

INTERNATIONAL
TAX SERVICES

TRANSFER PRICING

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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 require knowledge of a complex web of country tax laws, regulations, rulings, methods and requirements.

The Ernst & Young Transfer Pricing Global Reference Guide is a comprehensive 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 approaches must be understood in order to complete both compliance and planning activities.

The Guide outlines baseline information on tax law, regulations and rulings, priorities and pricing methods, transfer pricing penalties, documentation requirements, return disclosures, related party disclosures, audit risk and APA availability in the covered countries.

Disclaimer

In the preparation of this brochure, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nonetheless, inadvertent errors can occur, and tax rules and requirements may change with little advance notice. Further, the information in the text is intended to afford general guidelines on matters of interest to taxpayers. The application and impact of tax laws can vary widely, from case to case, based upon the specific or unique facts involved. Accordingly, the information in this brochure is not intended to serve as legal, accounting, or tax advice. Readers are encouraged to consult with professional advisors for advice concerning specific matters before making any decision, and Ernst & Young, LLP disclaims any responsibility for positions taken by taxpayers in their individual cases or for any misunderstanding on the part of readers.

A web-based version of this document can be found at www.ey.com/transferpricingguide. Please check this version periodically for late breaking country developments. Commentaries from transfer pricing specialists 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 or post an e-mail query at www.ey.com/transferpricingguide.



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Transfer Pricing Global Reference Guide Legend

All rules are current as of October 2006

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

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

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

Transfer Pricing Penalties: Tax authority will impose a transfer pricing specific penalty if the taxpayer is found not to be in compliance with the transfer pricing rules imposed by that country.

Reduction in Penalties: Reduction in transfer pricing documentation penalty if the taxpayer satisfies certain conditions.

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.

Categories of Documentation Required: Types of information required as part of the taxpayer's documentation requirement.

Deadline to Prepare Documentation: Deadline for preparing transfer pricing documentation.

Deadline to Submit Documentation: Deadline for submitting transfer pricing documentation.

Statute of Limitation on Transfer Pricing Assessments: Statute of limitations on assessment for transfer pricing adjustments.

Return Disclosures/Related Party Disclosures: Disclosures required with respect to related party transactions.

Audit Risk: Level of risk of transfer pricing issues being scrutinized during an audit.

APA Availability: Tax authority agrees to the application of a specified transfer pricing method for a fixed term.

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Argentina

Taxing Authority and Tax Law

The Administración Federal de Ingresos Públicos-Dirección General Impositiva or AFIP-DGI is the Argentine Internal Revenue Service (ARS).

Tangible goods exports and imports between independent parties: Income Tax Act (ITA) Section 8, Income Tax Act Regulations (ITA Regulations) sections 10 & 11. Transactions between related parties and deemed related parties (including tax haven entities): ITA Sections 14, 15, 15.1, 129 & 130. ITA 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. ITA has been amended by Act No. 25,063, Act No. 25,239 and Act 25,784.

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

Regulations and Rulings

Currently in effect: ARS Regulation No. 1,122 (Published October 31, 2001, but applicable for fiscal years beginning from December 31, 1999) amended by ARS 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. ARS Regulation No. 1,375/02 (Information program) as amended by ARS Regulations No. 1,417/03, No. 1,463/03; No. 1,476/03; No. 1,508/03, No. 1,517/03, No. 1,524/03 and No. 1,530/03. In force before December 31, 1999: ARS Regulation No. 702 amended by 1007/01.

Priorities/Pricing Methods

The tested party must be the local entity (i.e., entity based in Argentina). The ARS accepts the most appropriate method. For exports and imports on 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) the ARS will accept CUP, Resale Price, Cost Plus, Profit Split, and TNMM. 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 & 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 not applicable if the local exporter is able to prove the substance of the operations of the consignee abroad. The ARS has the power to limit the application of this method or extend it to other transactions based on the characteristics of such transactions.

Transfer Pricing Penalties

As of September 1, 2004, there is interest on unpaid tax balances (1.5% monthly basis; 2.5% 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 from three and a half to nine years. For the late filing of tax returns concerning international transactions (exports/imports 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 non-compliance with formal duties of furnishing information requested by the ARS 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 if the taxpayer has income amounting to more than AR\$10,000,000, the fine is increased from AR\$90,000 to AR\$450,000.

Reduction in Penalties

Concerning underpayment and fraud, if the taxpayer voluntarily amends its return before a special notice (vista) from the ARS, the penalty is reduced to 1/3 of the minimum fine. If the taxpayer amends the return within 15 days of receiving the notice, the penalty is reduced to 2/3 of the minimum fine as long as the taxpayer is not recidivist. If the non-recidivist taxpayer accepts the adjustments made by the ARS 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.

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.

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Argentina (continued)

Documentation Requirements (continued)	<p>In addition, taxpayers are required to file with the ARS the following documentation.</p> <ul style="list-style-type: none">■ Special Report including the key elements of the Transfer Pricing Study■ Audited financial statements for the last three fiscal years■ An independent CPA's certification of certain contents of the Special Report■ Annual Form 743 return■ Form 742 return (for the first 6-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 ARS Regulation No. 702/99 <p>ARS 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 the ARS and file "Tri-annual Form 886" return, and service providers must complete Tri-annual Form 887."</p>
Categories of Documentation Required	The Annual Transfer Pricing Study must contain the following data: business overview, organization structure, relevant controlled transactions, functional analysis (functions, assets, and risks), selection of transfer pricing analysis methods, comparables used, application of the methods selected.
Deadline to Prepare Documentation	The transfer pricing documentation must be ready for filing with the ARS by the date the corresponding transfer pricing returns filings are due.
Deadline to Submit Documentation	The Special Report, financial statements and certification must be filed with the tax authorities within eight months after the end of the fiscal year. The annual transfer pricing returns must be filed within eight months after the end of the fiscal year. The semi-annual returns must be filed within five months after the end of the relevant six-month period. The annual return for exports and imports with independent parties must be filed within seven months after the end of the fiscal year.
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 ARS request for up to five years after the period established by the statute of limitations.
Return Disclosure-Related Party Disclosure	The ARS 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.
Audit Risk/Transfer Pricing Scrutiny	It is likely that Argentine authorities will try to increase revenue and strictly enforce penalties with companies that are not complying with transfer pricing legal requirements.
APA	APAs are not specifically addressed.

