list-style-type: none"><li>■ In industries targeted by the NTA</li><li>■ With low profits or losses in Japan</li><li>■ With fluctuating profitability</li><li>■ Who have significant transactions with tax havens</li><li>■ In industries with high margins. The NTA is likely to seek to apply comparables, including secret comparables available only to the NTA</li></ul>
<b>APA Opportunity</b>	Unilateral and bilateral APAs are available, though the NTA prefers bilateral. APA guidelines are included in the Administrative Guidelines. While the NTA generally prefers transactional methods over profit-based methods, it has recently shown a willingness to accept more profit-based methods.

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# Kazakhstan

<b>Taxing Authority and Tax Law</b>	The Tax Committee of the Ministry of Finance of the Republic of Kazakhstan (TCMF) and the Customs Control Committee of the Ministry of Finance (CCC). Law No. 136-II, <i>On State Control of the Application of Transfer Prices</i> , of 5 January 2001 (Law). Code of the Republic of Kazakhstan on Taxes and Other Obligatory Payments to the Budget (Tax Code) No. 209-II of June 12, 2001.
<b>Relevant Regulations and Rulings</b>	The TCMF and the CCC issued a joint order approving the instruction <i>On Implementing State Control of Application of Transfer Prices in International Business Transactions</i> , and the list of goods and transactions that are subject to monitoring (effective 8 September 2003). Also of importance is the government of Kazakhstan Resolution No. 788, <i>On Approval of the List of Official Sources of Information on Market Prices for Goods Subject to Transfer Pricing Monitoring</i> (effective 9 June 2001).
<b>OECD Guidelines Treatment</b>	Although the currently effective transfer pricing law has some common features with the OECD Transfer Pricing Guidelines, the principal difference is that the Kazakhstan transfer pricing legislation targets all cross-border transactions as opposed to transactions between related parties (as per OECD Guidelines). Furthermore, it should be noted that OECD Guidelines are not binding for Kazakhstan.
<b>Priorities/Pricing Methods</b>	The law allows for three pricing methods: CUP, Cost Plus, and Resale Price.
<b>Transfer Pricing Penalties</b>	Interest for delayed payment is 2.5 times the National Bank refinancing rate on the day of payment of the additionally assessed tax. The fine for understatement of tax payment is up to 50% of the additionally accrued tax amount.
<b>Penalty Relief</b>	Not applicable.
<b>Documentation Requirements</b>	There are no specific documentation requirements. However, while conducting a transfer pricing audit, the TCMF may request the following data: <ul style="list-style-type: none"><li>■ Contracts</li><li>■ Payment documents for settlement with third parties</li><li>■ Foundation documents for the parties</li><li>■ Invoices for intermediary and brokerage services</li><li>■ Accounting documents</li><li>■ Bills for lading</li><li>■ Other related documents</li></ul>
<b>Documentation Deadlines</b>	<p>There is no established deadline for preparing documentation. However, it is advisable to have as much documentation as possible on all transactions subject to transfer pricing control prior to commencement of a transfer pricing audit. According to the Tax Code, taxpayers must keep accounting (i.e., all supporting) documentation related to its tax liabilities for a period of five years following the end of the year to which the liabilities relate. Certain subsurface taxpayers (i.e., those that are involved in exploration and/or production of mineral resources) should retain such supporting documentation for the entire period of their subsurface use contract, and for an additional five years after the contract's expiration date.</p> <p>The applicable legislation does not set a deadline for submitting transfer pricing documentation to the tax authorities. However, parties to transactions subject to transfer pricing control may be formally requested to submit relevant supporting documentation to the tax authorities, in which case the formal request should indicate the deadline for submission. The tax authorities may also request supporting documentation upon the transfer pricing audit. In that case, the taxpayer should provide the information as soon as possible. In addition, the taxpayer may appeal against adjustments made by the tax authorities during the transfer pricing audit and present additional documentation within 30 working days after the relevant adjustment notification is received by the taxpayer.</p>

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# Kazakhstan (continued)

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**Statute of Limitations on Transfer Pricing Assessments**

There is no specific statute of limitations on transfer pricing assessments. The general statute of limitations period for tax purposes is five years. The statute of limitations period for the assessment of underpayments of tax, understatements of income, or overstatements of expenses penalties is five years from the date of the relevant violation.

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**Return Disclosures/Related Party Disclosures**

No related party disclosure is required currently on tax declarations, though both Kazakh Accounting Standards and International Financial Reporting Standards require such disclosures in financial statements.

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**Audit Risk/Transfer Pricing Scrutiny**

Transfer pricing audits can take place twice a year. The risk of transfer pricing issues being scrutinized during an audit is high. The export of goods from Kazakhstan receives greater scrutiny. The review method, use, and interpretation of information on market prices applied by the tax authorities often result in transfer pricing adjustments that are contested by taxpayers in many cases.

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**APA Opportunity**

There is no formal system of reaching binding APAs. However, the parties to transactions subject to transfer pricing control are entitled to submit substantiation of the price applied and relevant supporting documentation to the tax authorities in advance. The authorized bodies are to review the documents submitted and issue an official letter on the fact (or absence thereof) of the deviation of prices applied by parties from market prices within one month.

# Latvia

<b>Taxing Authority and Tax Law</b>	Ministry of Finance of the Republic of Latvia and State Revenue Service (SRS). Law on Corporate Income Tax Article 12.
<b>Relevant Regulations and Rulings</b>	Cabinet Regulation on the Law on Corporate Income Tax Sections 83 – 93.
<b>OECD Guidelines Treatment</b>	Cabinet Regulations include a reference to the OECD Guidelines stating that they may be applied for determining market prices. However, provisions of the OECD Guidelines are not legally binding for taxpayers in Latvia.
<b>Priorities/Pricing Methods</b>	The market price must be determined by one of the traditional methods mentioned in the OECD Guidelines (CUP, Resale Price Method, or Cost Plus Method). If the traditional methods are not applicable or are giving unreliable results, the Profit Split Method or the TNMM may be applied. SRS prefers the CUP method over other traditional methods. For more reliable results, these methods can be combined.
<b>Transfer Pricing Penalties</b>	The general tax penalties apply to transfer pricing adjustments, as there are no special penalties related to non-observance of transfer pricing rules. General penalties vary from 15% up to 150% of the additional tax. The rate depends on the amount of the additional tax payable compared to the declared amount of tax and whether there have been prior similar violations. Furthermore, interest for late payments is due on additional tax assessments. As no specific documentation requirements exist, there are no specific penalties for not having transfer pricing documentation.
<b>Penalty Relief</b>	Penalties can be reduced if a taxpayer agrees to the additional tax calculated, pays interest for the late payments until the day of SRS audit, and within 30 days after SRS audit judgment pays additional tax calculated and reduced penalties. Having transfer pricing documentation may help to avoid an adjustment of taxable income and penalties.
<b>Documentation Requirements</b>	No specific requirements exist.
<b>Documentation Deadlines</b>	No specific requirements exist. However, during a tax audit the SRS can request evidence proving the application of arm's length prices.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The SRS is entitled to levy additional taxes during the period of three years starting from the closing of the accounting year.
<b>Return Disclosures/Related Party Disclosures</b>	No specific requirements exist. However, an annex to the annual corporate income tax return disclosing related party transactions has to be submitted together with the return to the SRS. In the annex, taxpayers are also required to provide information on transfer pricing methods used by them.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	There have not been specific transfer pricing audits. However, the transfer pricing issues are usually scrutinized during the general tax audits.
<b>APA Opportunity</b>	APAs are not available.

# Lithuania

<b>Taxing Authority and Tax Law</b>	Ministry of Finance of the Republic of Lithuania and the State Tax Inspectorate. The arm's length principle is established in the Corporate Income Tax of Lithuania and its implementation rules introduced in 2004.
<b>Relevant Regulations and Rulings</b>	Article 40 of the Law on the Corporate Income Tax of Lithuania. Order of the Minister of Finance No 1K-123 as of 9 April 2004 on transfer pricing evaluation and documentation rules. Order of the State Tax Inspectorate No VA-27 as of 22 March 2005, on the associated party disclosure annex to the annual corporate income tax return.
<b>OECD Guidelines Treatment</b>	The use of the OECD Guidelines is explicitly advocated in the regulations and rulings applicable in Lithuania.
<b>Priorities/Pricing Methods</b>	Transaction-based methods are preferred over profit-based methods. Taxpayers are encouraged to use profit-based methods only if transaction-based methods are not sufficient. Taxpayers are not required to use more than one method; however a combination of methods may be used in all cases providing reasons for the decision to apply any particular method.
<b>Transfer Pricing Penalties</b>	<p>There are no specific transfer pricing penalties.</p> <p>General tax penalties applicable in the case of the taxable income adjustments by the tax authorities are equal to 10% to 50% of the tax additionally calculated. In addition, the penalty interest will apply.</p> <p>There are no special penalties related to the non-provision of the transfer pricing documentation at the request of the tax authorities.</p>
<b>Penalty Relief</b>	Not applicable.
<b>Documentation Requirements</b>	<p>The transfer pricing documentation requirements are binding for resident and non-resident legal entities registered as corporate income tax payers in Lithuania, whose revenues in Lithuania in the year before the transactions were conducted exceeded €2.9 million.</p> <p>In addition, transfer pricing documentation requirements are applicable to the credit institutions such as banks and entities providing financial services (e.g., insurance companies), irrespective of their revenue size.</p> <p>The transfer pricing documentation has to contain:</p> <ul style="list-style-type: none"><li>■ Details of transaction</li><li>■ Terms and conditions of the transaction</li><li>■ Participants in the transaction, including their legal and organizational structure</li><li>■ Functions performed, property used or contributed, and the risks assumed by the parties</li><li>■ Data and methods considered, and the analysis performed to determine the transfer prices</li><li>■ All relevant assumptions, strategies, and policies that influenced the determination of the method applied</li></ul> <p>In general, the OECD Transfer Pricing Guidelines' principles are to be followed.</p>

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# Lithuania (continued)

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<b>Documentation Deadlines</b>	There are no specific requirements or schedules for the preparation of transfer pricing documentation. Taxpayers must submit the transfer pricing documentation within 30 days after the respective notice by the tax authorities.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The transfer pricing assessments may occur during the five years preceding the year in which the assessment takes place.
<b>Return Disclosures/ Related Party Disclosures</b>	<p>An associated party disclosure annex to the annual corporate income tax return has to be submitted within the nine months of each tax period (in a calendar year), in case the associated party transactions of the taxpayer exceed in annual value approximately €87,000.</p> <p>In the annex, taxpayers are required to inform the tax authorities whether any prescribed transfer pricing methods have been used by them in the transactions disclosed.</p>
<b>Audit Risk/Transfer Pricing Scrutiny</b>	Taxpayers in Lithuania run a high risk that transfer prices will be scrutinized during a tax audit.
<b>APA Opportunity</b>	Currently, the Lithuanian tax laws do not provide for an opportunity to conclude APAs.

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# Malaysia

<b>Taxing Authority and Tax Law</b>	Inland Revenue Board (IRB). General Anti-Avoidance Provision (Section 140 of the Malaysian Income Tax Act, 1967: <i>Power to disregard certain transactions if not deemed arm's length</i> ), and Transactions by Non-Residents (Section 141 of the Malaysian Income Act, 1967: <i>Powers regarding certain transactions by non-residents</i> ).
<b>Relevant Regulations and Rulings</b>	The IRB released the Malaysian Transfer Pricing Guidelines on 2 July 2003 which specify documentation requirements.
<b>OECD Guidelines Treatment</b>	The Malaysian Transfer Pricing Guidelines are largely based on the governing standard for transfer pricing, which is the arm's length principle as established in the OECD Guidelines. The IRB respects the general principles of the OECD Guidelines.
<b>Priorities/Pricing Methods</b>	The IRB accepts CUP, Resale Price, Cost Plus, Profit Split, and TNMM. However, the Malaysian Transfer Pricing Guidelines state that the traditional methods are preferred over the profit methods, and advise that the profit methods only be used when the traditional methods cannot be reliably applied or cannot be applied at all.
<b>Transfer Pricing Penalties</b>	There are no specific penalties for transfer pricing. However, the existing legislation and penalty structure under the Malaysian Income Tax Act, 1967 are applied. Penalties for transfer pricing adjustments can range from 100% to 300% of the undercharged tax. There are no transfer pricing specific documentation penalties.
<b>Penalty Relief</b>	Not applicable.
<b>Documentation Requirements</b>	<p>Documents pertaining to transfer pricing need not be submitted with the tax return form, but should be made available to the IRB upon request. All relevant documentation must be in, or translated into, Bahasa Malaysia (the national language) or English. There is no disclosure required on a tax return to indicate that transfer pricing documentation has been prepared.</p> <p>The IRB has set out a list of information and documentation to be prepared for transfer pricing purposes. This list is neither intended to be exhaustive nor meant to apply to all types of businesses. Instead, taxpayers are advised to maintain information and documentation that are applicable to their circumstances. The list includes:</p> <ul style="list-style-type: none"><li>■ Company details<ul style="list-style-type: none"><li><input type="checkbox"/> Ownership structure showing linkages between all entities within the Multinational Enterprise (MNE)</li><li><input type="checkbox"/> Company organization chart</li><li><input type="checkbox"/> Operational aspects of the business including details of functions performed</li></ul></li><li>■ Transaction details<ul style="list-style-type: none"><li><input type="checkbox"/> A summary of transactions with other entities in the same MNE, indicating the name and address of each entity in the MNE with whom international transactions have been entered into, and the type of transactions, e.g., purchase of raw material or fixed assets, sale of finished goods, borrowing of money</li><li><input type="checkbox"/> A summary of transactions similar to the above that are conducted with independent parties, or information derived from independent enterprises engaged in similar transactions or businesses</li><li><input type="checkbox"/> Economic conditions during the time of the transactions</li><li><input type="checkbox"/> Terms of the transactions, including where applicable contractual agreements with overseas associated parties with regard to technical assistance fees, management fees, marketing fees, recruitment fees, or other services provided, royalties payable, purchase or rental of equipment or other assets, handling charges, loans, allocation of overhead expenses, or any specific expenses (e.g., promotional or advertising) borne by the foreign entity, or other forms of payment to overseas associates</li><li><input type="checkbox"/> Pricing policy over the past seven-year period</li><li><input type="checkbox"/> Breakdown of product manufacturing costs</li><li><input type="checkbox"/> Product price list</li></ul></li></ul>

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# Malaysia (continued)

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## Documentation Requirements (continued)

- Determination of arm's length price
  - The pricing method adopted, showing how the arm's length price is derived, and indicating why that method is chosen over other methods
  - Functional analysis taking into consideration all risks assumed and assets employed
  - If a comparability analysis results in a range of arm's length outcomes, then to furnish documents relating to all of the outcomes, and the reasons for choosing that particular arm's length price from the range of outcomes must be given

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## Documentation Deadlines

There is no documentation deadline. However, documentation should be prepared contemporaneously. As tax returns are due for filing to the IRB within seven months after the close of a company's financial year end, it is advisable that transfer pricing documentation is prepared before the submission date of the return.

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## Statute of Limitations on Transfer Pricing Assessments

There is a six-year statute of limitations for tax adjustments, and documentation must be kept for seven years. There is no statute of limitations in instances of fraud, willful default, or negligence.

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## Return Disclosures/Related Party Disclosures

Disclosure of arm's length values is required in the tax return for the following transactions:

- Sales to related companies
- Purchases from related companies
- Other payments to related companies
- Lending to and borrowing from related companies
- Receipts from related companies

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## Audit Risk/Transfer Pricing Scrutiny

The risk of transfer pricing scrutiny during an audit is high. Tax audits are carried out under the Self-Assessment Regime. Every company is expected to be subject to a desk or field audit at least once every five years. With the release of the Malaysian Transfer Pricing Guidelines, greater scrutiny on transfer pricing has been observed in these field audits. Our experience is that every multinational corporation that was audited over the last 12 months was scrutinized on its transfer pricing policy. Since the beginning of 2005, the number of transfer pricing audits and investigation activity by the IRB has increased significantly.

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## APA Opportunity

APAs are available upon request. However, at this stage, there are no formal guidelines on APAs, and the IRB has indicated that it will consider any terms and conditions which are the norm observed in the transfer pricing regimes in other jurisdictions. To date, we are not aware if any APA has been concluded.

# Mexico

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<b>Taxing Authority and Tax Law</b>	<p>The Administración Central de Auditoría de Precios de Transferencia of the Mexican Tax Administration Service (SAT) is in charge of enforcing transfer pricing rules. This office is in charge of audits and the APA Program. The main legal provisions dealing with transfer pricing are Articles 86-XII, XIII, and XV, 215, 216, 216-BIS and 217 of the Mexican Income Act as well as Article 34-A of the Federal Fiscal Code. Article 216-BIS of the Income Tax Act provides special rules for maquiladoras.</p>
<b>Relevant Regulations and Rulings</b>	<ul style="list-style-type: none"><li>■ Tax regulations are issued by Mexico's President</li><li>■ The SAT publishes administrative rules on a regular basis</li><li>■ Few rules and regulations deal with transfer pricing issues</li></ul>
<b>OECD Guidelines Treatment</b>	<p>The OECD Guidelines act as an auxiliary in the interpretation of the rules as long as it does not contradict the Mexican Income Act or international treaties.</p>
<b>Priorities/Pricing Methods</b>	<p>The transfer pricing methods in Mexico are the CUP, Resale Price, Cost Plus, Profit Split, Residual Profit Split, and TNMM. Effective 2006, there is a best method rule and a hierarchy of methods. CUP and other traditional transactional methods are preferred to profit-based methods. No alternative methods are acceptable.</p>
<b>Transfer Pricing Penalties</b>	<p>No specific penalties are applied when taxpayers do not prepare and/or have contemporaneous transfer pricing documentation. However, there are information return-related penalties. A penalty of US\$4,100 to US\$8,037 can be assessed if the information return on related party transactions is not filed, or is incomplete or incorrect.</p> <p>If a transfer pricing adjustment reduces a net operating loss (NOL) the penalty ranges from 30% to 40% of the difference between the real NOL and the NOL in the return.</p> <p>There are no penalties for a valuation misstatement.</p> <p>There are no penalties in case of a self-correction before an audit.</p> <p>Waivers and abatements are possible under limited circumstances (see below).</p> <p>The Mexican Tax Administration Service has taken the position that failure to comply with transfer pricing documentation requirements results in the non-deductibility of payments to non-resident related parties.</p>
<b>Penalty Relief</b>	<p>According to Art. 76 of the Federal Fiscal Code, if the taxpayer prepares and maintains annual transfer pricing documentation, a penalty relief between 27.5% and 37.5% of the tax omitted applies.</p> <p>Waivers and abatements are possible under limited circumstances such as financial hardship (during 2006).</p> <p>Penalties may be reduced after the audit has started by self-correction procedures.</p>

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# Mexico (continued)

<b>Documentation Requirements</b>	<p>Documentation requirements include the name, address, and tax residency of the non-resident related persons with whom transactions are carried out, as well as evidence of direct and indirect participation between related parties. It is necessary to include in the documentation information on the functions, activities, assets used, and risks assumed by the taxpayer by transaction. It is also necessary to include information and documentation on comparable transactions or companies, by type of transaction.</p> <p>Taxpayers are required to identify non-resident related party transactions clearly on their accounting records.</p> <p>Documentation must be readily available by due date of the tax return.</p> <p>The Multiple Annual Tax Return includes an appendix for the disclosure of information related to intercompany transactions with non-resident related parties. Tax returns require the following information by type of transaction and by related party:</p> <ul style="list-style-type: none"><li>■ Names, country, and tax identification of affiliates</li><li>■ Type of transactions and the corresponding amounts</li><li>■ Transfer pricing method</li><li>■ Gross or operating margin earned on each transaction (only applicable under certain types of transactions)</li></ul>
<b>Documentation Deadlines</b>	<p>A transfer pricing study must be in place at the time the company files its annual income tax return (by the end of March of the following year) and must be kept along with the company's accounting records for five years.</p> <p>The external auditor of each Mexican taxpayer is required to disclose the company's compliance with all tax obligations, including those related to transfer pricing. This disclosure is made through the Annual Tax Report (Dictamen Fiscal) that must be filed by certain companies by June 30 every year.</p> <p>In order to issue a signed Dictamen Fiscal, the auditor must verify, among other things, that the company's transfer pricing documentation is in place for the fiscal year under analysis and that it complies with the requirements stated in the Mexican Law. Auditors may be granted an extension of one or two months to issue the Annual Tax Report.</p> <p>The information return on related party transactions must be filed electronically along with the annual income tax return.</p> <p>Transfer pricing documentation must be readily available as part of the accounting records by 31 March.</p> <p>SAT has taken the position that failure to comply with the documentation requirements results in non-deductibility of payments to non-resident related parties.</p>
<b>Statute of Limitations on Transfer Pricing Assessments</b>	<p>The statute of limitation on assessment in Mexico is five years. The term is affected by amended returns with respect to items changed, and it is suspended by audit. The SAT has two years to complete a transfer pricing audit.</p>
<b>Return Disclosures/Related Party Disclosures</b>	<p>Mexican taxpayers must submit a transfer pricing return to the SAT (Exhibit 9) which is due contemporaneously with the submission of the annual tax return. Information to be disclosed includes non-resident related parties' tax address and tax identification number, transactions classification, amounts, method to be applied for analysis, and profit/loss obtained. The information return discussed above must be filed by 31 March of each year.</p>
<b>Audit Risk/Transfer Pricing Scrutiny</b>	<p>Limited risk structures and highly leveraged structures are two areas of significant audit risk.</p>
<b>APA Opportunity</b>	<p>Unilateral and bilateral APAs are available under Article 34-A of the Federal Fiscal Code and Mexico's tax treaties. Unilateral APAs can cover the fiscal year of the application, the three subsequent fiscal years, and a one-year rollback.</p>

# Netherlands

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## Taxing Authority and Tax Law

Tax authority Articles 3.8 and 3.25 of the Dutch Income Tax Act 2001. Articles 8 and 8b of the Dutch Corporate Income Tax Act 1969. Effective 1 January 2002, Article 8b that codifies the arm's length principle and introduces transfer pricing documentation requirements in the Netherlands came into force.

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## Relevant Regulations and Rulings

Besides the articles in Dutch tax law as mentioned above, the Dutch Under-Minister of Finance issued several decrees in August 2004, which bring up to date existing decrees published in 2001, with adjustments and improvements of the rules for obtaining advance certainty. These 2004 decrees provide more clarity regarding how the fiscal rules within the APA/Advance Tax Ruling (ATR) practice should function. Furthermore, one decree clarifies how the Dutch tax authorities will treat certain issues regarding the application of the arm's length principle. The decrees provide the formal position of the Dutch tax authorities, and do not legally bind the taxpayer.

The eight decrees published are:

- APA decree IFZ2004/124M
- ATR decree IFZ2004/125M
- Decree regarding financial service activities IFZ2004/126M
- Questions and answers on the decree regarding service entities and grandfather regime ruling policy IFZ2004/127M
- Decree on advance certainty and good faith versus treaty partners DGB2004/1337M
- Decree on APAs, ATRs, financial services entities, interposed holdings, contact point potential foreign investors, organization, and competency rules DGB2004/1338M
- Implementation decree regarding the Coordination Group Transfer Pricing DGB2004/1339M
- Adjustments to the transfer pricing decree of 30 March 2001, application of the arm's length principle, and the OECD Guidelines, IFZ2004/680M

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## OECD Guidelines Treatment

The Dutch tax authorities in general follow the OECD Guidelines. Further guidance regarding the interpretation and application of the arm's length principle is provided by the Dutch transfer pricing decrees (as published by the Under-Minister of Finance in the decree of 30 March 2001, updated with the decree of 21 August 2004). According to these decrees, the OECD Guidelines leave room for interpretation, or require clarification on several issues. The goal of these decrees is to provide insight into the position of the Dutch tax authorities regarding these issues. The transfer pricing decree of August 2004 is an excellent source for transfer pricing guidance. It has specific guidance on intragroup services and shareholder activities, support services, contract research, cost contribution arrangements, arm's length price determination when the value at the time of the transaction is uncertain, and other topics.

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## Priorities/Pricing Methods

There is no "best method" rule. Taxpayers are in principle free to choose any OECD transfer pricing method as long as the method chosen results in arm's length pricing for the transaction. Taxpayers are not obligated to test all the methods, though they must substantiate the method chosen. The Dutch tax authorities prefer traditional transaction methods over transactional profit methods.

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## Transfer Pricing Penalties

The lack of transfer pricing documentation will shift the burden of proof regarding the arm's length nature of the transfer prices used to the taxpayer.

During the parliamentary discussions regarding the introduction of the arm's length principle and transfer pricing documentation requirements (i.e., Article 8b) into the Dutch Corporate Income Tax Act, a question was raised regarding the Dutch policy in connection with the levy of administrative penalties in case of a transfer price adjustment. The Dutch Under-Minister of Finance declared that in case of transfer price adjustments the levy of an administrative penalty under the circumstance of an incorrect income tax return should be limited to cases in which it is plausible that the agreed transfer price is not regarded as arm's length as a result of a pure intentional act. Therefore, an administrative penalty will not be imposed even in the case of gross negligence or conditional intentional act according to this policy announcement.

In case of a pure intentional act as set forth above, the tax may be increased with a maximum penalty of 100% of the (additional) tax due, plus interest.

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# Netherlands (continued)

<b>Penalty Relief</b>	<p>It is unlikely that there will be transfer pricing-related tax penalties if there is proper transfer pricing documentation available in the administration of the taxpayer, and that the documentation at hand adequately substantiates the arm's length nature of the intercompany transactions undertaken by the taxpayer.</p>
<b>Documentation Requirements</b>	<p>Taxpayers are obliged to prepare documentation that describes how the transfer prices have been established, which must be included in the accounting records. Furthermore, the documentation needs to include sufficient information that would enable the Dutch tax authorities to evaluate the arm's length nature of the transfer prices applied between associated enterprises. The parliamentary explanations to Article 8b do not describe an exhaustive list of information that should be documented.</p> <p>The transfer pricing documentation could consist of the following elements:</p> <ul style="list-style-type: none"><li>■ Information about the associated enterprises involved</li><li>■ Information on the intercompany transactions between these associated enterprises</li><li>■ A comparability analysis, describing the five comparability factors as set forth in Chapter I of the OECD Guidelines</li><li>■ A substantiation of the choice of the transfer pricing method applied</li><li>■ A substantiation of the transfer price charged</li><li>■ Other documents, such as management accounts, budgets, and minutes of shareholder and board meetings</li></ul>
<b>Documentation Deadlines</b>	<p>Documentation is generally expected to be available at the time when the taxpayer enters into a transaction. This has been communicated by the Dutch Ministry of Finance. However, if the transfer pricing documentation is not available upon request of the Dutch tax authorities, taxpayers are granted a minimum time frame of four weeks to prepare the documentation. This period may be extended to a maximum of three months depending on the complexity of the intercompany transactions in which the taxpayer is engaged.</p>
<b>Statute of Limitations on Transfer Pricing Assessments</b>	<p>The statute of limitations on transfer pricing assessments is the same as the statute of limitations on tax assessments (as covered by the General Tax Act). The statute of limitations for making an assessment is three years from the end of the fiscal year. If the tax inspector has granted an extension for filing the tax return, the assessment period is extended with the period of extension. An additional assessment must be made within a period of five years, starting from the end of the fiscal year (this period will also be extended with the possible period of filing extension). With respect to foreign-source income, the period for making an additional assessment is twelve years. For the tax authorities to be able to impose such an additional assessment there needs to be a new fact which the Dutch tax authorities did not know or could reasonably not have known upon the moment of imposing the initial tax assessment (unless the taxpayer did not act in good faith).</p>
<b>Return Disclosures/ Related Party Disclosures</b>	<p>Dutch corporate income taxpayers are required to confirm (by checking a separate box) whether they have been involved in related party transactions during the fiscal year in the corporate income tax return. The related party transactions need to be specified in a separate appendix to the Dutch corporate income tax return.</p>
<b>Audit Risk/Transfer Pricing Scrutiny</b>	<p>The risk of transfer pricing issues being scrutinized during a tax authority audit is high. Transfer pricing is a key issue in any tax audit, and many companies are subject to separate transfer pricing audits. A functional analysis is incorporated into many of these audits and forms the basis of transfer pricing risk analysis of taxpayers. The tax authorities have, among others, shown interest in performing head office audits (which include intra-group services and other activities performed by the head office), and characterizations in terms of alignment of functions and risks. Both head office and intangibles transactions are being evaluated, as well as business reorganizations. The Dutch tax authorities have also focused, as a natural result of the risk analysis, on transactions with entities located in low effective tax rate countries.</p>

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# Netherlands (continued)

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## **APA Opportunity**

Unilateral, bilateral, and multilateral APAs with rollback features are available. The APA process currently operates well in the Netherlands, despite earlier criticism regarding the uncertainty of obtaining APAs for financial service entities (see below). Pre-filing meetings with taxpayers to discuss the case before a formal APA request is made, support for small taxpayer APAs, and case management plans have been introduced, and processing time has been reduced.

Financial services entities consist of both financing (mere receipt and payment of intercompany interest) and licensing (mere receipt and payment of intercompany royalties) companies. For license companies, the first APA under the new regime was granted by the Dutch tax authorities in 2005. For finance companies, the APA process has been functioning successfully for a number of years already in 2005. A number of substantial improvements for Dutch financial services entities were introduced in 2005, which mainly relate to a reduction in the applicable transfer pricing documentation requirements.