Australia

Taxing Authority and Tax Law	Australian Taxation Office (ATO); Division 13 of Part III of Income Tax Assessment Act, relevant provisions of double tax treaties and taxation rulings.
Regulations and Rulings	TR92/11, TR94/14, TR95/23, TR97/20, TR98/11, TR98/16, TR1999/1, TR1999/8, TR2000/16, TR2001/11, TR2001/13, TR2002/2, TR2002/5, TR2003/1, TR 2004/1.
Priorities/Pricing Methods	The ATO will consider the use of all of the OECD recognized transfer pricing methods and will also consider broader methods for particular facts and circumstances.
Transfer Pricing Penalties	Methods outlined in ATO rulings include CUP, Resale Price, Cost Plus, Profit Split, and TNMM, with a preference for traditional methods. Penalties range from 0-50% plus additional penalty components for hindering ATO investigations or entering tax avoidance schemes. Zero penalties will apply only where the taxpayer has contemporaneous documentation that provides a reasonably arguable position (RAP). For due dates that fall on or after July 1, 1999, a general interest charge will apply to any amount of tax not paid by the due date. 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.
Reduction in Penalties	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. When a taxpayer has an RAP, the penalty can be reduced to 10% except for sole or dominant tax avoidance cases (25%). Additionally, the Commissioner of Taxation has discretionary power to remit penalties to zero.
Documentation Requirements	The ATO requires extensive contemporaneous documentation to be maintained. The documentation should record the transfer price setting process and in particular, verify the outcome of those transactions against the arm's length standard, including business, economic and industry analyses. In addition, taxpayers are expected to implement and document support processes including a review process to ensure material changes are reflected. The documentation should be relevant to the Australian operations (i.e., country-and company-specific).
Categories of Documentation Required	The ATO has outlined a four-step process in TR98/11 to assist companies in satisfying documentation requirements. This process is not mandatory but is highly recommended
Deadline to Prepare Documentation	There is no deadline for preparation of documentation, but documentation is expected to be contemporaneous with the filing of tax returns in order to be reflected on Schedule 25A (disclosing which documentation is available). Documentation is contemporaneous if it is prepared prior to or at the time of lodging the company's annual tax return.
Deadline to Submit Documentation	Documentation is generally only required to be submitted to the ATO following a specific notification, e.g., during an ATO transfer pricing documentation review or audit. Documentation is expected to be provided within two weeks of ATO request.
Statute of Limitations on Transfer Pricing Assessments	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.
Return Disclosure-Related Party Disclosure	Under Schedule 25A the following items are required to be disclosed: <ul style="list-style-type: none">■ Industry classification code■ Transaction type■ Amounts per transaction type■ Countries with which the taxpayer has transactions■ Percentage of transactions covered by contemporaneous documentation that meet various steps in the four-step process■ Transfer pricing methodologies selected and applied.

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Australia (continued)

TAudit Risk/Transfer Pricing Scrutiny

Australian taxpayers run a high risk of transfer pricing audits. As a matter of principle, the ATO will review transfer pricing as part of a taxpayer's tax audit or risk review. In addition, the ATO uses an automated risk engine, as well as transfer pricing record reviews to identify taxpayers that should undergo a specific transfer pricing audit. Areas that receive particular attention are royalties, intangibles (both Australian- and foreign-owned), services, interest-free loans, companies undergoing supply chain restructurings, and transactions of taxpayers that do not achieve a commercially realistic result (e.g., incur losses or low returns in any particular year). The ATO also focuses on specific industries including oil, motor vehicles, pharmaceuticals, distributors, banking and insurance. Recently, the ATO has stepped up its efforts in relation to "Transfer Pricing Record Reviews" (documentation reviews) and transfer pricing audits. This new round of reviews targets small and medium-sized enterprises as well as large enterprises.

APA

The ATO actively promotes the use of APAs and has a well-established program for both unilateral and bilateral APAs. Apart from providing a taxpayer with certainty, Australian APAs are usually negotiated in a cooperative and solution-focused manner, allowing for more realistic results when compared to the aggressive positions taken by the ATO in audit situations.

Austria

Taxing Authority and Tax Law	<p>Paragraph 6(6) of the Income Tax Act, and Paragraph 8(2) of the Corporate Income Tax Act.</p> <p>Please note that Paragraph 6(6) of the Income Tax Act has been amended (effective December 31, 2004) as follows: Austrian taxes incurred because of cross-border transfers of assets to EU and EEA countries will only be calculated on request— but taxes will not be due before the assets are sold, withdrawn from business assets or later transferred to a non-EU or EEA state if the following requirements are met:</p> <ul style="list-style-type: none">■ Transfer of assets within one company of the same taxpayer■ Relocation of companies and Permanent Establishments to EU and EEA countries. <p>When assets are re-transferred, book values before transfer will be applicable.</p>
Regulations and Rulings	<p>Austria has not implemented the OECD Transfer Pricing Guidelines as a legal rule. However, the Ministry of Finance has issued the OECD Transfer Pricing Guidelines in a decree, which is binding for all financial authorities. Thus the financial authorities are bound to apply the OECD Transfer Pricing Guidelines in international transfer pricing cases.</p>
Priorities/Pricing Methods	<p>The Austrian Tax Authorities follow the OECD Transfer Pricing Guidelines. However, the tax authorities furnish no binding rules.</p>
Transfer Pricing Penalties	<p>There are no special transfer pricing penalties, but a hidden distribution or hidden contribution may be assumed if the transfer pricing method does not meet the arm's length principle. If such a hidden distribution or contribution is assessed during a tax audit, the tax is calculated as if no hidden distribution or hidden contribution happened, and interest is charged for the late payment of the tax.</p>
Reduction in Penalties	<p>There are no special provisions for reduction in penalties.</p>
Documentation Requirements	<p>There are no specific transfer pricing documentation rules. However, following the OECD Transfer Pricing Guidelines is recommended. All figures should be adequately substantiated, otherwise re-characterization may occur.</p>
Categories of Documentation Required	<p>There are no specific categories of documentation required but a written transfer pricing contract or other documentation is highly recommended. All documents which prove that dealings occurred at arm's length are required. Also, documents that prove the arm's length nature of the calculation must be provided.</p>
Deadline to Prepare Documentation	<p>It is strongly recommended that documentation be prepared contemporaneously.</p>
Deadline to Submit Documentation	<p>The taxpayer must submit the documentation upon request of the tax authority.</p>
Statute of Limitations on Transfer Pricing Assessments	<p>There is no specific statute of limitations on transfer pricing adjustments but the general regime for the statute of limitations applies.</p>
Return Disclosure-Related Party Disclosure	<p>No specific disclosure is required.</p>
Audit Risk/Transfer Pricing Scrutiny	<p>Taxpayers run a high risk that transfer prices will be scrutinized during a tax audit.</p>
APA	<p>A special decree exists whereby an APA is possible. However, APAs are not binding since the taxpayer only has a good-faith argument with the tax authorities.</p>

Azerbaijan

Taxing Authority and Tax Law	Ministry of Taxes of the Azerbaijan Republic (MOT). The Tax Code, Article 14.
Regulations and Rulings	Internal letter of the MOT Nos. 13/01-25/406-572 dated February 25, 2002.
Priorities/Pricing Methods	The Tax Code permits the Resale Price and Cost Plus methods. It also allows the use of information on prices of comparable goods and expert opinions to establish transfer prices. However, a taxpayer has the right to petition the tax office with evidence demonstrating that the market value of any goods, works or services should be determined by means other than those outlined in the Tax Code due to the nature of the transaction involved. Market price is used for government-regulated goods, works, and services.
Transfer Pricing Penalties	If the amount of tax indicated in a tax return is understated, a taxpayer faces penalty in the amount of 25% of the understated tax. Interest on outstanding tax liabilities accrues at a rate of 0.05% per day (but it is not to exceed one year).
Reduction in Penalties	N/A
Documentation Requirements	No specific requirements exist.
Categories of Documentation Required	No specific requirements exist.
Deadline to Prepare Documentation	No specific requirements exist.
Deadline to Submit Documentation	Documentation is generally only required to be submitted following the notification of a transfer pricing documentation review by the MOT.
Statute of Limitations on Transfer Pricing Assessments	There is no specific statute of limitations for transfer pricing adjustments. The general statute of limitations period for tax purposes is three years.
Return Disclosure-Related Party Disclosure	N/A
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an audit is low.
APA	N/A



Belgium

Taxing Authority and Tax Law

Administration of Direct Taxes.