# New Zealand

<b>Taxing Authority and Tax Law</b>	The taxing authority in New Zealand is the Inland Revenue Department (IRD). Sections FB 2, GC 1, and GD 13 of the Income Tax Act 2004 and New Zealand's Double Tax Agreements are the relevant tax laws in New Zealand.
<b>Relevant Regulations and Rulings</b>	The final version of Transfer Pricing Guidelines issued in October 2000.
<b>OECD Guidelines Treatment</b>	The IRD fully endorses the positions set out in chapters 1 to 8 of the OECD Guidelines and proposes to follow those positions in administering New Zealand's transfer pricing rules. Consequently, New Zealand's Guidelines should be read as supplementing the OECD Guidelines, rather than superseding them. This applies for the domestic application of the New Zealand's rules, as well as in relation to issues raised under New Zealand's double tax agreements.
<b>Priorities/Pricing Methods</b>	The IRD accepts the most reliable method chosen from CUP, Resale Price, Cost Plus, Profit Split, and CPM/TNMM.
<b>Transfer Pricing Penalties</b>	Penalties are imposed under sections 141A-F of the Tax Administration Act 1994: 20% penalty for not taking reasonable care, 20% penalty for an unacceptable tax position, 20% penalty for gross carelessness, 100% penalty for an abusive tax position, and 150% penalty for evasive or similar act.
<b>Penalty Relief</b>	Shortfall penalties may be reduced upon voluntary disclosure to the Commissioner of the details of the shortfall. If the disclosure occurs before notification of an investigation, the penalty may be reduced by 75%. If disclosure occurs after notification of an investigation, but before the investigation commences, the penalty may be reduced by 40%. Shortfall penalties may be reduced by a further 50% if a taxpayer has a past record of "good behavior."
<b>Documentation Requirements</b>	There are no explicit requirements in New Zealand's transfer pricing legislation (Section GD 13 of the Income Tax Act 2004) for any particular category of information to be included in transfer pricing documentation. Section GD 13 requires taxpayers to select and apply an appropriate transfer pricing method for tax return purposes. The New Zealand Transfer Pricing Guidelines indicate that a taxpayer's main purpose in preparing and maintaining documentation should be to place the taxpayer in the position where they can readily demonstrate to the IRD that a transfer pricing method has been used to determine whether the taxpayer's transfer prices are consistent with the arm's length principle in light of the facts and circumstances.
<b>Documentation Deadlines</b>	There is no express legislative requirement for a taxpayer to document its transfer pricing policies and practices in New Zealand. However, the New Zealand Transfer Pricing Guidelines indicate that taxpayers that prepare and maintain transfer pricing documentation are more likely to ensure the burden of proof (that prices are not arm's length) remains with the Commissioner.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The Commissioner's power to issue amended assessments is subject to a four-year time limit. A taxpayer has the ability to extend the applicable time bar by up to an additional six months by signing a waiver, which generally arises when a dispute is not resolved, and more time would allow completion of the disputes process by mutual agreement of both parties, or where another case before the court is likely to resolve the issue in current dispute.
<b>Return Disclosures/Related Party Disclosures</b>	A company's income tax return requires disclosure of: <ul style="list-style-type: none"><li>■ Payments to non-residents such as dividends, interest, management fees, "know-how" payments, royalties, or contract payments made</li><li>■ Whether the company is controlled or owned by non-residents</li><li>■ Whether the company holds an interest in a controlled foreign company</li></ul>

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# New Zealand (continued)

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## **Audit Risk/Transfer Pricing Scrutiny**

The risk of transfer pricing scrutiny during a tax audit is high. Risk Assessment Review questionnaires relating to transfer pricing and thin capitalization are typically issued to companies during general income tax audits and as part of an IRDs transfer pricing review process. Recently, the IRD has also issued questionnaires in respect of interest and guarantee fees. In addition, there is a separate questionnaire for branches.

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## **APA Opportunity**

Section 91E of the Tax Administration Act 1994 allows a unilateral APA to be issued in the form of a binding ruling. Bilateral or multilateral APAs may be entered into pursuant to New Zealand's Double Tax Agreements under the mutual agreement procedure provisions. The IRD has not established any formal guidelines for APAs, as each case is considered to be different, depending on a taxpayer's specific facts and circumstances. The IRD has suggested pre-application conferences to make the APA application process less time consuming.



# Norway

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## Taxing Authority and Tax Law

The Royal Norwegian Ministry of Finance. The arm's length principle is stated in § 13-1 of the General Taxation Act. This is the main legal authority for intercompany transactions. There is a general obligation for the taxpayer to provide sufficient information and documentation to the tax authorities in the annual tax return according to § 4-3 and § 4-8 of the Tax Administration Act. In the Book Keeping Act § 10 and § 11 there is a general provision for documentation requirements of the transactions to be booked.

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## Relevant Regulations and Rulings

There are no regulations specific to transfer pricing, but Norwegian Supreme Court decisions and letters from the Ministry of Finance support the OECD Transfer Pricing Guidelines. According to Norwegian law, all major intercompany transactions must have written agreements.

While there have not been legal documentation requirements as such, Norwegian taxpayers have for a long time been required to provide extensive information and documentation to the tax authorities on their request.

On 7 November 2006, the Ministry of Finance issued a white paper on documentation rules for intercompany transactions (controlled transactions) subject to taxation in Norway. The closing date for a written response was February 9, 2007. According to the proposal, the documentation rules will in principle apply to permanent establishments and legal entities that own or control (are owned/controlled by) more than 50% of another entity. The proposal on documentation requirements is said to be in line with the OECD Guidelines and the European Union Transfer Pricing Documentation (EU TPD) Code of Conduct. The rules consist of two main requirements for documentation:

- Reporting requirement, (i.e., attachment to the annual tax return)
- Documentation requirement, (i.e., Transfer Pricing Documentation)

The white paper has no information on the effective date of the documentation rules. However, it is expected that the rules will be effective by 1 January 2008.

Currently, the second paragraph of § 13-1 provides that a deviation from an arm's length price may be assumed to be due to the common interests if the related party is a non-resident, but the white paper proposes a change due to EU and European Economic Area (EEA) law (non-discrimination between Norwegian and EU/EEA citizens).

Further, recent administrative rulings and decisions indicate that Norwegian Tax Authorities do not accept conversion to limited risk structures as long as the main functions of the legal entity remain the same or similar. It is believed that a good conversion documentation (defense file) that can support the changes in transfer prices and profits, can reduce tax risk and exposure in case of an audit.

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## OECD Guidelines Treatment

Currently, the OECD Guidelines are applied by tax authorities and taxpayers in Norwegian transfer pricing cases to the extent that the OECD Guidelines cover the case under consideration. The Norwegian Supreme Court, in the 2001 Agip case, stated that the arm's length standard must be interpreted in accordance with the OECD Guidelines. Thus, while Norway has not had any extensive transfer pricing legislation as such, it accepts and applies the transfer pricing methods described by the OECD.

The white paper of November 7, 2006 introduces a new paragraph to the Norwegian General Tax Act § 13-1, whereby the OECD Guidelines are given a stronger and more formal status in Norwegian law for assessments in transfer pricing cases. However, OECD chap. IV (Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes) and chap. V (Documentation) will not be included. It is emphasized that the status of the OECD Guidelines will be limited to that of guidance, and that the OECD Guidelines will not constitute binding rules. The proposals of the white paper have, as of April 2007, not yet been adapted to Norwegian law.

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# Norway (continued)

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## Priorities/Pricing Methods

The OECD pricing methods are accepted by Norwegian tax authorities. The traditional transaction methods (CUP, RPM, and cost plus) are generally preferred to the transactional profit methods, TNMM, and profit split). There seems to be an increasing support of the applicability of the profit methods under certain circumstances.

There is no specified priority under Norwegian tax law, but reference is often made to the OECD hierarchy. As stated by the Norwegian Supreme Court, the Norwegian General Tax Act § 13-1 allows for the use of several transfer pricing methods, including methods not described by the OECD Guidelines, provided those methods will provide arm's length results.

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## Transfer Pricing Penalties

Transfer pricing penalties (surtax) range from 15% to 45% based on the tax adjustments. In case of gross negligence, a surtax of up to 60% may be levied. However, the normal surtax rate is 30%. Additionally, a non-deductible interest charge will apply per year.

Currently there is no specific penalty for failure to supply documentation. However, this will only apply if documentation can be provided upon the tax authorities' request.

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## Penalty Relief

A 30% penalty is normal; however, the penalty may be reduced or even eliminated if proper documentation has been prepared in advance.

Disclosure in the tax return will in principle relieve penalties, as the tax authorities will then have an incentive to further scrutinize a transfer pricing case.

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## Documentation Requirements

There are currently no formal documentation requirements. However, the reference to OECD Transfer Pricing Guidelines is strong, and is in fact treated as a documentation requirement.

The white paper issued on 7 November 2006 proposes both reporting and documentation requirements. The reporting requirements will be an attachment to the tax return which is intended to be relatively easy for taxpayers to complete and submit.

The documentation requirements are said to be aligned with the EU TPD Code of Conduct. According to the proposed Norwegian transfer pricing documentation rules, the following information will be required:

- A description of the group, the business of the taxpayer, and the taxpayer's related parties
- An explanation of the types of transactions and the amounts involved
- A functional analysis
- A comparability analysis
- A description of the chosen pricing method, and an explanation of why that method has been selected

Comparability is a key factor in the proposed documentation rules. Norwegian tax authorities recognize that independent comparables should be used as a benchmark for controlled transactions, but the tax authorities have in some rare cases applied controlled transactions conducted by one set of taxpayers as a benchmark for the pricing of other taxpayers' intercompany transactions.

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# Norway (continued)

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**Documentation  
Deadlines**

There are no formal requirements to have transfer pricing documentation prepared. However, contemporaneous documentation will strongly improve the case of the taxpayers, and will shift the burden of proof to the tax authorities. The tax authorities may at any time, according to § 4-8 of the Tax Administration Act, ask the taxpayer to present documentation which supports the contention that the transfer prices are at arm's length. The information the tax authorities request is usually in line with the OECD Transfer Pricing Guidelines. The deadline for submitting such documentation is normally three to four weeks upon request. It is possible to apply for an extended deadline.

According to the white paper, documentation must be provided to Norwegian tax authorities within 45 days of a request for an examination. In addition, the white paper proposes a reporting form to be attached to the annual tax return.

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**Statute of Limitations  
on Transfer Pricing  
Assessments**

The general statute of limitations for tax assessments in Norway states that issues regarding the tax return cannot be raised more than 10 years after the end of the income year.

The deadline is three years for changes of the tax return based on the tax authorities' discretionary assessments, or the interpretation of the tax legislation, when the circumstances which the previous tax return is based on were not wrong or incomplete.

The statute of limitations is two years if any tax adjustment is against the taxpayer, provided the taxpayer has not given wrong or incomplete information to the tax authorities.

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**Return Disclosures/  
Related Party  
Disclosures**

Currently, the Tax Administration Act § 4-4 requires related party disclosures for parent companies owned at least 10% by a Norwegian company. Required information is share of ownership, intercompany transactions with the foreign entity, balance sheet, and a profit and loss statement of the foreign company. Further, there are documentation requirements for controlled foreign corporations (CFCs). All companies are obliged to provide yearly numbers for intercompany loans (interest income and interest costs).

According to the white paper of 7 November 2006, related parties must attach a form to the annual tax return, providing certain information relevant for transfer pricing purposes.

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**Audit Risk/Transfer  
Pricing Scrutiny**

The risk of transfer pricing issues being reviewed under an audit is high. The tax authorities focus strongly on intercompany transactions, and have established an in-house transfer pricing network where the major tax offices, including the Tax Directorate, are members. Norwegian Tax Authorities have launched a transfer pricing audit campaign against Tax Effective Supply Chain Management (TESCM) conversions, and the first cases have been brought to court. Especially targeted by the tax authorities are limited risk distributors or commissionaires with low margins, and those that have recently experienced reduction in margins.

In addition, the transfer pricing of intangible property is expected to be a focus area of the Norwegian tax authorities in the near future.

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**APA Opportunity**

APAs on transfer pricing assessments are currently unavailable. There is one exemption for the transfer pricing on the sale of gas under the Norwegian Petroleum Tax Act.

# Peru

<b>Taxing Authority and Tax Law</b>	Superintendencia Nacional de Administración Tributaria (SUNAT); Article 32, Item 4 and 32-A of the Peruvian Income Tax Law (PITL).
<b>Relevant Regulations and Rulings</b>	<p>Transfer pricing regulations were in force as of 1 January 2001 (Article 32 of PITL). Subsequently, Legislative Decree 945 and Legislative Decree 953 introduced transfer pricing amendments into the PITL and Tax Code, which were in force as of fiscal year 2004. The regulations are detailed in Article 24 and Chapter XIX (Articles 108 to 119) of the Peruvian Income Tax Regulations.</p> <p>The Peruvian Transfer Pricing Rules apply both to cross-border and domestic transactions between related parties. Additionally, all transactions with tax haven residents are considered to be with related parties. Thus, they are subject to Transfer Pricing Regulations. In the case of domestic transactions they must be considered not only for income tax purposes but also for value added tax (VAT) and excise tax.</p>
<b>OECD Guidelines Treatment</b>	The PITL refers to the OECD Guidelines as a source of interpretation for transfer pricing analysis, as long as they do not contradict the PITL.
<b>Priorities/Pricing Methods</b>	<p>Peruvian law implicitly adopts a best-method rule.</p> <p>Under Peruvian legislation the transfer pricing methods identified are CUP, Resale Price, Cost Plus, Profit Split, the Residual Profit Split, and TNMM.</p>
<b>Transfer Pricing Penalties</b>	<p>The non-compliance with the obligation to present a transfer pricing technical study, or documentation and information supporting the calculation of the prices agreed on transactions with related parties, is penalized with a fine of 0.6% of the company's net income. The percentage can not be less than 10% of a Tax Unit (approximately, US\$1,000) nor be more than 25 Tax Units (approximately, US\$27,000).</p> <p>Likewise, non-compliance with the obligation to file the transfer pricing return according to the dates established by the SUNAT, is subject to a fine of 0.6% of the company's net income. The percentage can not be less than 10% of a Tax Unit (approximately, US\$1,000) nor be more than 25 Tax Units (approximately, US\$27,000).</p> <p>The adjustments to annual taxable income resulting from the tax authorities' application of the transfer pricing provisions will be subject to additional penalties which may be up to 50% of the resulting tax deficiency (income misstatement penalties).</p>
<b>Penalty Relief</b>	<p>The penalty reductions that a taxpayer can be subject to for not complying with the obligations of having the transfer pricing technical study and/or the transfer pricing informative return are the following:</p> <ul style="list-style-type: none"><li>■ 80% penalty reduction if the taxpayer rectifies the infraction and pays the corresponding fine within the time established by SUNAT.</li><li>■ 50% penalty reduction if the taxpayer rectifies the infraction but does not pay the corresponding fine within the time established by the SUNAT.</li></ul>
<b>Documentation Requirements</b>	<p>Since 2006, taxpayers are compelled to keep a transfer pricing study if they meet any of the following conditions:</p> <ul style="list-style-type: none"><li>■ The companies' income exceeds six million Nuevos Soles (approximately, US\$1,875,000), and the amount of its intercompany transactions exceeds one million Nuevos Soles (approximately, US\$312,500)</li><li>■ The company has been engaged in transactions from, to, or through a low-tax jurisdiction.</li></ul>
<b>Documentation Deadlines</b>	<p>According to a tax disposition published in 2007, the deadline to comply with the obligation to file the transfer pricing return for the fiscal year 2006 to the tax authority is from 10 -25 July of said year, considering the tax ID of the company.</p> <p>Additionally, as provided in N°167-2006-SUNAT Resolution, the tax authority can require a transfer pricing study from taxpayers once the fiscal year has ended. Nevertheless, as an exception, taxpayers who solely were or will be engaged in transactions with domiciled related parties during fiscal years 2006 and 2007 are not obligated to document their intercompany transactions.</p>

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# Peru (continued)

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**Statute of Limitations on Transfer Pricing Assessments**

According to Articles 87-7 and 43 of the Peruvian Tax Code, the statute of limitations on income tax assessments is four years after 1 January of the year that follows the year the annual income tax return is due (generally, 31 March), and six years for returns that were never filed.

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**Return Disclosures/ Related Party Disclosures**

The main information required by the transfer pricing information return is the amount of the transaction, the transfer pricing method selected, the related party with whom the transaction was made, and the amount of the adjustment, among others.

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**Audit Risk/Transfer Pricing Scrutiny**

The risk of transfer pricing issues being reviewed under a tax audit is moderate. The Peruvian Tax Administration has not yet initiated any tax audits regarding transfer pricing issues. Nevertheless, a transfer pricing technical study has been requested by SUNAT during fiscal audits.

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**APA Opportunity**

APAs are available for cross-border transactions only.