The arm's length principle was introduced in Belgian tax law through the law of June 21, 2004, introducing Article 185 §2 (entered into force on July 19, 2004). This article's content is equivalent to Article 9, §1 and §2 of the OECD Model Treaty. Previously, the arm's length principle was only indirectly embodied in general tax law on the avoidance of profit shifting; Income Tax Code and Articles 26, 49, 54, 55, 79, 185 §2, 207, 344, & 345, which also remain in force.

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

Regulations and Rulings

Administrative guidelines on transfer pricing: 1999–Offensive transfer pricing aspects; 2000 and 2003–Defensive transfer pricing aspects. Administrative guidelines providing the tax authority's view on article 185 §2, which introduced the arm's length principle in Belgian tax law, were issued in July 2006.

Traditional Belgian safe harbor regimes (coordination, service, and distribution center) have been revised as a result of efforts such as the Code of Conduct. These regimes have been replaced by a general ruling practice (see APAs). As an alternative for coordination centers, the Belgian government has implemented a fictitious deduction on risk capital, also known as Notional Interest Deduction. This new measure is applicable as of January 2006

Priorities/Pricing Methods

Transaction-based methods are preferred over profit-based methods, but, in principle, taxpayers are 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 required to use more than one method, although they should provide reasons for the decision to apply a particular method.

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 payment is due on additional tax assessments (including assessments resulting from a transfer pricing adjustment).

Reduction in Penalties

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).

Documentation Requirements

No legislative guidance regarding proper documentation exists. The 1999 Circular Letter states that documentation should demonstrate that the taxpayer's pricing complies with the arm's length principle to avoid an in-depth transfer pricing audit. Additional guidance is expected to be issued in the near future.

Categories of Documentation Required

The 1999 Circular Letter recommends that documentation include, at a minimum:

- Activities of the group (including competitive position, level of market, economic circumstances, business strategies, etc.)
 - Identification and characterization of intercompany transactions and contractual relationships among affiliates
 - Functional analysis (including an overview of the functions; risks & intangibles)
 - Transfer pricing methods used
 - Economic analysis
-

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Belgium (continued)

Deadline to Prepare Documentation	Given the lack of any formal transfer pricing documentation requirements, there is no deadline for preparation. It is, however, recommended that each transaction be documented at the time it is executed since a taxpayer must, under the general tax rules, provide the authorities with the information that is relevant for the assessment of his taxable income. Additionally, the 1999 Circular provides that if the taxpayer has made sufficient efforts to prepare transfer pricing documentation, the tax inspector does not need to carry out an in-depth tax audit.
Deadline to Submit Documentation	No formal filing requirements exist since there is no statutory requirement to prepare transfer pricing documentation. However, upon a tax audit, a tax-payer has typically a one-month period to provide all information requested, including all information that allows verification of the arm's-length nature of the transfer prices.
Statute of Limitations on Transfer Pricing Assessments	According to the Belgian Income Tax Code, the tax authorities are entitled to levy additional taxes 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 prior notice is given to the taxpayer of serious indications of fraud.
Return Disclosure-Related Party Disclosure	No specific disclosure requirements exist for filing the tax return.
Audit Risk/Transfer Pricing Scrutiny	<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 Cell" within the field services (it selects its own audit targets and supports other field inspector, 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 team 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>Although the transfer pricing audit focus is increasingly shifting to product sale prices, service fees, financing transactions, and transactions involving intangibles, operational restructurings continue to be subject to in-depth investigations</p>
APA	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 June 21, 2004, the Service for Advance Decisions became an autonomous department (led by a committee of four) as of January 1, 2005. More than 30 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

Taxing Authority and Tax Law	Secretaria da Receita Federal (SRF) Ordinary Federal Law of December 27, 1996 (Law 9430/96), Articles 18 to 24 and 28.
Regulations and Rulings	Normative Instruction (NI) SRF No. 243 of November 11, 2002 (NI 243/02) and NI SRF No. 382 of December 30, 2003 (NI 382/03).
Priorities/Pricing Methods	The SRF prefers the method that yields lowest taxable income. It accepts CUP, Resale Price (20% or 60% of statutory margin on imports, 15% or 30% on exports), and Cost Plus (20% of statutory margins on imports, 15% on exports).
Transfer Pricing Penalties	Penalties exist for underpayment of taxes.
Reduction in Penalties	If settled within 30 days, the penalty may be reduced by fifty percent (not of underlying tax contingency).
Documentation Requirements	The SRF requires contemporaneous documentation as part of the annual tax return (DIPJ—Declaração de Informações Econômico-Fiscais da Pessoa Jurídica).
Categories of Documentation Required	The DIPJ 2005 (due by June 30, 2006) must include: <ul style="list-style-type: none">■ Form 38A—Breakdown of Transactions with Foreign Related Parties■ Form 38B—Summary of Transactions with Foreign Related Parties■ Form 39—Export Transactions■ Form 40—Export Transactions—Foreign Related Persons■ Form 41—Import Transactions■ Form 42—Import Transactions—Foreign Related Parties
Deadline to Prepare Documentation	Documentation must be prepared by the end of December. This deadline to file DIPJ falls on June 30 of the subsequent fiscal year.
Deadline to Submit Documentation	Contemporaneous documentation must be submitted by the same deadline as the DIPJ. Detailed support documentation only needs to be submitted upon specific request by the tax authorities as part of an audit.
Statute of Limitations on Transfer Pricing Assessments	The statute of limitations on transfer pricing adjustments is five years.
Return Disclosure-Related Party Disclosure	Parties and transactions involved must be disclosed. Additionally, information regarding the products, transfer prices, and related parties is required in specific schedules that are part of the DIPJ.
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an audit is high, especially for industries considered strategic (e.g., pharmaceuticals, agro-chemicals, electronics, telecommunications equipment, auto parts, etc.).
APA	Bilateral APAs are unavailable. A unilateral APA-like ruling process is only available under Federal Revenue Service's NI 243/02.