# Portugal

<b>Taxing Authority and Tax Law</b>	Article 58 of the Corporate Income Tax Code tax authority.
<b>Relevant Regulations and Rulings</b>	Administrative Decree 1446-C/2001 of 21 December 2001.
<b>OECD Guidelines Treatment</b>	The Portuguese tax authorities recognize both the transactional and profit-based methods in the OECD Transfer Pricing Guidelines. Theoretically, any method can be acceptable provided that it can be justified and the traditional transactional methods are not applicable.
<b>Priorities/Pricing Methods</b>	<p>The transfer pricing methods described in the Portuguese legislation are based on the OECD Guidelines and thus do not introduce significant changes to the widely accepted methods amongst transfer pricing administrators and practitioners.</p> <p>However, despite the preference for transaction-based over profit-based methods, the Portuguese rules also state (paragraphs 1 and 2 of Article 4 of the transfer pricing Ministerial Order), that the most appropriate method should be applied to a controlled transaction or to a series of transactions in order to determine whether those transactions comply with the arm's length principle.</p> <p>This principle appears to amount to a best method rule. This means that a taxpayer is expected to use the method or methods most suitable to each case, thus explaining not only the reason why a certain method is considered as the most appropriate to test whether the controlled transactions comply with the transfer pricing rules, but also why other methods are rejected.</p>
<b>Transfer Pricing Penalties</b>	Transfer pricing adjustments are subject to the general tax penalty regime, and thus are subject to withholding, late payment, and bad-faith penalty provisions. Penalty for non-compliance with mandatory contemporaneous documentation rules may reach €100,000. A late payment interest penalty is also applicable for transfer pricing adjustments at the rate of 4% per year.
<b>Penalty Relief</b>	The general tax penalty regime applies.
<b>Documentation Requirements</b>	<p>The Portuguese transfer pricing rules require taxpayers with a turnover and other income in excess of €3 million in the prior year to prepare contemporaneous documentation, which should provide evidence of the market parity regarding the terms and conditions agreed, accepted, and practiced in the operations made with related parties, as well as the selection and utilization of the best method(s). The regulations divide the documentation between relevant, supporting documentation and that which is applicable to cost contribution arrangements and intragroup services.</p> <p>The transfer pricing documentation should include:</p> <ul style="list-style-type: none"><li>■ Related party status, according to the definition presented in Article 58 of the Corporate Income Tax Code (a company subject to a substantially favorable tax regime or included in the Portuguese offshore blacklist is considered as being a related party, independent of other related party criteria)</li><li>■ Characterization of the taxpayer's activity and that of the related parties with whom it engages in commercial transactions</li><li>■ Identification of all intercompany transactions</li><li>■ The volumes, terms, and conditions of the transaction(s) for the past three years</li><li>■ The counterparties to the transaction(s)</li><li>■ A functional analysis for each relevant transaction(s)</li><li>■ Technical studies focusing on essential areas of business</li><li>■ A description of the method used and demonstration of how the prices are calculated</li><li>■ Information about comparables</li><li>■ The legal entity organization structure</li><li>■ A description of the activities</li><li>■ All intercompany contractual agreements and unrelated party agreements</li></ul>

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# Portugal (continued)

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<b>Documentation Deadlines</b>	<p>For companies adopting the calendar year for tax purposes, the documentation must be prepared by the last day of June of the year following the one to which it concerns or six months after the corresponding tax year-end for those not using the calendar year.</p> <p>All Portuguese-based companies have a statutory obligation to keep available and in good order their tax documentation file for the relevant year for a 10-year period. It must be kept at the Portuguese establishment or premises, and should be prepared by the last working day of the six-month period following the tax year-end. However, the tax authorities can, and do, ask for some documentation on transactions at any time after they take place.</p>
<b>Statute of Limitations on Transfer Pricing Assessments</b>	<p>Assessment is possible during the four years from the end of the assessment year. The transfer pricing documentation must be kept by the taxpayer for 10 years.</p>
<b>Return Disclosures/ Related Party Disclosures</b>	<p>The main disclosure requirements at this level are contained in annexes A, B, C, and H of the Annual Declaration. The deadline for submission is the same as for the annual documentation. Taxpayers have to declare in the Annual Declaration whether they have complied with the contemporaneous documentation requirements.</p>
<b>Audit Risk/Transfer Pricing Scrutiny</b>	<p>Since January 2004, entities resident in blacklisted offshore countries or territories are deemed related parties for transfer pricing purposes.</p> <p>Additionally, in 2007 the Portuguese tax authorities began carrying out positive adjustments to taxpayers' taxable profits as a result of tax audits. These adjustments are based on a benchmark computed with the financial information of an internal database called MGIT. In respect to the comparables analysis performed by the tax authorities the following should be pointed out:</p> <ul style="list-style-type: none"><li>■ Entities with a recurrent loss situation are excluded from the comparables final sample</li><li>■ Comparables identification is not disclosed in the final sample</li><li>■ A transaction is considered arm's length only if within the computed interquartile range</li><li>■ Only the median of the interquartile range of the benchmark is considered when the tax adjustments are made</li></ul>
<b>APA Opportunity</b>	<p>Although the domestic transfer pricing law does not yet foresee APAs, a legislative authorization was introduced in the state budget for 2007 to allow for the introduction of APA rules in the Portuguese tax law in the short term.</p>

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# Russia

<b>Taxing Authority and Tax Law</b>	The Federal Tax Service of the Russian Federation. The Tax Code of the Russian Federation (the Tax Code).
<b>Relevant Regulations and Rulings</b>	Transfer pricing rules are stipulated in Articles 20 and 40 of the Russian Tax Code. A number of clarifications from the tax authorities and extensive court practice exist; however, these sources are of a non-binding nature.
<b>OECD Guidelines Treatment</b>	<p>The taxing authorities do not recognize the OECD Guidelines; however, to a certain extent, the Russian Tax Code's provisions follow these guidelines, e.g., three transfer pricing methods are stipulated (CUP, Resale Minus, Cost Plus).</p> <p>It should also be noted that amendments to the transfer pricing legislation are currently being discussed by the Russian government. If the amendments are introduced, the Russian transfer pricing rules will reflect international practice, including transfer pricing methods (e.g., comparable profitability and Profit Split methods could be introduced), transfer pricing documentation, APAs, etc. These amendments may be effective no earlier than 2008 (with APA rules suggested to be effective starting from year 2010).</p>
<b>Priorities/Pricing Methods</b>	<p>There are three methods mentioned in the Tax Code:</p> <ul style="list-style-type: none"><li>■ CUP</li><li>■ Resale Minus</li><li>■ Cost Plus</li></ul> <p>According to the Russian Tax Code, these methods are implemented sequentially: the resale minus method is used only if there is no information available about the prices used in similar transactions by independent entities, and cost plus method is implemented if both CUP and resale minus are inapplicable (i.e., no free market prices available and the product is not resold).</p>
<b>Transfer Pricing Penalties</b>	<p>There are no specific transfer pricing penalties. In case of a tax assessment as a result of a transfer pricing adjustment, tax authorities charge the tax itself, 20% penalty (40% in case of deliberate tax violation), and interest, which is calculated as 1/300 of the refinancing rate of the Russian Central Bank for each day while the tax was underpaid. The current refinancing rate is 10%.</p> <p>Transfer pricing documentation is not required. However, the above-mentioned expected amendments may stipulate the obligation to have such documentation for certain transactions (and corresponding fines for its absence are supposed to be stipulated). As mentioned, these amendments may be brought into effect no earlier than 2008.</p>
<b>Penalty Relief</b>	<p>Penalties are not imposed if the taxpayer voluntarily pays the tax before the tax authorities indicate the tax underpayment.</p> <p>In addition, it should be noted that there have been some arbitral cases when the penalties charged by the tax authorities for transfer pricing rule violations were cancelled by the court (generally, based on the grounds that transfer pricing rules are of an estimative nature rather than a precise tax calculation); however, such practice is not widely implemented.</p>
<b>Documentation Requirements</b>	There are no specific documentation requirements under the effective transfer pricing rules.
<b>Documentation Deadlines</b>	Not applicable.

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# Russia (continued)

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<b>Statute of Limitations on Transfer Pricing Assessments</b>	The general rule is that the tax authorities may audit three years preceding the year when the audit is conducted. For example, if the tax audit is performed in 2007, apart of 2007, the authorities can audit 2004, 2005, and 2006. In case is it proved that a taxpayer acted in “bad faith,” including where a taxpayer actively prevents the tax audit procedures, the statute period of limitation could be expanded.
<b>Return Disclosures/ Related Party Disclosures</b>	There are no disclosure requirements at the present time. However, the expected amendments to the transfer pricing rules would require the disclosure of transactions with related parties and also other types of “controlled transactions” (e.g., cross-border provision of services, transactions with parties located in low-tax jurisdictions).
<b>Audit Risk/Transfer Pricing Scrutiny</b>	<p>At the moment, due to the lack of implementation practice and limitations imposed by the Russian transfer pricing legislation, the tax authorities are reluctant and not efficient in implementing the rules. For example, as of 2006, based on the available data, the tax authorities succeeded in about 10% to 15% of the transfer pricing tax court cases.</p> <p>Transfer pricing risk should be estimated on a case-by-case basis depending on actual facts and circumstances.</p>
<b>APA Opportunity</b>	APAs are not allowed under the current legislation. If the above-mentioned amendments are introduced, APAs may become available starting from 2010. However, they are likely to be available only to large-scale businesses (due to the expected high statutory duty payable for the right to enter into an APA).

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# Singapore

<b>Taxing Authority and Tax Law</b>	Inland Revenue Authority of Singapore (IRAS). Singapore does not have specific transfer pricing legislation. General income tax provisions cover transfer pricing. These are § 53 (2A) of the Income Tax Act which concerns related party business dealings between a non-resident and a resident, and § 33 of the Income Tax Act which is a general anti-avoidance provision.
<b>Relevant Regulations and Rulings</b>	The IRAS issued Transfer Pricing Guidelines on 23 February 2006 (Singapore Transfer Pricing Guidelines), which are consistent with the OECD Transfer Pricing Guidelines.
<b>OECD Guidelines Treatment</b>	The Singapore Transfer Pricing Guidelines are consistent with the OECD Transfer Pricing Guidelines. The principles and transfer pricing methods set out in the OECD Transfer Pricing Guidelines are acceptable in Singapore.
<b>Priorities/Pricing Methods</b>	The IRAS does not have a specific preference for any of the five prescribed methods outlined in the OECD Transfer Pricing Guidelines. The transfer pricing method that produces the most reliable results should be selected and applied.
<b>Transfer Pricing Penalties</b>	There are no specific penalties regarding transfer pricing. Under general tax provisions relating to understatements of income, the penalty range is from 100% to 400% of the tax underpaid. In practice, where a transfer pricing adjustment is made, penalties will most likely be applied if the taxpayer has no or insufficient transfer pricing documentation.
<b>Penalty Relief</b>	In general, tax penalties can be mitigated if there is reasonable cause for the understatement of income. Good-quality transfer pricing documentation is important in mitigating penalties.
<b>Documentation Requirements</b>	<p>Singapore tax law and the Singapore Transfer Pricing Guidelines do not explicitly impose a formal requirement to prepare transfer pricing documentation. The IRAS expects taxpayers to assess their transfer pricing risk and prepare transfer pricing documentation commensurate with that risk. As a minimum, Singapore taxpayers should perform and document a transfer pricing risk assessment regarding their related party dealings. Based on such assessment, the taxpayer should determine whether more detailed transfer pricing documentation should be prepared.</p> <p>A transfer pricing risk assessment should cover at least the following information:</p> <ul style="list-style-type: none"><li>■ A description of the nature of the taxpayer's related party dealings, including the amount of the dealings and the contractual terms relating to these dealings</li><li>■ A high-level functional analysis that describes the key contributors to the relevant transactions in terms of functions performed, assets developed, assets used, and risks assumed</li><li>■ An outline of the taxpayer's assessment of its tax risk</li></ul> <p>If a Singapore taxpayer has complex or large transactions, preparation of more detailed transfer pricing documentation may be necessary to substantiate compliance with the arm's length principle. More detailed transfer pricing documentation would usually include:</p> <ul style="list-style-type: none"><li>■ Detailed factual information regarding the related party dealings, including the functions performed, assets developed, assets used, and risks assumed in relation to the transaction</li><li>■ An analysis of the applicable industry in which the taxpayer operates</li><li>■ Selection and application of one of the transfer pricing methods specified in the Singapore Transfer Pricing Guidelines</li><li>■ An economic analysis that supports the use of the selected method using appropriate benchmarking data/analysis</li></ul>
<b>Documentation Deadlines</b>	<p>There is no deadline for the preparation of documentation. However, when a taxpayer believes that it has potential transfer pricing risk, then transfer pricing documentation should be prepared contemporaneously.</p> <p>There is also no submission requirement or deadline. However, documentation should be made available if requested by the IRAS.</p>

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# Singapore (continued)

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**Statute of Limitations on Transfer Pricing Assessments**

The statute of limitations for transfer pricing adjustments is six years from the end of the year of assessment to which the transfer pricing issue relates.

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**Return Disclosures/Related Party Disclosures**

No specified disclosures are required on Form C, Singapore income tax return.

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**Audit Risk/Transfer Pricing Scrutiny**

The purpose of the Singapore Transfer Pricing Guidelines is to create an awareness of transfer pricing issues. Given the IRAS's desire to create awareness about transfer pricing, it is likely that over time there will be an increase in the number of tax audits that involve transfer pricing. Hence, the risk of a transfer pricing audit is currently moderate.

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**APA Opportunity**

Unilateral, bilateral, and multilateral APAs are available. However, for bilateral and multilateral APAs, there must be a double tax agreement between Singapore and the other involved country or countries. The Singapore Transfer Guidelines outline the procedures for applying for an APA.

# South Africa

<b>Taxing Authority and Tax Law</b>	Section 31 of the Income Tax Act 58 of 1962 (the Act), contains the main legislative provisions concerning transfer pricing. Section 31 authorizes the Commissioner of the South African Revenue Services (SARS) to adjust the consideration for goods and/or services to what he regards as an arm's length price for the purposes of computing the South African taxable income of a person.
<b>Relevant Regulations and Rulings</b>	There are no specific regulations or rulings; however, guidance for the application of § 31 is contained in Practice Notes Number 2 (14 May 1996) and 7 (6 August 1999).
<b>OECD Guidelines Treatment</b>	Although South Africa is not a member of the OECD, the South African tax authorities accept the OECD Guidelines and have largely based Practice Note 7 on these Guidelines. By the same token, the South African tax authorities recognize the five methods accepted by the OECD.
<b>Priorities/Pricing Methods</b>	The SARS accepts the methods prescribed by the OECD, i.e., the CUP, RPM, Cost Plus, TNMM, and Profit Split. The SARS prefers transaction-based methods over profit-based methods, but the TNMM is most commonly applied by taxpayers and generally accepted, provided the taxpayer can show that reliable data was not available to apply CUP, RPM, or Cost Plus. Reasons for discounting other methods must be given, and as such, the SARS does, in practice, apply a hierarchy of methods. The SARS may require that adjustments be made on foreign comparable company results used in benchmarking the results of the South African entity, to compensate for differences in risks assumed by entities operating in a different jurisdiction.
<b>Transfer Pricing Penalties</b>	Any adjustments made by the SARS under § 31 are deemed to be dividends, and Secondary Tax on Companies (STC) at a rate of 12.5% will be levied. There are no other specific penalties for transfer pricing, but general penalty rules are applicable.
<b>Penalty Relief</b>	Where taxpayers have taken conscientious efforts to establish transfer prices that comply with the arm's length principle, and have prepared documentation to evidence such compliance, the SARS is likely to take the view that the taxpayer's transfer pricing practices represent a lower tax risk. Accordingly, the preparation of sound and consistent transfer pricing practices may reduce the possibility of an audit, and therefore reduce the likelihood of incurring penalties.
<b>Documentation Requirements</b>	<p>The taxpayer has the burden of proof that its prices are arm's length. The best way to discharge the burden of proof is by developing a transfer pricing policy, determining the arm's length amount, and voluntarily producing documentation to evidence the analysis undertaken. Having said this, the SARS would expect taxpayers to have created, referred to, and retained transfer pricing documentation in accordance with prudent business management principles, i.e., the principles that would govern the process of evaluating a business decision of a similar level of complexity and importance.</p> <p>There is no specific statutory requirement to prepare transfer pricing documentation. However, a company that has such documentation is required to submit it together with its tax return.</p>
<b>Documentation Deadlines</b>	Transfer pricing documentation should be prepared not later than the date of submission of a tax return affected by the intercompany transactions. Tax returns are due eight months after a company's financial year-end and provided all tax affairs are up to date the company can obtain a further extension of up to 12 months.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The statute of limitations is three years from the date of assessment. There is no limitation on the prescription of a tax return if an amount was not assessed due to fraud, misrepresentation, or non-disclosure of material facts.

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# South Africa (continued)

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**Return Disclosures/  
Related Party  
Disclosures**

The company has to answer a number of questions and provide further details specifically related to its transfer pricing policies and documentation in its annual tax return.

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**Audit Risk/Transfer  
Pricing Scrutiny**

The risk of transfer pricing issues being reviewed under an audit is high, as transfer pricing remains an area of focus for the SARS. The SARS communicates on a regular and ongoing basis with other revenue authorities, particularly the UK's HMRC.

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**APA Opportunity**

APAs are not available.



# Spain

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## **Taxing Authority and Tax Law**

State Agency of Tax Administration (AEAT) and General Directorate of Taxation (DGT). Spanish Consolidated Corporate Income Tax Law (CCITL) Art. 16 (see below).

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## **Relevant Regulations and Rulings**

The anti-avoidance Law 36/2006, approved 29 November 2006 and published on the Spanish Official Gazette (B.O.E.) on 30 November 2006 included an amendment to article 16 CCITL which regulates transactions between related parties. As from 1 December 2006 taxpayers have to provide the necessary documentation supporting the transfer pricing policy of related entities and the meeting of the arm's length principle. Although the documentation requirements will be formally specified, hopefully, during 2007, it seems reasonable to anticipate that they should be in line with the results of the work carried out by the European Union Joint Transfer Pricing Forum (EU JTPF).

The Law incorporates secondary adjustments (i.e., in those transactions where both values will have for the related parties the tax treatment that corresponds to the nature of the profit realized). The Law makes a clarification for cases where the link is defined in light of the relationship between the shareholder and the entity, the difference shall (proportionally to the participation in the entity) be (1) considered as dividends whenever such difference is in favor of the shareholder, or (2) contributions by the shareholder to the entity's equity whenever the difference is in favor of the entity.

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## **OECD Guidelines Treatment**

These amendments aim to "adapt the Spanish legislation on Transfer Pricing to the OECD Guidelines and that of the European Union Joint Transfer Pricing Forum."

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## **Priorities/Pricing Methods**

The Law establishes that, in order to determine the market value, one of the following methods should be applied: CUP, Cost Plus, or Resale Minus. These methods are on the same preferential level in the valuation method hierarchy.

When due to the complexity or to the information relating to the transactions, the above methods may not be applied properly, the following methods may be used: Profit Split, or TNMM.

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## **Transfer Pricing Penalties**

Transfer Pricing assessments are subject to a penalty regime for tax periods starting on or after 1 December 2006.

The Law states that a breach arises when the documentation legally requested is not furnished, incomplete, inaccurate, or contains false documentation.

When the market price, which derives from such documentation, does not meet the ones used by the company, an infringement is deemed to exist. Penalties are charged on the basis of the differences in valuation and not as surcharges of tax due.

According to the new penalty regime, the following specific penalties could be imposed:

- When the tax authorities' valuation corrections are not applicable with respect to the transactions subject to Corporate Income Tax (CIT), Personal Income Tax (PIT) or Non-Resident Income Tax (NRIT), the penalty will consist of a €1,500 fine per piece of information lacking, or a €15,000 fine when combined data is omitted, inaccurate, or false as regards each of the obligations legally set out for the group or for each entity as taxpayer
- When the tax authorities make the valuation corrections with respect to the transactions subject to CIT, PIT, or NRIT, the penalty will consist of a 15% proportional financial fine on the amounts which result from the valuation corrections of each transaction, with a minimum of double the sanction which may correspond to the bullet point above
- When the tax authorities make valuation corrections in respect of the transactions subject to CIT, PIT, or NRPIT, without breaching thereof and such correction originates a lack of tax payment, undue tax returns, undue determination or accreditation of entries to be compensated in future tax returns, or the net income is incorrectly declared without a lack of income or gain having taken place because it has been compensated in a verification procedure or investigation on amounts pending to be compensated, deducted, or applied

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# Spain (continued)

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## Transfer Pricing Penalties (continued)

The fulfillment of the documentation requirements implies that a penalty will not be applied under Articles 191, 192, 193, and 195 of the General Tax Law (GTL).

The above sanctions are compatible with aggravating circumstances such as by resisting, obstructing, excusing, or negating the tax authorities' actions.

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## Penalty Relief

Some reductions are applicable to penalties. The fulfillment of the documentation requirements suggests that a penalty will not be applied.

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## Documentation Requirements

The documentation requirements are expected to be established in line with the EU Joint Transfer Pricing Forum (JTPF). In principle, two types of documentation requirements will be established: one global document for the group (Master File) and one document for each group entity (Local File). The documentation will cover domestic and international transactions. However, it is expected that transactions within the same fiscal unit could be exempted from the documentation requirements.

In principle, the EU JTPF Global Documentation Requirements establishes the necessity of:

- A general description of the business and business strategy, including changes in the business strategy compared with the previous tax year
- A general description of the group's organizational, legal, and operational structure (including an organization chart, a list of group members, and a description of the participation of the parent company in the subsidiaries)
- The general identification of the associated enterprises engaged in controlled transactions involving enterprises in the EU
- A general description of the controlled transactions involving enterprises in the EU, i.e., a general description of
  - The transactions (tangible and intangible assets, services, financial, etc.)
  - Invoices
  - Amounts of the transactions
- A general description of functions performed and risks assumed, and a description of changes with respect to functions and risks compared to the previous tax year, e.g., the change from a full-fledged distributor to a commissionaire
- The ownership of intangibles (patents, trademarks, brand names, know-how, etc.) and royalties paid or received
- The group's intercompany transfer pricing policy, or a description of the group's transfer pricing system that explains the arm's length nature of the company's transfer prices
- A list of cost contribution agreements, APAs, and rulings covering transfer pricing aspects as far as group members in the EU are affected
- An undertaking by the taxpayer to provide supplementary information upon request and within a reasonable time frame according to national rules

On the other hand, the EU JTPF Local Documentation Requirements establish the necessity of:

- A detailed description of the taxpayer's business and business strategy, including changes in the business strategy compared to the previous tax year
- A description and explanation of the specific controlled transactions including
  - The transactions (tangible and intangible assets, services, financial, etc.)
  - Invoices
  - Amounts of the transactions
- A comparability analysis, including
  - Amounts of the transactions
  - Characteristics of property and services
  - Functional analysis (functions performed, assets used, risks assumed)
  - Contractual terms
  - Economic circumstances
  - Specific business circumstances

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# Spain (continued)

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**Documentation Requirements (continued)**

- An explanation about the selection and application of the transfer pricing methods, why the methods were selected, and how they were applied
- Information on any internal or external comparables, if available
- A description of the implementation and application of the group's intercompany transfer pricing policy

Further information could be required by the tax administration during a tax audit with regard to the related party transactions.

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**Documentation Deadlines**

The Law 36/2006's "7th Additional Resolution" establishes that the documentation obligations will be required three months after the regulation comes into effect. The regulation has still not been published. However, documentation will have to be kept by companies once the corporate income tax return is filed.

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**Statute of Limitations on Transfer Pricing Assessments**

A general statute of limitations of four years applies. The statute will be interrupted in case of a tax audit. If a new income tax return is filed with the tax authorities, the four-year period is suspended and a new one begins.

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**Return Disclosures/ Related Party Disclosures**

There is no current requirement under Spanish tax rules.

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**Audit Risk/Transfer Pricing Scrutiny**

There is no specific tax audit procedure for transfer pricing. In the course of a general tax audit, there may be additional scrutiny when transactions with related parties have been carried out.

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**APA Opportunity**

Taxpayers may request the tax authorities to value related party transactions before they are carried out. This request has to be filed with a proposal based on the arm's length principle. On the other hand, the tax authorities may also settle agreements with other tax authorities in order to determine the market value of the transactions jointly (i.e., bilateral APAs).

The new regulation has improved the previous regime on APAs by extending the validity term from a three- to a six-year period (e.g., the previous year, when the time limit for filling the tax return has not yet expired, the current year, and the next four years).

# Sweden

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**Taxing Authority and Tax Law**

Swedish Tax Agency; Sections 14:19-20 of the Income Tax Act include the arm's length principle. Sections 19:2a and b of the Law (2001:1227) on income tax returns and income statements include the documentation requirements regarding transfer prices.

The Swedish Tax Agency is responsible for the correct and uniform implementation of the tax laws. It issues guidelines, recommendations, and publishes its standpoints on specific issues to the local tax offices.

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**Relevant Regulations and Rulings**

Section 12:4 of the Regulations (2001:1244) on income tax returns and income statements, and the Regulations (SKVFS 2007:1) regarding documentation of the pricing between associated enterprises.

The Swedish Tax Agency also issues general taxation guidelines, which include information on transfer pricing.

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**OECD Guidelines Treatment**

The Swedish tax laws on transfer pricing refer to the OECD Transfer Pricing Guidelines, and they are applied by the courts and tax authorities.

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**Priorities/Pricing Methods**

One of the methods described in OECD Transfer Pricing Guidelines should be applied. Transaction-based methods are preferred over profit-based methods.

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**Transfer Pricing Penalties**

There are no specific transfer pricing penalties. General penalty rules apply, with penalties ranging from 10% to 40% of the additional tax imposed. In transfer pricing cases, penalties at a rate of 40% are generally imposed.

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**Penalty Relief**

Surcharges are imposed on taxpayers for supplying the Tax Agency with inaccurate information. In the preparatory work to the law that introduces transfer pricing documentation requirements, it is stated that if an income adjustment is made because the taxpayer's transfer prices are not deemed to be at arm's length, the surcharges might be reduced if the taxpayer has provided proper transfer pricing documentation.

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**Documentation Requirements**

Multinational enterprises are required to document transactions with related companies as of 1 January 2007. The new legislation introduces formal transfer pricing documentation requirements in relation to cross-border transactions within multinational enterprises. The documentation must include:

- A description of the company, organization, and business operations
- Information regarding the characteristics and scope of the transactions
- A functional analysis
- A description of the chosen pricing method
- A comparability analysis

The functional analysis should, in addition to identifying the functions performed, risks assumed, and assets used, also describe which functions, risks, and assets contribute to the company's ability to generate profit. Moreover, the importance of the comparability factors described in the OECD Transfer Pricing Guidelines is highlighted.

Documentation prepared in accordance with the code of conduct regarding European Union Transfer Pricing Documentation (EU TPD), shall be considered to comply with the Swedish documentation requirements. The documentation should be prepared in the Swedish, Danish, Norwegian, or English language.

For transactions of limited value it is possible to prepare simplified documentation. Transactions of limited value for FY 2007 include:

- The sale or purchase of goods amounting to SEK 25,389,000 or less on a yearly basis
- Other transactions amounting to SEK 5,037,000 or less on a yearly basis

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# Sweden (continued)

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**Documentation Requirements (continued)**

Simplified documentation is not possible for transactions involving the sale of intangible assets.

The simplified documentation should include the following:

- The group's legal and organizational structure, and a description of the business operations
- The counter party of the transaction, and information of that entity's business operations
- Information on the intercompany transactions including the type of transaction, amounts, and value
- The method applied on the transaction to comply with the arm's length principle
- Information on comparable transactions, if utilized

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**Documentation Deadlines**

The underlying analysis should, in principle, be prepared in connection with the transaction. The final documentation should be available upon request from the Tax Agency. Such a request is possible from the date that the income tax return is filed.

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**Statute of Limitations on Transfer Pricing Assessments**

A general statute of limitations applies, which is within five years from the year of assessment.

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**Return Disclosures/- Related Party Disclosures**

No specific disclosure requirements when filing the tax return currently exists.

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**Audit Risk/Transfer Pricing Scrutiny**

The risk that transfer price adjustments will be scrutinized during an audit is high. There has been a significantly increased focus from tax authorities on transfer pricing related issues.

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**APA Opportunity**

There are no formal APA procedures. However, a number of informal APAs have been completed between the Swedish authorities and treaty partners.

# Switzerland

<b>Taxing Authority and Tax Law</b>	Swiss Federal Tax Administration (SFTA). There are no specific references to transfer pricing in Swiss tax law. However, legal support for adjusting profits of a taxpayer is derived from the arm's length principle in Article 58 of the Federal Direct Tax Act.
<b>Relevant Regulations and Rulings</b>	There are no specific transfer pricing regulations.
<b>OECD Guidelines Treatment</b>	The SFTA instructed the cantonal tax administrations, in a circular issued in 1997, to adhere to the OECD Transfer Pricing Guidelines for transfer pricing, and Switzerland has agreed to adopt key aspects of the OECD Transfer Pricing Guidelines.
<b>Priorities/Pricing Methods</b>	The Swiss tax administration adheres to the OECD Transfer Pricing Guidelines for transfer pricing, and prefers the transactional methods over the profit-based methods. Circular Letter 4/2004 mentions that mark-ups of service companies must be determined in accordance with the arm's length principle, on the basis of comparable uncontrolled transactions, and with appropriate ranges of mark-ups for any individual case. The circular also implicitly states that the Cost Plus method is the most appropriate method for service companies to price their services. However, where facts and circumstances indicate, other methods of arriving at a profit on the services may be appropriate.
<b>Transfer Pricing Penalties</b>	There are no specific transfer pricing penalties, but general penalty rules apply. However, penalties are only imposed in case of fraud or negligence. Interest charges for late payment are due in case of adjustments.
<b>Penalty Relief</b>	There are no special provisions for reduction in penalties.
<b>Documentation Requirements</b>	There are no specific documentation requirements. However, if challenged by the tax authority, the taxpayer has to demonstrate that the transfer prices applied were based on sound economic and commercial reasoning on an arm's length basis.
<b>Documentation Deadlines</b>	There are no special provisions for documentation deadlines.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	The general rule provides up to 10 years back from the end of the assessment year, if new facts or circumstances are discovered.
<b>Return Disclosures/Related Party Disclosures</b>	There are no formal related party disclosure requirements. However, in the case of an audit or request from the competent authorities, the taxpayer must provide the requested information to a reasonable extent.
<b>Audit Risk/Transfer Pricing Scrutiny</b>	The risk that transfer pricing issues are scrutinized during an audit is at a medium level. Transfers of intangibles and transfers with offshore entities receive specific scrutiny.
<b>APA Opportunity</b>	There are no formal APA procedures. However, the Federal Tax Administration participates in multilateral APAs.