Canada

Taxing Authority and Tax Law	Canadian Income Tax Act Section 247. The Act is administered by the Canada Revenue Agency (CRA).
Regulations and Rulings	There are no regulations in effect. Information Circular 87-2R (September 27, 1999) outlines the CRA current administrative practices. In addition, the CRA has issued supplementary Transfer Pricing Memoranda clarifying certain administrative procedures.
Priorities/Pricing Methods	The CRA accepts all of the transfer pricing methods listed in the OECD Transfer Pricing Guidelines. While the Act does not impose an explicit hierarchy of methods, the CRA's view is that there is a natural hierarchy in the methods. The traditional transaction methods (CUP, Cost Plus, and Resale Price) are preferable to the transactional profit methods (Profit Split and TNMM). The CRA believes that in many cases the practical application of the U.S. CPM does not meet the degree of comparability required for the TNMM.
Transfer Pricing Penalties	<p>There is a 10% penalty on total transfer pricing adjustments, plus non-deductible interest. The penalty applies to transactions on income account (e.g., operations, inventory) as well as to adjustments on capital account (e.g., purchase of capital assets). The penalty is not dependent upon whether there is an actual cash tax payable. All potential penalties are reviewed by the Transfer Pricing Review Committee. The Committee has recommended penalties in approximately 50% of the cases referred to it to date (March 2006).</p> <p>It is important to note that the Act permits the CRA to recharacterize a transaction if certain conditions are met.</p>
Reduction in Penalties	<p>The transfer pricing penalty is eliminated under the following conditions:</p> <ul style="list-style-type: none">■ The transfer pricing adjustments are less than the lesser of C\$ 5 million or 10% of the taxpayer's gross revenue (Canadian), or■ "Reasonable efforts" were made to determine and use arm's length terms and conditions. <p>The "reasonable effort" is not met if contemporaneous documentation is not prepared within a specified time frame (within six months of year-end for corporations) or if documentation is not provided to the CRA within three months of its request. Documentation itself is not a safe harbor; rather the actions of the taxpayer will be evaluated under a statutory standard of reasonable care.</p>
Documentation Requirements	The Act does not require contemporaneous documentation. However, in the absence of documentation, an adjustment in excess of the penalty threshold will automatically incur a transfer pricing penalty.
Categories of Documentation Required	<p>The required statutory information includes:</p> <ul style="list-style-type: none">■ Details of the property/service involved■ Terms and conditions of the transaction■ Participants in the transaction■ Functions performed, property used or contributed and the risks assumed by the parties■ Data and methods considered and the analysis performed to determine the transfer prices■ Assumptions, strategies and policies that influenced the determination of the method applied. <p>Administratively, the CRA considers the following additional information relevant:</p> <ul style="list-style-type: none">■ Business overview and organization structure■ Method selected with an explanation of why the selected method is more appropriate than higher-ranking methods■ Projection of expected benefits in reference to intangibles■ Scope of search and criteria to select comparables■ Analysis of the factors determining comparability■ Relevant assumptions, strategies and policies as they relate to the transaction. <p>Alternatively, taxpayer may prepare documentation consistent with the PATA Documentation Package.</p>

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Canada (continued)

Deadline to Prepare Documentation	Corporations must prepare documentation within six months of the year-end. Partnerships have five months from the end of the fiscal year. Trusts have 90 days after the year-end. Individuals have until April 30 of the following year, or June 15 of the following year if they are self-employed.
Deadline to Submit Documentation	Taxpayers must submit documentation within three months from the date of service of a written request from the CRA (whether in person or by registered/certified mail).
Statute of Limitations on Transfer Pricing Assessments	Individuals, trusts and Canadian-controlled private corporations have six years from the date of the initial assessment. Other corporations have seven years. Both of these periods represent a three year extension of the normal statutory period. This period may be extended by filing a waiver within the normal statutory period.
Return Disclosure-Related Party Disclosure	A separate disclosure (on Form T106) must be made for transactions not using the arm's length standard involving non-residents. This reporting form provides information regarding the non-resident, the amount and type of transactions and the transfer pricing method applied to the transactions. In addition, the taxpayer is required to disclose whether contemporaneous documentation has been prepared. Tax returns must also disclose transactions with shareholders.
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an audit is high. Issues of particular risk are service fees and intangibles, although all transactions are subject to review. A transactional approach, rather than a results approach, is taken on audit. The CRA's International Tax Directorate now requires field auditors to formally request transfer pricing documentation from taxpayers at the beginning of tax audits.
APA	Unilateral, bilateral, and multilateral APAs are available under Circular 94-4R (March 2001). However, the CRA prefers bilateral and multilateral APAs. A smaller business APA program is also available (IC 94-4SR).

Chile

Taxing Authority and Tax Law	Chilean Internal Revenue Service or Servicio de Impuestos Internos (SII); Chilean Income Tax Law, Article 38; Law 19,506.
Regulations and Rulings	Form Letter No. 3.
Priorities/Pricing Methods	The Chilean Internal Revenue Service accepts the most reasonable method.
Transfer Pricing Penalties	Penalties exist for the underpayment of tax and interest.
Reduction in Penalties	N/A
Documentation Requirements	N/A
Categories of Documentation Required	N/A
Deadline to Prepare Documentation	N/A
Deadline to Submit Documentation	N/A
Statute of Limitations on Transfer Pricing Assessments	N/A
Return Disclosure-Related Party Disclosure	N/A
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an audit is generally low; however, SII has begun an initiative to request information from taxpayers on cross-border transactions as well as information on related party services and royalty payments.
APA	N/A

China (PRC)

Taxing Authority and Tax Law	State Administration of Taxation (SAT). PRC Income Tax Law for Foreign-Invested Enterprises and Foreign Enterprises, Article 13; and Detailed Rules for Implementation, Articles 52-58.
Regulations and Rulings	Taxation Administration Rules for Business Transactions Between Associated Enterprises (Guo Shui Fa No. 59 (1998)). Amendments of Taxation Administration Rules for Business Transactions Between Associated Enterprises (Guo Shui Fa No. 143 (2004) (issued on October 22, 2004).
Priorities/Pricing Methods	The SAT accepts a reasonable method. The SAT will accept CUP, Resale Price, and Cost Plus. Other methods, including Profit Split, CPM, and TNMM, are also considered.
Transfer Pricing Penalties	No specific transfer pricing penalties exist, with the exception of a penalty for late filing of the "Related Party Transactions Declaration Form," which should be submitted with the annual income tax return. Failure to provide information requested by the Taxing Authorities (including transfer pricing documentation) within the prescribed timeframe will lead to a maximum penalty of 10,000 Chinese Yuan. For any tax payable resulting from a transfer pricing investigation, the taxpayer must settle the payment within the time limit proscribed by the tax authorities. If the taxpayer fails to pay the tax within the time limit, a surcharge of 0.05% per day and, for serious violation, up to five times that amount, may be imposed on any delinquent tax payment.
Reduction in Penalties	N/A
Documentation Requirements	There are no statutory requirements for documentation; however, the SAT prefers contemporaneous documentation. The statutory authorities are empowered to re-characterize the deemed profit should the taxpayer fail to provide adequate documentation within the proscribed timeframe or provide false information. The SAT is in the process of drafting the documentation guidelines and it has advised that the guidelines can be very complicated. The documentation guidelines are expected to be released in late 2006y 2006.
Categories of Documentation Required	N/A
Deadline to Prepare Documentation	N/A
Deadline to Submit Documentation	N/A
Statute of Limitations on Transfer Pricing Assessments	The statute of limitations for transfer pricing adjustments is three to ten years depending on the nature of the intercompany transactions.
Return Disclosure-Related Party Disclosure	The taxpayer must file an "Annual Declaration Disclosing Transactions With Related Enterprises." (Forms 13A or 13B). Detailed related party transaction information may also be requested by tax authorities during transfer pricing investigations or audits.