# Taiwan

<b>Taxing Authority and Tax Law</b>	National Tax Administration (NTA); Republic of China (ROC). Articles 43-1 of the Income Tax Law (ITL). Article 50 of the ROC Financial Holding Company Law. Article 42 of the ROC Business Mergers and Acquisitions Law.
<b>Relevant Regulations and Rulings</b>	The Taiwan Transfer Pricing Examination Guidelines (TP Guidelines) were put into effect on 30 December 2004.
<b>OECD Guidelines Treatment</b>	The NTA recognizes the OECD Guidelines.
<b>Priorities/Pricing Methods</b>	<p>In accordance with the TP Guidelines, the pricing methods are as follows:</p> <ul style="list-style-type: none"><li>■ CUP</li><li>■ Resale Price</li><li>■ Cost Plus</li><li>■ Profit Split</li><li>■ Comparable profit margin method (TNMM)</li><li>■ Other methods prescribed by the Ministry of Finance (MOF)</li></ul>
<b>Transfer Pricing Penalties</b>	Pursuant to the TP Guidelines, under certain circumstances, a maximum of 200% of the tax shortfall could be imposed if assessed by the tax authority.
<b>Penalty Relief</b>	Not applicable.
<b>Documentation Requirements</b>	<p>Except for immaterial related party transactions, extensive contemporaneous documentation is required. According to the TP Guidelines, upon filing of the annual income tax return, a profit-seeking enterprise shall have the transfer pricing report and relevant documents prepared. If the tax return meets the requirement for certification, the Tax CPA has to note on the return whether the profit-seeking enterprise has prepared a transfer pricing report in accordance with the TP Guidelines. No attachment of the report to the return is required upon filing. Upon notice for a transfer pricing audit, a profit-seeking enterprise shall provide the tax authority with the transfer pricing report within one month. With the approval of the tax authority, the submission could be extended for one month under special circumstances.</p> <p>In December 2005, the Taiwan tax authority issued a safe harbor rule for transfer pricing reports in Tax Letter Ruling No. 09404587590. The ruling provides that a profit-seeking enterprise is not required to prepare a transfer pricing report (other supporting documents are allowed) if any of the following criteria is met:</p> <ul style="list-style-type: none"><li>■ The total annual revenue of the profit-seeking enterprise does not exceed TWD100 million</li><li>■ The total annual revenue of the profit-seeking enterprise exceeds TWD100 million but does not exceed TWD300 million</li><li>■ The profit-seeking enterprise does not utilize tax credits for more than TWD1 million or loss carry-forwards for more than TWD4 million to reduce the income tax or undistributed earnings surplus tax</li><li>■ A profit-seeking enterprise, including a company under Financial Holding Company Law, and Mergers and Acquisitions Law, has no overseas related parties (whether a company or an individual)</li><li>■ The total annual controlled transactions amount is less than TWD100 million</li></ul> <p>One of the other supporting documents stated under the Ruling is the parent or headquarters' transfer pricing report, which is not significantly varied from the Taiwan TP Guidelines.</p>

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# Taiwan (continued)

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## Documentation Requirements (continued)

Categories of documentation required:

- Business overview
- Organizational structure
- Description of controlled transactions
- Transfer pricing report
  - Industry and economic analysis
  - Functions and risks analysis
  - Application of the arm's length principle
  - Selection of comparables and related information
  - Comparability analysis
  - Transfer pricing methods selected by profit-seeking enterprises
  - Transfer pricing methods selected by related parties under the same control
  - Result of comparables search under the best method of transfer pricing
- Report of affiliated enterprises under Article 369 of the ROC Company Law
- Any other documents that have significant influences over pricing between related parties

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## Documentation Deadlines

According to the TP Guidelines, upon filing the annual income tax return, the taxpayer shall have the transfer pricing report and relevant documents prepared. If the tax return meets the requirement for certification, the Tax CPA has to note on the return whether the profit-seeking enterprise has prepared a TP report in accordance with the TP Guidelines. No attachment of the TP report to the return is required upon filing.

In accordance with the TP Guidelines, upon audit, the profit-seeking enterprise has to provide the tax authority with the transfer pricing report within one month. With the approval of the tax authority, the submission could be extended for one month under special circumstances.

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## Statute of Limitations on Transfer Pricing Assessments

The statute of limitations is five years if the tax return was timely filed, and seven years if not.

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## Return Disclosures/- Related Party Disclosures

Beginning in 2004, a taxpayer must disclose related party transactions and include the disclosure under the annual income tax return pursuant to the TP Guidelines. The disclosure generally includes:

- The investing structure
- Identification of related parties
- The related party transaction amounts by type
- The related party transaction balances
- The related parties' financial information, including total revenues, gross margins, operating margins, and net margins
- Whether the profit-seeking enterprise has prepared transfer pricing documentation for that fiscal year

In December 2005, the Taiwan tax authority issued a safe harbor rule for related party transaction disclosures in Tax Letter Ruling No. 09404587580. The Ruling provides that a profit-seeking enterprise shall disclose related party transactions on its income tax return if the sum of its annual operating and non-operating revenue (total annual revenue amount) exceeds TWD30 million and also meets one of the following:

- Has related parties outside the territory of the ROC (including the headquarters and branches)
- Utilizes tax credits for more than TWD500,000, or utilizes loss carry-forwards for more than TWD2 million to reduce the income tax or undistributed earnings surplus tax
- Exceeds total annual revenue of TWD300 million

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# Taiwan (continued)

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## **Audit Risk/Transfer Pricing Scrutiny**

In general, audit risk is moderate. On 2 August 2005, the MOF issued a Tax Letter Ruling No. 9404540920 to set forth the circumstances for a transfer pricing audit as follows:

- The gross profit ratio, operating profit ratio, and net income before tax ratio are below the industry average
- The parent or headquarters reports profit on the global consolidation level, but the local affiliate reports loss or much lesser profit than the industry average
- A profit-seeking enterprise reports significant fluctuations of profit over the transaction year and the two years preceding
- A profit-seeking enterprise fails to disclose related party transactions in accordance with the related party transaction disclosure requirements
- A profit-seeking enterprise fails to determine whether its related party transactions are within an arm's length range, and fails to prepare documents in accordance with the TP Guidelines
- A profit-seeking enterprise fails to charge related parties in accordance with the TP Guidelines, or charges an abnormal amount
- A profit-seeking enterprise fails to provide the transfer pricing report upon tax audit
- The transfer pricing of the enterprise has been adjusted by the tax authority, in which case, the tax years preceding and subsequent to the year of a transfer pricing audit are likely to be selected for audit
- An enterprise has significant or frequent controlled transactions with related parties in tax havens or low tax jurisdictions
- An enterprise has significant or frequent controlled transactions with related parties entitled to tax incentives
- Any other transaction fails to meet the arm's length requirements in accordance with the TP Guidelines

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## **APA Opportunity**

APAs are available under articles 23 to 32 of the TP Guidelines.

According to Tax Letter Ruling No. 9404540920, under an APA, a tax return shall not be subject to a transfer pricing audit except for the following circumstances:

- The profit-seeking enterprise fails to provide the tax authority with the annual report regarding the implementation of APA
- The profit-seeking enterprise fails to keep the relevant documents in accordance with TP Guidelines
- The profit-seeking enterprise fails to follow the provisions of the APA
- The profit-seeking enterprise conceals material facts, provides false information, or conducts wrongful acts

# Thailand

<b>Taxing Authority and Tax Law</b>	<p>Thai Revenue Department (TRD). General transfer pricing relevant provisions of the Thai tax code (dealing with exchanges at below market price in general) are: Thai Revenue Code Sections 65 bis (4); Section 70 ter; Section 65 bis (7); Section 65 ter (13), (14) and (15); and Section 79/3.</p> <p>Transfer Pricing (TP) guideline: Departmental Instruction No. Paw. 113/2545.</p>
<b>Relevant Regulations and Rulings</b>	<p>On 16 May 2002, the TRD issued its guideline specifically addressing transfer pricing. The guideline, Departmental Instruction No. Paw. 113/2545, is written in the form of an internal departmental instruction which provides guidance to tax officials for tax audit purposes.</p>
<b>OECD Guidelines Treatment</b>	<p>Thailand's transfer pricing guideline, Departmental Instruction No. Paw. 113/2545, generally follows the model of the OECD Guidelines, including allowing all methods allowed under the OECD Guidelines. This includes supporting material beyond the scope of the OECD Guidelines.</p> <p>The OECD Guidelines are not binding on the TRD. The OECD Guidelines may, however, be persuasive in areas not addressed by the Thai TP guideline.</p>
<b>Priorities/Pricing Methods</b>	<p>The TRD accepts CUP, Resale Price, and Cost Plusd. Other commercially used methods are also acceptable, such as the OECD's Profit Split and the TNMM.</p>
<b>Transfer Pricing Penalties</b>	<p>There is no explicit penalty for transfer pricing assessments. Nor is there an explicit penalty for not having transfer pricing documentation. However, for tax shortfalls in general, if a company is assessed by the TRD, a penalty of 100% or 200% of the tax shortfall and a 1.5% per month surcharge may be imposed. The 1.5% monthly surcharge is capped at 100% of the tax shortfall amount.</p>
<b>Penalty Relief</b>	<p>In the event of a transfer pricing adjustment, there is no formal penalty relief for having in place transfer pricing documentation.</p> <p>Penalties may be reduced by half if the taxpayer voluntarily discloses the tax shortfall. Surcharges are a form of interest and cannot be reduced. Contemporaneous documents cannot be used to reduce the penalty for a transfer pricing shortfall. However, they are important for the defense of transfer pricing should a tax audit take place.</p>
<b>Documentation Requirements</b>	<p>The following extensive contemporaneous documentation is specified:</p> <ul style="list-style-type: none"><li>■ The structure and relationships between business entities within the same group, including the structure and nature of business carried on by each entity</li><li>■ Budgets, business plans, and financial projections</li><li>■ Taxpayers' business strategies and the reasons for adopting those strategies</li><li>■ Sales and operating results, and the nature of transactions between business entities within the same group</li><li>■ Reasons for entering into international transactions with business entities in the same group</li><li>■ Pricing policies, product profitability, relevant market information, and profit sharing of each business entity. Functions performed, assets utilized, and risks assumed by the related business entities should all be considered</li><li>■ Support for the particular method chosen</li><li>■ Where other methods have been considered, details of those methods, and the reasons for their rejection (contemporaneously documented)</li><li>■ Evidence supporting the negotiation positions taken by the taxpayer in relation to the transactions with business entities in the same group, and the basis for those negotiating positions</li><li>■ Other relevant documentation (if any) supporting the transfer price</li></ul>

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# Thailand (continued)

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<b>Documentation Deadlines</b>	The taxpayer is required to submit the transfer pricing documentation under the TP guidelines within one month of receiving the letter from the TRD requesting the documentation.
<b>Statute of Limitations on Transfer Pricing Assessments</b>	Under Section 19 of the Thai tax code, the statute of limitations is two years from the date of filing the tax return. This period is extendible to five years if tax evasion or fraud is suspected.
<b>Return Disclosures/Related Party Disclosures</b>	<p>No disclosure of the existence or non-existence of transfer pricing documentation is required to be submitted with a tax return. Nor does any documentation need to be filed with a tax return.</p> <p>Under the Thai Federation of Accounting Professions and Securities and Exchange Commission of Thailand (SEC) regulations, the related-party transactions of companies listed on the SEC must be disclosed in the company's financial statements and annual report. Non-listed companies are not required to disclose related-party transactions in their financial statements.</p>
<b>Audit Risk/Transfer Pricing Scrutiny</b>	<p>Scrutiny of transfer pricing during a tax audit or inquiry in Thailand is common and the risk to the average MNC is moderate to slightly high. The TRD expects taxpayers to cooperate in providing relevant transfer pricing support documentation. It is likely that failure to do so will lead to a tax audit.</p> <p>Up until the present, there have been no formal transfer pricing audits in Thailand. Generally, the TRD makes tax adjustments to the deductibility of expense items through its annual routine visits to taxpayers to review their business operations. During such checks, if officials find any transactions warranting further scrutiny (including deductibility of expenses arising from intercompany transactions), a further investigation will be conducted. In most cases, the taxpayer under investigation will be required to add back the expenses (to the extent deemed excessive) to taxable income and pay the additional tax arising. The final tax adjustments are then generally settled by way of negotiations.</p> <p>Since 2006, there has been more aggressive enforcement by the TRD in all areas of tax, especially transfer pricing. The increased level of enforcement mainly arises from tax collection pressure on the TRD to compensate for customs duty and excise tax shortfalls.</p>
<b>APA Opportunity</b>	<p>Despite adoption of the APA program in the May 2002 Thai TP guidelines, no APAs have been concluded to date.</p> <p>From late 2004 onwards, there have been an increasing number of taxpayers filing APAs (both unilateral and bilateral) with the TRD. The TRD has set up a formal APA committee to handle these APA applications. There are several bilateral APAs between Japan and Thailand close to completion, but these still have issues to overcome.</p>

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# Turkey

<b>Taxing Authority and Tax Law</b>	<p>Tax authority Article 13 of Corporate Tax Code numbered 5520 published June 21, 2006, and Article 13 of Corporate Tax Code General Communiqué serial no 1.</p> <p>Article 13 of Corporate Tax Code states: "Income shall be considered to have been wholly or partially distributed in a disguised manner through transfer pricing, if the company engages in purchase of goods and services with related parties at prices or at amounts which they determine not complying with the arm's length principle."</p> <p>Transfer pricing provisions have been effective since January 2007.</p>
<b>Relevant Regulations and Rulings</b>	<p>The Ministry of Finance is still working on preparing a regulation to settle the details of the tax code's application. No specific tax rulings and guidelines have been issued yet.</p>
<b>OECD Guidelines Treatment</b>	<p>In the preamble of the law, it is stated that the provisions of international regulations, especially the OECD Transfer Pricing Guidelines, are taken into account. It should be possible to use the OECD Guidelines as a reference, especially because Turkish legislation is not clear on transfer pricing issues or has no contrary provisions.</p>
<b>Priorities/Pricing Methods</b>	<p>Taxpayers can use the below methods in order to prove that the prices applied in their transactions with related parties are arm's length:</p> <ul style="list-style-type: none"><li>■ CUP</li><li>■ Cost Plus</li><li>■ Resale Price</li><li>■ Other methods to be determined by the taxpayer if it is not possible to reach the arm's length price through one of the above methods,</li></ul> <p>Taxpayers should select the most appropriate method. There are no priorities among the first three methods.</p>
<b>Transfer Pricing Penalties</b>	<p>There are no special transfer pricing penalties, but a disguised income distribution is assumed if the transfer pricing method does not meet the arm's length principle. If such a disguised distribution is assessed during a tax audit, the tax is calculated again as if no disguised or hidden distribution applied, and also late payment interest and tax loss penalty (which is the same as tax loss amount) is charged.</p>
<b>Penalty Relief</b>	<p>There are no special provisions for penalty relief. However, it is possible to come to a reconciliation concerning tax loss.</p>
<b>Documentation Requirements</b>	<p>There are no special documentation rules for transfer pricing.</p> <p>Taxpayers should prepare and keep the documents which will constitute a basis for the calculations relating to the methods determined in accordance with the arm's length principle. Taxpayers should also keep these documents ready for presenting upon request of the tax authority.</p>
<b>Documentation Deadlines</b>	<p>The taxpayer must submit the documentation upon request of the tax authority. No specific deadline has been set yet. In general, taxpayers must submit the required information within 15 days from receiving the request.</p>
<b>Statute of Limitations on Transfer Pricing Assessments</b>	<p>There is no specific statute of limitations on transfer pricing adjustments but general rules for the statute of limitations are applicable, which is five years from accrual of the tax payment.</p>

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# Turkey (continued)

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**Return Disclosures/  
Related Party  
Disclosures**

No specific disclosure rules have been determined yet.

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**Audit Risk/Transfer  
Pricing Scrutiny**

The risk of transfer pricing scrutiny during a tax audit is high. Tax inspectors generally focus on related party transactions.

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**APA Opportunity**

An APA is possible upon the demand of the taxpayer. In principle, the agreed method would be binding through the period determined; however it cannot exceed three years.