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China (PRC) (continued)

Audit Risk/Transfer Pricing Scrutiny

The risk of transfer pricing issues being reviewed under an audit is medium. In 2005, transfer pricing audit targets in China will be mainly selected from:

- Enterprises that have incurred sustained losses in the past
- Companies whose profits have fluctuated from year to year
- Businesses that have continuously expanded their Chinese operations despite little or no prior profits

A recent circular issued by the SAT (Guo Shui Fa No. 239 [2005]) reveals that tax authorities will expand their focus on tax avoidance activities from tangible goods to other areas including thin capitalization, cost allocation, intercompany services, financing, and royalties, etc. The SAT has purchased databases from the National Bureau of Statistics of China and Bureau van Dijk to strengthen the comparable analysis. The SAT has imposed greater control on anti-avoidance/transfer pricing audit practice by the local tax authorities since 2005.

APA

APAs are available in China. Guidance regarding the APA process and procedures is provided in the "Trial Implementation Rules for Advance Pricing Arrangement for Transactions Between Related Parties" (Guo Shui Fa No. 118 [2004]), which was issued by the SAT on September 3, 2004.

Colombia

Taxing Authority and Tax Law	<p>Dirección de Impuestos y Aduanas Nacionales (DIAN).</p> <p>Law 788 enacted in 2002, and Law 863, enacted in December 2003, established the transfer pricing practice in the Tax Code, articles 260-1 to 260-10.</p> <p>The definition of related parties is found in articles 450 and 452 of the Tax Code; articles 260, 261, 263 and 264 of the Commercial Code; and article 28 of Law 222 of 1995.</p>
Regulations and Rulings	<p>Regulatory Decree 4349 published on December 2004 provides the transfer pricing guidelines applicable in Colombia, including the contents of the statutory transfer pricing documentation and declaration, use of financial data, and APA program.</p> <p>Regulatory statements were published in December of 2004. Resolution 5015 of 2003 created the DIAN group for transfer pricing matters. There are several non-binding rulings on transfer pricing matters.</p>
Priorities/Pricing Methods	<p>Regulatory Decree 4349 established the best method rule. The law stipulates six methods that can be applied depending on the type of transaction. These methods are CUP, Resale Price, Cost Plus, Profit Split, Residual Profit Split, and TNMM. Local company information is available and should be used for benchmark analyses when applicable.</p>
Transfer Pricing Penalties	<p>For partial non-compliance with transfer pricing documentation requirements, taxpayer face penalties of 1% of the total value of the operations with related parties during the relevant tax year, or 0.5% of the taxpayer's net income or gross capital in the income tax return of the same tax year or in the last tax return filed. Penalties cannot exceed COP\$500 million (~ US\$212,000). Additionally, when the taxpayer does not present the required documentation, the penalties are calculated in the same way as partial non-compliance; those penalties cannot exceed COP\$700 million (~ US\$296,000).</p> <p>Regarding the "Transfer Pricing Transactions Declaration," penalties for late compliance are calculated in the same manner as penalties for non-compliance with the transfer pricing documentation requirement but applied on a monthly basis and cannot exceed COP\$700 million (~ US\$296,000). With respect to transfer pricing adjustments, tax authorities penalize taxpayers with an extra penalty of 160% of the unpaid tax.</p> <p>If taxpayers fail to fulfill their obligation of declaring transfer pricing transactions, the default fine is 10% of taxpayer's net income or gross capital in the income tax return of the same tax year or in the last tax return filed. These penalties cannot exceed COP\$700 millions (~ US\$296,000).</p>
Reduction in Penalties	<p>Regarding transfer pricing studies, penalties are reduced by 50% if the omission, mistake or weakness is repaired before sanction notification, or reduced by 25% if they are repaired within two months after penalty notification.</p> <p>With respect to the "Transfer Pricing Transactions Declaration," once the taxpayer becomes liable for penalties for not presenting the declaration form, such penalty can be reduced by 25% if the taxpayer presents the declaration before the new deadline.</p>
Documentation Requirements	<p>Taxpayers must prepare documentation supporting that each transaction with related parties is conducted according to the arm's length principle. Documentation is not required for transactions within the fiscal year that do not exceed 500 times the minimum wage (~ US\$81,000). Regulatory Decree 4349 outlines the information to be included in transfer pricing documentation.</p>
Categories of Documentation Required	<p>DIAN requires a "Transfer Pricing Transaction Declaration" for each year, due between June 17 and June 23 for the previous fiscal year. For each transaction, documentation should identify the related parties, transfer pricing methodology, analyze the factors determining comparability, and include other specific information.</p>

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Colombia (continued)

Deadline to Prepare Documentation	Taxpayers must prepare documentation by June 30 for the previous fiscal year. After this date, tax authorities can request transfer pricing documentation. Transfer pricing rules apply as of 2004. DIAN may audit companies beginning in 2005 for FY04.
Deadline to Submit Documentation	Transfer pricing documentation is only to be presented to the tax authorities upon request. In such an event, documentation should be provided as of June 30.
Statute of Limitations on Transfer Pricing Assessments	The taxpayer must keep transfer pricing documentation for five years. DIAN may review the transfer pricing assessments during this period.
Return Disclosure-Related Party Disclosure	As part of the transfer pricing transaction declaration, taxpayers must disclose information on related parties.
Audit Risk/Transfer Pricing Scrutiny	<p>In February and March of 2006, the tax authorities requested transfer pricing documentation from those taxpayers who declared transfer pricing transactions for FY 2004, approximately 1250 taxpayers. After this documentation was reviewed, tax authorities requested additional information and corrections from these taxpayers. Until May 2006, approximately six taxpayers were under the tax authority's scrutiny for lack of proper 2004 documentation.</p> <p>Additionally, the tax authorities have requested clarifications from other taxpayers who had expected to have intercompany transactions (but did not file declarations) on why they did not make declarations. The tax authorities' interest in transfer pricing matters have increased considerably during this year.</p> <p>A centralized transfer pricing group is currently defining a transfer pricing audit strategy with the support of foreign experts.</p>
APA	<p>The tax reform enacted in 2003 established APA regulations. APAs may be granted for four year terms, and they may be renewed. For the time being only unilateral APAs are available; no double-taxation treaties currently exist.</p> <p>Regulations for transfer pricing establish that the Tax Authority will be negotiating APAs in fiscal year 2006.</p>

Czech Republic

Taxing Authority and Tax Law	Ministry of Finance. The Income Tax Act §23(7) – arm's length principle and §38nc – APA scope and procedures.
Regulations and Rulings	<p>Directive D-258 discusses the application of international standards in the taxation of transactions between associated companies – 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 the binding assessment, 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 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.</p>
Priorities/Pricing Methods	The Ministry of Finance follows the OECD Transfer Pricing Guidelines and prefers the traditional transactional methods due to their simplicity and their accordance with OECD Transfer Pricing Guidelines. Use of profit based methods must be substantiated.
Transfer Pricing Penalties	There are no specific transfer pricing penalties. Generally, upon a successful challenge of transfer prices by the tax authority, a penalty of 0.2% of the unpaid tax for each day after its due date may be applied. The penalty may be assessed up to a maximum of 500 days. Thereafter, interest is assessed at 140% of the discount rate of the Czech National Bank.
Reduction in Penalties	There is no specific reduction of penalty policy for transfer pricing. It is at the discretion of the Ministry of Finance to decrease penalties.
Documentation Requirements	<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 the taxpayers, the appropriateness of the level of the fees, and the transfer pricing method selected. The analysis of controlled transactions and identification of comparables could be useful. Therefore, a high level of formal evidence may be necessary to support various aspects of the transaction. There are deadlines for submitting the required documentation after a request is made (see "Deadline to Submit Documentation" below).</p> <p>D-258 indicates 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 determines 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>
Categories of Documentation Required	There are no specific statutory requirements. See "Documentation Requirements" above.
Deadline to Prepare Documentation	There is no specific deadline to prepare documentation, since no specific statutory documentation requirement exists. See "Documentation Requirements" above.
Deadline to Submit Documentation	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 receipt of a request by the Ministry of Finance. This time limit may be extended at the discretion of the Ministry of Finance if a request is made by the taxpayer.