# United Kingdom

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## **Taxing Authority and Tax Law**

Her Majesty's Revenue and Customs (HMRC) Schedule 28AA, Income and Corporation Taxes Act of 1988, Section 12B Taxes Management Act of 1970, Section 108-111 and Schedule 16 Finance Act of 1988 (full text of the basic rule now appears in Schedule 28 AA ICTA 1988). The Finance Act of 2004 introduced provisions extending the transfer pricing code to include thin capitalization issues and transactions within the UK, including between entities in the UK under common control. From 1 April 2004, transfer pricing laws are no longer restricted to cross-border transactions. This is to ensure that UK rules are not discriminatory within the EU and is a defense against recent European Court of Justice (ECJ) decisions. The revisions include exemptions for dormant companies and certain transactions of small and medium-sized enterprises, including cross-border as well as domestic transactions.

Finance Act (No. 2) 2005 introduced provisions to Schedule 28AA extending the transfer pricing code, effective as of March 2005, to include two additional situations in which financing transactions are entered into for an entity: (1) where two or more persons finance an entity and act together to control collectively the entity, and (2) where a person finances an entity and a position of control will come into existence within six months of the financing being entered into. Grandfathering provisions exist under certain conditions to ensure that the amendments will only apply to transactions, effective from 1 April 2007. Where a company's accounting period straddles a relevant date (4 March 2005/1 April 2007, date of contract variation), profits and losses are to be calculated as if there were two distinct accounting periods divided by the relevant date.

The UK Finance Bill for 2007 did not introduce any specific changes to the transfer pricing legislation.

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## **Relevant Regulations and Rulings**

There are no specific regulations (with the exception of provisions for APAs as below) but there are "Guidance Notes" provided in HMRC Tax Bulletins (covering audit handling, share options, VAT considerations, Mutual Agreement Procedure (MAP) penalties and documentation). Additionally, HMRC has published several technical notes and made sections of their internal manuals available.

The Varney Report of November 2006 (produced by Sir David Varney for the Chancellor) included various recommendations for changes to the way HMRC interacts with taxpayers. One of the recommendations is in relation to the handling of transfer pricing inquiries and is likely to be finalized by the end of 2007 with an emphasis on initial risk assessments.

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## **OECD Guidelines Treatment**

The OECD Transfer Pricing Guidelines are effectively imported into UK tax legislation as the law is to be interpreted in best accord with the guidance. Therefore, there is general adherence to the OECD Guidelines.

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## **Priorities/Pricing Methods**

With alignment to the OECD Guidance required under the statutory provisions, the most appropriate method of pricing is effectively required under the UK legislation. HMRC prefers transaction methods over transactional profit methods (such as with the TNMM). However, there is a recent move by the HMRC towards testing results against systems profits. This may also be mirroring OECD developments in this area.

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## **Transfer Pricing Penalties**

Two possible penalty regimes are currently applicable; however, provisions in the Finance Act of 2004 confirm that penalties for the failure to prepare and maintain adequate transfer pricing documentation will be waived under certain circumstances in the two years beginning 1 January 2004. This period has now ended.

Currently UK tax law provides that tax-g geared penalties of up to 100% of any underpaid tax apply to the filing of an incorrect return due to fraudulent or negligent conduct under Section 95/96 of the Taxes Management Act of 1970 and Paragraph 20 Schedule 18 Finance Act of 1988. Failure to have a policy documented as arm's length may be seen as negligent. A flat penalty of GB£3,000 applies for failure to keep proper records under Paragraph 23 Schedule 18 of the Finance Act of 2004. There is a general increase in the use of neglect penalties across the board for all adjustments to profits. This is now extending to routine transfer pricing adjustments.

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## **Penalty Relief**

The best protection against neglect penalties is a transfer pricing policy which fully documents and evidences due consideration of application of the arm's length principle in the preparation of the relevant tax return. Mitigation of tax-g geared penalties, where applicable, will, however, be made having regard to size, gravity, disclosure, and cooperation.

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# United Kingdom (continued)

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## Documentation Requirements

HMRC has long struggled with guidance in the documentation requirements area. Tax Bulletin 37 originally set out HMRC expectations; however, this guidance is now superseded by the guidance published with the pre-budget report December 2003.

The guidance published with the pre-budget report 2003, and now confirmed in the HMRC manuals, sets out what types of documents HMRC might expect. This divides documentation into Primary Accounting Records, Tax Adjustment Records, and most important, Evidence. Documentation relating to Evidence of compliance with the arm's length principle is to follow OECD Guidelines, and HMRC set out some suggestions on what this should or may include such as:

- Identification of the associated enterprises with whom the transaction is made
- A description of the nature of the business
- The contractual or other understandings between the parties
- A description of the method used to establish an arm's length result, with an explanation of why the method is chosen
- An explanation of commercial and management strategies, forecasts for the business or technological environment, competitive conditions, and regulatory framework

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## Documentation Deadlines

Under the current guidance, the first two categories of documentation should be in existence when the accounts are prepared and the return submitted. In relation to documentation evidence of arm's length pricing, it is not needed in a form capable of production to HMRC until a request by the HMRC has been made. The previous guidance published by the HMRC confirmed that all documentation should be in existence at the time the return is submitted. In practice, evidence confirming adherence to the arm's length principle should exist at the time of submission of the return if difficulties in its production are to be avoided.

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## Statute of Limitations on Transfer Pricing Assessments

Discovery assessments can be raised six years after the company's accounting period ends, but this is extended to 21-years where the misstatement is due to fraudulent or negligent conduct by the taxpayer. Determinations can be raised five years from the date of filing, or six years from the end of the company's accounting period. The legislation applicable before 1999 operated in a different manner, and as a result, an investigation started now would not normally lead to transfer pricing adjustments for periods before 1999.

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## Return Disclosures/Related Party Disclosures

There are no return disclosure requirements except those required in statutory accounts and in annual reports filed in compliance with any current APAs. The absence of disclosure requirements will typically leave prior years open to discovery assessments (see statute of limitations).

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## Audit Risk/Transfer Pricing Scrutiny

HMRC now conducts a risk assessment before inquiry (details contained in Tax Bulletin 60), and further confirmed at the time of the 2003 pre-budget report and now in the International Manual. HMRC has also highlighted areas of concern that are likely to lead to inquiries (e.g., changed business structures and characterizations) and are investing time and resources into the transfer pricing investigation process. Additionally there is pressure on the department to maximize taxes, and transfer pricing is known to be an area of high priority.

A draft risk assessment approach and template was published at the time of the 2007 Budget. This covers areas such as Corporate Governance and adequacy of systems and processes.

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## APA Opportunity

Section 85-87 of the Finance Act of 1999 introduced legislation on APAs. A Statement of Practice published in September 1999 supplements this legislation. Bilateral and unilateral APAs are available, but bilateral APAs are preferred. For APAs to be admitted to the program, there needs to be sufficient doubt or difficulty in approaching compliance with the arm's length standard.

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# United States

<b>Taxing Authority and Tax Law</b>	Internal Revenue Service (IRS); Internal Revenue Code (IRC) § 482, § 6038A, § 6038C, and § 6662.
<b>Relevant Regulations and Rulings</b>	<p>Treasury Regulations (Treas. Reg.)§ 1.482; § 1.6662; § 1.6038A; § 1.6038C; Revenue Procedure (Rev. Proc.) 2006-54; Rev. Proc. 99-32; and Rev. Proc. 2006-9. Final regulations (T.D. 9088) on compensatory stock options under IRC § 482 released on August 25, 2003, maintaining that stock-based compensation must be taken into account in determining operating expenses for qualified cost sharing arrangements (CSAs) under Treas. Reg. § 1.482-7. Audit checklist on CSAs issued in August 2005. Proposed regulations on CSA (REG-144615-02) issued August 22, 2005 introducing new methods for determining buy-in payments, providing the IRS with discretion to make periodic adjustments, and formalizing other new requirements for compliance. In April 2007, CSA buy-ins were designated by the IRS as a “Tier I” issue, and thus susceptible to intensified audit scrutiny. A Coordinated Issue Paper was released on 27 September 2007 providing internal IRS guidance for examiners in developing CSA exam positions.</p> <p>New final, temporary, and proposed regulations related to services issued on 31 July 2006. The new rules were effective 1 January 2007, and apply to tax years beginning after 31 December 2006. In conjunction with the new regulations, the IRS also issued Announcement 2006-50, which contained a proposed list of “specified covered services” that relate to a specific cost-based method. The new services regulations require stock-based compensation to be considered. On 20 December 2006, the IRS released Notice 2007-5 and Revenue Procedure 2007-13, which extended the effective date of the Services Cost Method until 1 January 2008, and added to the list of “covered services.”</p>
<b>OECD Guidelines Treatment</b>	The IRS considers its transfer pricing laws and regulations to be wholly consistent with OECD Guidelines. For domestic use, the OECD Guidelines do not provide support, and would not be directly relevant to the application of any pricing methods. However, if taxpayers pursue competent authority relief from double taxation or a bilateral APA, then the OECD Guidelines would be important and be used to demonstrate compliance with international principles.
<b>Priorities/Pricing Methods</b>	The IRS accepts CUP, Resale Price, Cost Plus, Comparable Profits Method (CPM), Profit Split, or other unspecified methods. Taxpayers must use the best method under the regulations. New services regulations provide for methods: Services Cost Method, Comparable Uncontrolled Services Price, Gross Services Margin, Cost of Services Plus, CPM, Profit Split, and unspecified methods.
<b>Transfer Pricing Penalties</b>	Taxpayers may be liable for either a 20% or 40% penalty for underpayment of tax, as a percentage of the underpayment, or the penalty may apply to a valuation misstatement. There is not a US penalty for failure to have documentation, but documentation may help to avoid a penalty.
<b>Penalty Relief</b>	Penalties may be avoided by adequate disclosure on IRS Form 8275 for disregarding rules or regulations and for a substantial understatement of income tax. Penalties for negligence and for a valuation misstatement are not avoided by disclosure. No penalties apply, however, if there was reasonable cause and the taxpayer acted in good faith with respect to the transaction. The regulations provide guidance for establishing reasonable cause and good faith, for example, by preparing documentation or by obtaining an APA.
<b>Documentation Requirements</b>	Documentation is not required by law; however, in practice, it is recommended that taxpayers maintain contemporaneous documentation in order to avoid penalties. Documentation must be provided to the IRS within 30 days of a request for an examination. The documents must be in existence when the return is filed, but their existence does not need to be disclosed with the tax return, and they do not need to be provided with the return. For penalty avoidance purposes, a taxpayer is considered to have satisfied the documentation requirement if it maintained sufficient documentation to establish that the taxpayer reasonably concluded that, given the available data and the applicable pricing methods, the method (and its application of that method) provided the most reliable measure of an arm's length result under the principles of the best method rule. A method determined as part of an APA is a consideration for whether the taxpayer's method was reasonable.

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# United States (continued)

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## Documentation Requirements (continued)

The principal documents required by regulations are:

- An overview of business, and analysis of legal and economic factors affecting pricing
- A description of the organizational structure
- Any documents explicitly required by regulations (e.g., CSA documents)
- A description of the pricing method and reasons why the method was selected (best method analysis)
- A description of alternative methods and why they were not selected
- A description of controlled transactions and any internal data used to analyze them
- A description of comparables used, how comparability was evaluated, and any adjustments
- An explanation of any economic analysis and any projections used to develop the pricing method
- Any material data discovered after the close of the tax year but before filing the tax return
- A general index of the principal and background documents, and a description of the record-keeping system

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## Documentation Deadlines

If documentation is prepared to help protect against penalties, then it must be in place by the filing date of the US tax return. Taxpayers must provide documentation to the IRS within 30 days of an examiner's request.

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## Statute of Limitations on Transfer Pricing Assessments

A general statute of limitations applies, which is three years from the later of either the tax return due date or the date the return was actually filed.

For substantial understatements of income, the statute is extended to six years. For fraud, there is no statute of limitations.

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## Return Disclosures/Related Party Disclosures

Taxpayers are required to file Forms 5471 and 5472 regarding transactions with related parties; however, they may also need to file Form 8275.

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## Audit Risk/Transfer Pricing Scrutiny

The risk of transfer pricing scrutiny during a tax audit is high. Transfer pricing is extensively regulated and a 2003 IRS directive on enforcing contemporaneous documentation violations indicates that scrutiny will increase. This has been borne out in practice, where documentation is requested at the start of any transfer pricing audit.

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## APA Opportunity

Unilateral and bilateral APAs are available under Revenue Procedure 2006-9. The revenue procedure was released in December 2005 and updates Rev. Proc. 2004-40. There is a new fee scale. The IRS implemented the following changes to the APA Program including:

- Stricter case management procedures - instituting follow-up actions to speed up case development and processing
- Additional taxpayer disclosure requirements
- An APA case will not be processed until the submission is "substantially complete"
- Updated conditions under which an APA may be cancelled or revoked, such as lack of good faith in taxpayer's compliance
- User fee simplification - flat fee structuring, but an increase in fees

# Venezuela

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**Taxing Authority and Tax Law**

Venezuelan Tax Administration (SENIAT). 1999 Venezuelan income tax law: Title VII, Articles 112 to 117, for fiscal year 2000 and 2001. 2001 Master Tax Code: chapter III, Articles 220 to 229, Articles 109, 110, and 111. 2001 Venezuelan income tax law, chapter III, Articles 112 to 170, for fiscal year 2002.

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**Relevant Regulations and Rulings**

Administrative Rulings 401, 3/05/01 (9 TPR 870, 4/4/01) (applicable only for the period from 5 March 2001 to 28 December 2001), established gross margins for imports and exports, and Resale and Cost Plus methods. There are no transfer pricing rules in the Venezuelan Income Tax rulings. SENIAT believes that the transfer pricing rules in the law are enough to cover the issue. On February 2007, there was published in Official Gazette No. 38.628 a partial Reform Law to the income tax law. Such reform included a new article numbered 118, which established that the interest paid directly or indirectly to persons considered as related parties pursuant to the terms of the second section of chapter III of title VII of the Law, shall be deductible only so far as the amount of the debts contracted directly or indirectly with related parties, which added to the amount of the debts contracted with independent parties, does not exceed the net equity of the taxpayer. This reform also establishes that the amount of the debts contracted directly or indirectly by the taxpayer with related parties that exceeds the annual average balance of the taxpayer's net equity shall receive net equity treatment for all purposes of the law. Therefore in accordance with article 8 of the Master Tax Code, it is possible to interpret that it will enter into force 60 days after its publication (on 17 April 2007) and is applicable for those fiscal years beginning after it enters into force.

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**OECD Guidelines Treatment**

The 1995 OECD Guidelines are applicable as a supplement to these rules for everything else not considered in the Venezuelan income tax law.

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**Priorities/Pricing Methods**

The methods that may be applied for 1999 include CUP, Resale Price, Cost Plus, for imports and exports, following the Brazilian transfer pricing rules, and TNMM following the OECD model. The methods acceptable for 2001 and later years are the internationally accepted methods: CUP, Resale, Cost Plus, Profit Split, and TNMM. Priority is given to the CUP method, but any of the approved methods can be applied.

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**Transfer Pricing Penalties**

For failing to apply the methods established by the income tax law, the taxpayer faces fines from 300 to 500 tax units. The 2007 tax unit is BS 37.632/unit. In addition, there will be a fine ranging from 25% to 200% of the omitted tax amount, and interest may also be added to these amounts. There is a penalty of 10 to 50 tax units for failure of the presentation of the transfer pricing return.

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**Penalty Relief**

If a taxpayer complies with a transfer pricing methodology, this could be considered a mitigating circumstance in the determination of an adjustment.