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Czech Republic (continued)

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. 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).

Return Disclosure-Related Party Disclosure

Effective January 1, 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.

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 services 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.

APA

APA regulations were established under §38nc of the Income Tax Act, which became effective January 1, 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 affected in a particular tax period or will be affected in the future. It is impossible to apply for a binding assessment of business relationships that have already affected the tax liability. The D-292 details the procedures 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.

Denmark

Taxing Authority and Tax Law	Ministry of Taxation (MT). Tax Assessment Act, Section 2; Tax Control Act, Sections 3B, 14 (3) and 17 (3); and Tax Administrative Act, Sections 33C (1), 33E (3), 34 (5) and 35 (1).
Regulations and Rulings	Guidelines for Tax Assessment, and Section S.I. Guidelines for disclosing information exist. Regulation no. 42 of January 24, 2006 pertains to the documentation of the pricing of intercompany transactions and guidelines for preparation of written transfer pricing documentation. The guidelines state that the MT, for the purpose of its assessment, will apply the principles of the OECD Transfer Pricing Guidelines.
Priorities/Pricing Methods	The MT accepts CUP, Resale Price, Cost Plus, Profit Split, and TNMM. However, the MT prefers transactional methods to profit-based methods.
Transfer Pricing Penalties	Fines were introduced for years commencing on or after April 2, 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. In case of income adjustments, a 5.3% (5.4% for 2005, 5.7% for 2004, and 10% for 2001-2003) non-deductible surcharge will be levied on all adjustments of prior years' corporate taxes payable. Further, non-deductible interest of 0.5% (0.6% for income years 2001-2004) is applicable for each month since the due date for the corporate tax payable for the income year in question.
Reduction in Penalties	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.
Documentation Requirements	The MT requires contemporaneous documentation. The documentation must be available upon request from the tax authorities within sixty days notice. Transfer pricing documentation requirements affect both domestic and foreign intercompany transactions. The transfer pricing documentation requirements are eased for small and medium-sized companies, as well as for entities subject to tonnage tax.
Categories of Documentation Required	<p>Documentation requirements have been tightened as of 2006. According to Regulation no. 42, the documentation should include:</p> <ul style="list-style-type: none">■ A description of the group including the legal group structure, history of the group, including a description of restructurings, operational structure and primary business activities, as well as a description of and the industry in which it operates■ A description of the Danish entity, its intercompany transactions and the other entities involved (primary business activities and key financials)■ A description of each intercompany transaction<ul style="list-style-type: none"><input type="checkbox"/> Parties, types of products/services/assets transferred and the volumes involved<input type="checkbox"/> An analysis of functions and risks undertaken and assets employed by the entities involved<input type="checkbox"/> Contractual terms<input type="checkbox"/> Economic conditions<input type="checkbox"/> Business strategies■ Comparability analysis per intercompany transaction, including<ul style="list-style-type: none"><input type="checkbox"/> Information about the transfer pricing method applied and how the transfer pricing principles are implemented in practice, e.g. whether year-end adjustments are made<input type="checkbox"/> Analysis of how the transfer prices satisfy the arm's length principle■ 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 <p>According to the new strengthened documentation requirements, with 60-90 days notice, a taxpayer must 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)

Deadline to Prepare Documentation	The deadline to prepare documentation is the same as the date for filing the tax return.
Deadline to Submit Documentation	Documentation must be provided upon request. Sixty days notice is given.
Statute of Limitations on Transfer Pricing Assessments	The limitation on a transfer pricing assessment is May 1 in the sixth year after the end of the calendar year replacing the income year.
Return Disclosure-Related Party Disclosure	Form 05.021 discloses information on all controlled transactions and whether the company is qualified for the relaxed documentation requirements.
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an audit is medium/high. Transfer pricing audits are an area of focus for the Danish tax authorities.
APA	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.

Ecuador

Taxing Authority and Tax Law	Internal Revenue Service (SRI); Master Tax Code Art. 91.
Regulations and Rulings	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 establishes the transfer pricing exhibit and transfer pricing integral report contents requirements. Resolution NAC-DGER 2005-0641 establishes median calculation and arm's length standard. The OECD Transfer Pricing Guidelines will be applicable as an indices technique. Resolution No. NAC-DGER2006-0161 changes the 2005 exhibit deadline to October 2006.
Priorities/Pricing Methods	The SRI accepts CUP, Resale, Cost Plus, Profit Split, Residual Profit Split, and TNMM. There is no best method rule.
Transfer Pricing Penalties	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. The annual income tax return includes a box to be filled with transfer pricing adjustment to payable tax.
Reduction in Penalties	N/A
Documentation Requirements	The SRI requires that the transfer pricing exhibit report all transactions held with related parties and that the transfer pricing integral report substantiate all transactions with related parties comply with the arm's-length principle. Exhibits must be filed by any company with accumulated transactions with related parties over US\$300,000 on the reported fiscal year.
Categories of Documentation Required	<p>The transfer pricing exhibit requires the following information:</p> <ul style="list-style-type: none">■ Declaration of transactions performed by the company■ Names of each related party■ Related party physical address and country of location■ Related party taxpayers' identification numbers■ Type and amount of transaction■ Type of relationship■ Method used to establish arm's length values■ Difference obtained on each reported transaction <p>The transfer pricing integral report requires:</p> <ul style="list-style-type: none">■ Economic and business environment analysis■ Documentation of functions, assets, risk, organizational structure, business description■ Detailed information of all operations with related parties, audited financial statements■ Agreements and contracts■ Reason for selecting a method■ Reason for rejection of comparable companies■ Accepted comparable companies activities description and financial statements■ Analysis description and results■ Other relevant information
Deadline to Prepare Documentation	The transfer pricing exhibit must be filed five days after filing the annual income tax return. Because 2005 was the first year that the transfer pricing regulations applied, an exception has been made for the exhibit filing. This document must be prepared and filed along with the integral report, by October 2006. The exception does not change the obligation to declare the transfer pricing adjustment amount in the April tax return.

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Ecuador (Continued)

Deadline to Submit Documentation	The transfer pricing report and documentation must be prepared and submitted six months after filing the annual income tax return.
Statute of Limitations on Transfer Pricing Assessments	The statute of limitations is three years from the date of filing the return, and six years if overall tax compliance was not accomplished.
Return Disclosure-Related Party Disclosure	The obligation to disclose related parties has been established in SRI Resolution NAC-DGER2005-0640.
Audit Risk/Transfer Pricing Scrutiny	<p>SRI Resolution NAC-DGER2006-0477 created the temporary "Transfer Pricing Unit" in charge of the analysis, design, and proposal of international transactions tax compliance controls. This Unit will also be in charge of:</p> <ul style="list-style-type: none">■ Design of controls for transfer pricing issues■ APAs and related matters design and analysis■ Surveillance of taxpayers who are under the protection of double taxation treaties■ Coordination with other national tax administrations to exchange information■ Analysis of the feasibility to subscribe to new treaties or modify those previously agreed <p>This unit is temporary, and its achievements will be evaluated after one year of operation. A positive evaluation likely means that the Unit will be permanent, and negative evaluation likely means that audit processes will be conducted by the SRI general tax audit department</p>
APA	APAs are not available at this time; however, the Transfer Pricing Unit is currently analyzing the feasibility of an APA program, and once implemented, the Transfer Pricing Unit will be charged with its administration and management.

Finland

Taxing Authority and Tax Law	Ministry of Finance. Paragraph 31 of the Taxation Procedure Act.
Regulations and Rulings	There are no specific regulations or rulings specific to transfer pricing, but the Ministry of Finance generally follows the OECD Transfer Pricing Guidelines.
Priorities/Pricing Methods	None.
Transfer Pricing Penalties	The taxpayer faces penalties up to 30% of adjusted income and a 9.5% interest rate if taxes are reassessed.
Reduction in Penalties	Penalties can be reduced or removed if the taxpayer presents sufficient transfer pricing documentation. The determination will be made on a case-by-case basis.
Documentation Requirements	The Ministry of Finance is preparing specific transfer pricing documentation requirements for Finland. It is expected that these requirements will become effective in 2007. There are no specific regulations, currently, but the taxpayer has the burden of proof concerning the correctness of its transfer pricing.
Categories of Documentation Required	The following elements are necessary for obtaining an advance ruling in Finland: <ul style="list-style-type: none">■ Business overview■ Functional analysis■ Organization structure■ Method selected■ Identification of comparables■ Economic analysis■ Index
Deadline to Prepare Documentation	The tax authorities require contemporaneous documentation.
Deadline to Submit Documentation	There is no deadline to submit documentation. Submission deadlines vary case-by-case depending on the tax audit.
Statute of Limitations on Transfer Pricing Assessments	Assessment is possible within five years from the end of the assessment year.
Return Disclosure-Related Party Disclosure	Based on Paragraph 26.4 of the Taxation Procedure Act, if the other party of the transaction is a non-resident and if the tax authorities cannot obtain adequate information on the transaction by using an appropriate international treaty, the taxpayer is held responsible to present such information.
Audit Risk/Transfer Pricing Scrutiny	The tax authorities are very active. Management fees, service fees and intercompany royalties are especially prone to tax audits.
APA	APAs are unavailable, but advance rulings are available.

France

Taxing Authority and Tax Law	French Tax Authority (FTA). French Tax Code: Articles 57 and 238A. French Procedure Code: Articles L13B and L188A. Case law Abnormal Management Act Theory.
Regulations and Rulings	Administrative Doctrine on Articles 57 and 238A of the French Tax Code, and Article L 13B of the French Procedure Code.
Priorities/Pricing Methods	The FTA accepts CUP, Resale Price, Cost Plus, Profit Split, and TNMM, but prefers transactional methods.
Transfer Pricing Penalties	<p>After an adjustment (added profit) is made, the added profit is analyzed as deemed dividends:</p> <ul style="list-style-type: none">■ When the beneficiary is located outside of France and no double tax treaty applies, the distribution is subject to a 25% withholding tax.■ 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).■ The late payment interest is applied particularly in cases of tax reassessments in application of Article 57 of the French Tax Code. Beginning on January 1, 2006, the late payment interest rate is 0.40% per month (4.80% per year).■ Supplementary penalties are applicable if the taxpayer has acted in bad faith (40%) or fraudulently (80%). <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 €7,500 for each year that is audited.</p>
Reduction in Penalties	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 fill a complementary tax return and pay the corresponding additional taxes at the same time.
Documentation Requirements	<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 <i>de facto</i> documentation obligation exists in France.</p> <p>On November 10, 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 French Tax Authorities, it is likely that in the future they will follow the recommendations provided by the code.</p>
Categories of Documentation Required	<p>Upon request the taxpayer must provide the following documentation:</p> <ul style="list-style-type: none">■ Method selected■ Analysis of controlled transactions■ Identification of comparables■ Economic analysis■ Functional analysis■ 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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France (continued)

Deadline to Prepare Documentation	There is no formal requirement to maintain/prepare a contemporaneous documentation.
Deadline to Submit Documentation	In the case of a tax investigation, transfer pricing documentation requested by the French Tax Authority should be provided within a short time period. If a specific request is made from the French Tax Administration (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.
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 January 1, 2005, which means that these procedures can be related to tax adjustments proposed prior to January 1, 2005.
Return Disclosure-Related Party Disclosure	In the case of a specific request from the French Tax Administration (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.
Audit Risk/Transfer Pricing Scrutiny	<p>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.</p> <p>Transfer pricing issues that receive the greatest scrutiny are:</p> <ul style="list-style-type: none">■ Product sale prices (under-/over-estimated prices)■ Management fees■ Agents and commissionaire schemes (e.g., conversion of a distributor into an agent) <p>Following a tax reassessment, a taxpayer can enter a mutual agreement procedure (on the basis of a tax treaty or the European arbitration convention) in order to avoid double taxation.</p> <p>On February 23, 2006, French Tax Authorities 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).</p>
APA	Bilateral and, under certain circumstances, unilateral APAs (not opposable to the Foreign Tax Authorities) are available under French Procedural Tax Code, Section L 80 B 7°. The new section was released by the Finance Amendment Act for 2004 and is effective as of January 1, 2005. It incorporates existing procedures as described by French administrative guideline 4 A-8-9 dated September 7, 1999.