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**Documentation Requirements**

Effective as of 2002, taxpayers are required to prepare and maintain supporting and extensive contemporaneous documentation. The documentation requirements include functions, assets, risk, organizational structure, business description, detailed information of all operations with related and non-related parties, audited financial statements, agreements and contracts, reasoned method selection, inventory valuation method (if applicable), analysis results, and other relevant information.

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**Documentation Deadlines**

The taxpayer must prepare documentation by the filing date of the annual income tax return and the end of every fiscal year. In addition, the taxpayer must submit the documentation upon request by SENIAT during a transfer pricing audit.

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**Statute of Limitations on Transfer Pricing Assessments**

The statute of limitations is four years from the date of filing the return, and six years if overall tax compliance was not accomplished.

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**Return Disclosures/Related Party Disclosures**

A controlled party's information return must be filed during the following six months, immediately after the closing of each tax year. The Tax Administration has not issued a specific form (PT-99) for the transfer pricing return. As such, the information may be submitted by the taxpayer using his own form.

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# Venezuela (continued)

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## **Audit Risk/Transfer Pricing Scrutiny**

Since February 2005, SENIAT has initiated certain audit processes related to transfer pricing. SENIAT is currently reviewing the fiscal years 2003 to 2005. It is too soon to conclude if any particular industrial sector is receiving more scrutiny than others. Thus far, audits have been performed on taxpayers in the pharmaceutical industry, service providers, consumer products industry, manufacturers, distributors, and more recently, the oil industry.

As such, SENIAT is requiring the following information from taxpayers:

- Commercial accounting ledgers
- Special ledgers for investments carried out in low taxation jurisdictions
- Purchase and sale ledgers regarding VAT, including the respective monthly summary required by law
- Special ledgers regarding inflation adjustment
- A transfer pricing transactions return
- A list of assets used in the production of income
- The company's organizational chart
- Documents that verify the activities performed by group companies
- The totality of contracts with related parties
- The statement of production cost and cost of sold goods
- Documentations supporting the transfer pricing method used
- Documents that verify the monthly control of goods inflows and outflows, indicating the inventories' valuations method and their valuation
- Detail of the functional analysis
- An additional ledger of financial transactions, open, primary or secondary market, internationally applicable

The risk of transfer pricing scrutiny when a taxpayer performs financial operations directly or indirectly with related parties is high. In this sense, in November 2006, SENIAT emitted an objection act against an oil company in which it was declared a discord on a loan operation during the 2005 fiscal year.

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## **APA Opportunity**

Unilateral and bilateral APAs are available to the extent that they are carried out with nations that have outstanding double taxation treaties. (See income tax law Articles 143 to 167 and Master Tax Code chapter III, Articles 220 to 229, Articles 109, 110 and 111.)

# Vietnam

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**Taxing Authority and Tax Law**

General Department of Taxation (GDT); Decree 164/2003/NDCP dated December 22, 2003, *Decree on Detailed Provisions Implementing the Law on Corporate Turnover Tax*; Circular 117/2005/TT/BTC (Circular 117) dated 19 December 2005 of the Ministry of Finance, *Circular Providing Guidelines on the Calculation of Market Prices in Business Transactions between Related Parties*.

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**Relevant Regulations and Rulings**

Please see above Decree and Circular. Circular 117 became effective on 27 January 2006.

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**OECD Guidelines Treatment**

Circular 117 is generally based on the OECD Guidelines. How the GDT will apply the OECD Guidelines in interpreting the principles under Circular 117 remains to be seen during the first year of implementation of the Circular. Transfer pricing documentations adhere to the OECD Guidelines in applying the principles of Circular 117.

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**Priorities/Pricing Methods**

Circular 117 permits the use of the following methods: CUP, Resale Price, Cost Plus, Comparable Profit Method (or TNMM under the OECD Guidelines), and Profit Split. Taxpayers must use the most appropriate method under the regulations. There is no hierarchy among the methods.

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**Transfer Pricing Penalties**

Adjustments in corporate income tax liabilities may be made by the tax authorities in the following cases:

- Failure to disclose or incomplete disclosure of related-party transaction
  - Failure to produce information, documents, or source documents within 30 days from request by the tax authorities
  - Intentional erroneous application of the provisions of the circular, and failure to produce substantiation requirements within 90 days from date of request by the tax authorities
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**Penalty Relief**

Penalties may be avoided by adequate disclosure on Form GCN-01/HTQT of related party transactions, and the preparation and timely production of a transfer pricing documentation.

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**Documentation Requirements**

Contemporaneous documentation is required by law. Documentation must be provided to the tax authority within 30 days upon request. The documents must be in existence when the transaction occurs and must be updated during the performance of the transaction. For penalty avoidance purposes, a taxpayer is considered to have satisfied the documentation requirement if it maintained sufficient documentation to establish that the taxpayer reasonably concluded that, given the available data and the applicable pricing methods, the method (and its application of that method) provided the most reliable measure of an arm's length result under the principles of the most appropriate method rule.

The principal information/documents required by the regulations are:

- Information on relations between affiliated parties and the taxpayer
  - Information and updated reports on strategy for development, administration, and control between affiliated parties
  - The pricing policy for transactions in relation to each group of products in accordance with the general guidance of affiliated parties and the taxpayer
  - Documents and reports on the process of development, business strategy, projects, production, business or investment plans
  - Regulations and procedures for financial statements and internal control reports of the company and of affiliated parties to the transactions
  - A diagram of transactions and documents describing transactions, including information on parties to transactions, order and procedures for payment, and delivery of products
  - Documents specifying properties and technical specifications of products, the breakdown of costs (or cost) of one product, selling price of products, total amount of products produced or traded and sold in the period (specifying such items on the basis of the related transaction and an independent transaction, if any), and the quantity of products
  - Information, documents, and source documents concerning the process of negotiation, signing, performance, and liquidation of economic contracts and agreements related to transactions (usually including a description of products, place of transaction, form of transaction, value of transaction, terms of payment, payment documentation, period of performance, minutes of meetings or instructions of the management regarding the process of negotiation, signing, and performance of a transaction
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# Vietnam (continued)

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**Documentation Requirements (continued)**

- Information, documents, and source documents related to economic conditions of the market at the time of related transactions affecting the method of calculation of a price for transactions (for example, changes in exchange rates and policies of the government affecting prices in transactions and financial incentives)
- The pricing policy for selling and purchasing products and procedures for control and approval of prices
- Information, documents, and source documents used to select the most appropriate method, including data used for comparative analysis and adjustment of significant differences
- Other information or documents used to select and apply the method

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**Documentation Deadlines**

If documentation is prepared to help protect against penalties, then it must be in place by the filing date of the corporate income tax return. Taxpayers must provide documentation to the tax authorities within 30 days of a request. If the taxpayer intentionally fails to apply the provisions of Circular 117, and fails to produce the documentation within 90 days of request, an adjustment of corporate income tax liabilities will be made.

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**Statute of Limitations on Transfer Pricing Assessments**

A general statute of limitations applies. The tax authorities are allowed to recover taxes or fines which arise within five years prior to the date of discovery of the false declarations, tax evasion, or tax error. In case the business establishment does not register, declare, and pay taxes, the tax authorities may recover taxes and fines from the date the business establishment commenced its operations.

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**Return Disclosures/ Related Party Disclosures**

Taxpayers are required to file Form GCN-01/HTQT to disclose their transactions with related parties, the details of these transactions, and the transfer pricing methods used to calculate the prices in these transactions. The disclosure form must be submitted together with the corporate income tax return, which must be filed within 90 days from the end of the fiscal year.

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**Audit Risk/Transfer Pricing Scrutiny**

The risk of transfer pricing scrutiny during a tax audit is high. The requirements to disclose related party transactions at the time of filing of corporate income tax returns and to have contemporaneous documentation indicate that scrutiny will likely occur. However, this remains to be tested during the first year of the implementation of Circular 117 in 2007.

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**APA Opportunity**

Circular 117 does not provide for unilateral or bilateral APAs.



# The Ernst & Young Global Transfer Pricing Practice

Ernst & Young is attuned with your multinational business challenges and is ready to deliver transfer pricing ideas and solutions ranging from planning and documentation to controversy management.

Ernst & Young built its leading global transfer pricing practice to serve multinational clients around the world. Over 900 highly respected professionals apply their experience in tax, economics, research, government, accounting, and international business to develop creative and practical solutions for your transfer pricing needs. The size of our practice and our global reach allow us to continually invest in the development of value-added transfer pricing resources that are not available in other firms.

Ernst & Young is recognized as a leading advisor in transfer pricing. We pioneered the Advance Pricing Agreement process, conducting the first APA in 1990 and, since then, have completed more APAs than any other consulting firm. Our people bring to every engagement a wealth of experience in international tax, economics, accounting, law, and industry.

Many of our professionals have previously held key positions in business and government around the world. Our global transfer pricing teams include leading authors on OECD and national regulations, key APA negotiators, and former Competent Authority personnel. We continue to provide up-to-date information on transfer pricing practices, perceptions, and trends through our global transfer pricing surveys, speaking engagements, and “thought leadership” articles in respected industry publications.

Ernst & Young established the Transfer Pricing Desk Program in 1996, placing multilingual partners and senior transfer pricing professionals from the United States, the United Kingdom, the Netherlands, and other key countries in offices around the world. This program allows us to respond to the global and local needs of our multinational clients by providing real time transfer pricing advice.

# Contacts

## Transfer Pricing Regional Leaders

Global Leader	Thomas Borstell	+49 211 9352 10601	thomas.borstell@de.ey.com
Americas	Bob Ackerman	202 327 5944	bob.ackerman@ey.com
Europe, Middle East, Africa, India	David Lewis	+44 20 7951 8846	dlewis1@uk.ey.com
	Mike Lowe	+44 20 7951 2206	mlowe1@uk.ey.com
Central Europe	Thomas Borstell	+49 211 9352 10601	thomas.borstell@de.ey.com
Continental W. Europe	Juan Jose Terraza Torra	+34 933 663 741	juanjose.terrazatorra@es.ey.com
Asia Pacific	Phil Anderson	+86 21 24052269	philip.anderson@cn.ey.com
Japan	Wayne Aoki	+81 3 3506 2411	wayne.aoki@jp.ey.com
Oceania	Paul Balkus	+61 2 9248 4952	paul.balkus@au.ey.com

## Country Contacts

Argentina	Carlos Casanovas	+54 11 4318 1619	carlos.casanovas@ar.ey.com
Australia	Paul Balkus	+61 2 9248 4952	paul.balkus@au.ey.com
Austria	Andreas Stefaner	+43 1 211 70 1041	andreas.stefaner@at.ey.com
Belgium	Herwig Joosten	+32 02 774 9349	herwig.joosten@be.ey.com
Brazil	Gil Mendes	+55 11 2112 5466	gil.f.mendes@br.ey.com
Canada	Greg Noble	+604 891 8221	greg.noble@ca.ey.com
Chile	Sergio Sapag	+56 2 676 1676	sergio.sapag@cl.ey.com
China	Phil Anderson	+86 21 24052269	philip.anderson@cn.ey.com+
Colombia	Gustavo Pardo	+57 1 651 2210	gustavo.pardo@co.ey.com
Costa Rica	Rafael Sayagues	212 773 4761	rafael.sayagues@ey.com
Croatia	Stan Jakubek	+421 259 229 111	stan.jakubek@sk.ey.com
Czech Republic	Jiri Teichmann	+420 225 335 327	jiri.teichmann@cz.ey.com
Denmark	Thomas Bjerre	+45 35 87 29 01	thomas.bjerre@dk.ey.com
Ecuador	Javier Salazar	+593 2 255 5553	javier.salazar@ec.ey.com
Estonia	Leonas Lingis	+370 5 274 2279	leonas.lingis@lt.ey.com
Finland	Antero Joutsu	+358 9 172771	anterojoutsu@fi.ey.com
France	Franck Berger	+33 4 78 63 17 10	franck.berger@ey-avocats.com
Germany	Oliver Wehnert	+49 211 9352 10627	oliver.wehnert@de.ey.com
Greece	Alexandros Karakitis	+359 2 817 7141	alexandros.karakitis@bg.ey.com
Hungary	Denes Szabo	+36 1 451 8209	denes.szabo@hu.ey.com
India	Srinivasa Rao	+91 98450 04866	srinivasa.rao@in.ey.com
Indonesia	Rachmanto Surahmat	+62 21 5289 5000	rachmanto.surahmat@id.ey.com
Ireland	Joe Bollard	+353 1 2212457	joe.bollard@ie.ey.com
Israel	Lior Harary-Nitzan	+972 3 623 2749	lior.harary-nitzan@il.ey.com
Italy	Davide Bergami	+39 02 851 4409	davide.bergami@it.ey.com
Japan	Wayne Aoki	+81 3 3506 2411	wayne.aoki@jp.ey.com
Kazakhstan	Roman Yurtayev	+49 211 9352 10873	roman.yurtayev@kz.ey.com
Korea	Chanho Song	+82 2 3770 0977	chanho.song@kr.ey.com
Latvia	Ilona Butane	+371 704 3836	ilona.butane@lv.ey.com
Lithuania	Leonas Lingis	+370 5 274 2279	leonas.lingis@lt.ey.com
Malaysia	Janice Wong	+60 3 7495 8223	janice.wong@my.ey.com

Continued on next page

# Contacts (continued)

Mexico	Jorge Castellon	+52 55 5283 8671	jorge.castellon@ey.com
Netherlands	Erik Kamphuis	+31 10 406 8630	erik.kamphuis@nl.ey.com
New Zealand	Matthew Andrew	+64 9 3774790	matthew.andrew@nz.ey.com
Norway	Marius Leivestad	+47 24 00 23 86	marius.leivestad@no.ey.com
Peru	Marcial Garcia	+51 1 411 4424	marcial.garcia@pe.ey.com
Philippines	Romulo Danao	+63 2 894 8392	romulo.danao@ph.ey.com
Poland	Aneta Blazejewska-Gaczynska	+48 22 557 89 96	aneta.blazejewska-gaczynska@pl.ey.com
Portugal	Paulo Mendonca	+351 21 791 2045	paulo.mendonca@pt.ey.com
Russia	Henrik Hansen	+7 495 648 9608	henrik.hansen@ru.ey.com
Singapore	Jesper Solgaard	+65 6309 8038	jesper.solgaard@sg.ey.com
Slovak Republic	Marian Biz	+421 259 229 130	marian.biz@sk.ey.com
Slovenia	Marc van Rijnsoever	+31 10 406 8626	marc.van.rijnsoever@si.ey.com
South Africa	Sean Kruger	+27 11 772 3996	sean.kruger@za.ey.com
Spain	Juan Jose Terraza Torra	+34 933 663 741	juanjose.terrazatorra@es.ey.com
Sweden	Mikael Hall	+46 8 520 592 35	mikael.hall@se.ey.com
Switzerland	Salim Damji	+41 58 286 4366	salim.damji@ch.ey.com
Taiwan	George Chou	+886 2 2720 4000	george.chou@tw.ey.com
Taiwan	Rebecca Coke	+886 2 2720 2704	rebecca.coke@tw.ey.com
Thailand	Anthony Loh	+66 2 264 0777	anthonyv.loh@th.ey.com
Turkey	Erdal Calikoglu	+90 212 368 5375	erdal.calikoglu@tr.ey.com
UK	David Lewis	+44 20 7951 8846	dlewis1@uk.ey.com
UK	Mike Lowe	+44 20 7951 2206	mlowe1@uk.ey.com
US	Bob Ackerman	202 327 5944	bob.ackerman@ey.com
US	Purvez Captain	713 750 8341	purvez.captain@ey.com
Venezuela	Katherine Pinzon	+58 212 953 5222	katherine.pinzon@ve.ey.com
Vietnam	Nam Nguyen	+84 8 824 5252	nam.nguyen@vn.ey.com

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