Germany

Taxing Authority and Tax Law	<p>Section 1 Foreign Tax Act addresses the general arm's length principle.</p> <p>Section 8 Paragraph 3 Corporate Income Tax Act addresses Hidden Profit Distribution.</p> <p>Section 40 Corporate Tax Guideline addresses Hidden Capital Contribution.</p>
Regulations and Rulings	<p>Administration Principles: Circular of the Federal Ministry of Finance, dated February 23, 1983 (Federal Gazette I 1983, p. 218). Principles for the Review of Income Determination through Cost Allocation among internationally affiliated enterprises, Circular of the Federal Ministry of Finance dated December 30, 1999 ("Cost Allocation Circular," Federal Tax Gazette I 1999, p. 1122).</p> <p>Administration Principle relating to the Examination of Apportionment of Income in the Case of Permanent Establishments of internationally operating Enterprises, Circular of the Federal Ministry of Finance dated December 24, 1999 ("Permanent Establishment Circular," Federal Tax Gazette I 1999, p. 1076). Principles for the Examination of Allocation of Expenses between Internationally Affiliated Enterprises for the Cross-border Secondment of Employees, Circular of the Federal Ministry of Finance dated November 9, 2001 ("Secondment Circular," Federal Tax Gazette I 2001, p. 796).</p> <p>Administration Principles prescribing transfer pricing documentation requirements: "Principles for the Examination of Income Allocation between Parties with Cross-border Business Relationships in Respect of Income Adjustments as well as Investigation and Cooperation Obligations and Competent Authority and Arbitration Procedures," Circular of the Federal Ministry of Finance dated April 12, 2005 ("Administration Principles on Procedures," Federal Tax Gazette I 2005, p. 570).</p>
Priorities/Pricing Methods	<p>The tax authorities demonstrate a clear preference for transaction-based methods: CUP, Resale Price and Cost Plus. Besides the application of transaction-based methods, the Administration Principles dated April 12, 2005 acknowledge the application of transactional profit methods in narrow and clearly-defined circumstances.</p> <p>The Transactional Net Margin Method is only applicable if all of the following requirements are met:</p> <ul style="list-style-type: none">■ 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; and■ At least a limited degree of comparability with the comparables companies can be established. <p>According to the Circular dated April 12, 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.</p>
Transfer Pricing Penalties	<p>If the taxpayer fails to submit transfer pricing documentation or if the documentation is insufficient or if the documentation for extraordinary business transactions is not prepared contemporaneously a surcharge of 5% -10% on income adjustment (minimum surcharge of €5,000) will be applied. For late filing the taxpayer faces a penalty up to €1 million (minimum penalty of €100 per day of delay). Interest is assessed on tax payments (6% p.a. which is non-deductible for tax purposes).</p>
Reduction in Penalties	<p>Penalties are not imposed if the taxpayer is not effectively responsible for the lack of appropriate documentation.</p>

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Germany (continued)

Documentation Requirements	Section 90 of the General Tax Code contains transfer pricing documentation requirements. For the documentation of transfer pricing issues, an Executive Order Law (effective June 30, 2003), prescribes generally required documentation and documentation required in special circumstances. The circular dated April 12, 2005 provides the tax authorities' interpretation of the documentation requirements set out in the General Tax Code and in the Executive Order Law.
Categories of Documentation Required	<p>General documentation requirements:</p> <ul style="list-style-type: none">■ General information: Shareholder relationships, organizational and operative group structure, and area of 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 <p>Special documentation requirements:</p> <p>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).</p>
Deadline to Prepare Documentation	Contemporaneous documentation requirements exist only for exceptional business transactions. However, the preparation of contemporaneous document is strongly recommended.
Deadline to Submit Documentation	Documentation must be submitted within 60 days upon receipt of the tax authority's request. In general, such request shall be made in the course of a tax audit.
Statute of Limitations on Transfer Pricing Assessments	There is no specific statute of limitations for transfer pricing adjustments in Germany. 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 limitation. As a rule of thumb, the assessment period (Section 169 General Tax Code) generally lasts four years. 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 has arisen). Finally, it should be kept in mind that the limitation period is tolled when a tax audit begins.
Return Disclosure-Related Party Disclosure	There are no specific disclosure requirements.
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 new documentation provisions, such as the transfer of functions and risks will particularly attract tax auditors' attention.
APA	APAs are generally available. Currently, a binding ruling may be based on §§204 et seq. of the German General Tax Code or on a December 29, 2003 circular issued by the German Ministry of Finance (so called "Circular Regarding <i>Auskunft mit Bindungswirkung nach Treu und Glauben</i> "), and the German Ministry of Finance is working on an APA circular. Taxpayers are hopeful that the intended circular will define the APA procedures and provide guidance with regard to the negotiation of APAs.

Hungary

Taxing Authority and Tax Law	Sections 4.23 and 18 of the Act LXXXI of 1996 on Corporate Income Tax and Dividend Tax (the Act on CIT); Section 23(4)(b), Section 178.17 of the Act XCII of 2003 on Tax Procedure (the Act on Tax Procedure); Section 13(1)5 and 22 (6)(a) of the Act LXXIV of 1992 on Value Added Tax (the Act on VAT); Section 1(4), Section 3.69. of the Act CXVII of 1995 on Personal Income Tax; Ministry of Finance Decree 18 of 2003 on the fulfillment of transfer pricing documentation obligation; 2004/37, 2005/55 and 2006/55. Guidelines have been issued by the Hungarian Tax Authority on fulfillment of transfer pricing documentation requirements.
Regulations and Rulings	N/A
Priorities/Pricing Methods	The market price must be determined by one of the traditional methods including CUP Method, Resale Price Method, or Cost Plus Method. Any other method may be applied if the first three methods are not applicable. Taxpayers must substantiate the use of a non-traditional method. Hungarian tax law does not express a preference for the CUP method over other traditional methods. However, as the Act on CIT directly refers to the OECD Transfer Pricing Guidelines, in our professional view, the CUP method has priority for Hungarian transfer pricing purposes.
Transfer Pricing Penalties	General penalties apply, as there are no special penalties for transfer pricing. 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. As of January 1, 2004, a default penalty of HUF2 million may be levied for not fulfilling or not properly fulfilling the documentation obligation.
Reduction in Penalties	There are no specific rules regarding transfer pricing. Penalties may be reduced if the taxpayer exercised reasonable care in the given situation.
Documentation Requirements	The Act on CIT states that companies (with the exemption of SMEs under certain circumstances) which do not qualify as minor companies must document the methods they use to calculate 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 as of 2005. The details of the documentation obligation are regulated by Ministry of Finance Decree 18 of 2003. As of January 1, 2004, foreign entrepreneurs (usually foreign taxpayers carrying out their business activity through a Hungarian permanent establishment) are also subject to the documentation obligation.
Categories of Documentation Required	<ul style="list-style-type: none">■ Name, registered seat and tax number of the related party■ Contents of the written agreement with the related party should include:<ul style="list-style-type: none"><input type="checkbox"/> Subject of the agreement<input type="checkbox"/> Signing date (amendment date) of the agreement<input type="checkbox"/> Period during which the agreement is effective<input type="checkbox"/> Characteristics of the service provided, and/or goods sold<input type="checkbox"/> Method and terms of the fulfillment of the agreement<input type="checkbox"/> Nature of the activities performed, assets used, risks assumed<input type="checkbox"/> Analysis of the market■ The method applied for establishing the arm's length price■ Reasons for selecting the method applied■ Description of comparable services and goods transactions■ Factors affecting the arm's length price; margin or profit, the extent of any necessary adjustments■ The arm's length price/margin■ Information on pricing agreements and court procedures■ Preparation date of the documentation <p>For contracts with a value less than HUF50 million simplified documentation may be prepared. In the case of frame agreements, the simplified documentation cannot be applied.</p>
Deadline to Prepare Documentation	The documentation must be prepared by the deadline for filing the corporate income tax return (May 31 of the year following the tax year if the business year is the calendar year).

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Hungary (Continued)

Deadline to Submit Documentation	The law does not require taxpayers to file documentation with the tax authority. However, it should be available within 3 days if the tax authority requests it during a tax audit.
Statute of Limitations on Transfer Pricing Assessments	The general rules should be 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.
Return Disclosure-Related Party Disclosure	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 real market price. If the tax base has to be increased, there is no special requirement regarding the documentation. However, if the tax base is decreased, a certificate with respect to the amount of the difference signed by the other party is required.
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being scrutinized during a tax authority audit is increasing. The tax authority considers transfer pricing to be one of the top priorities for the year 2006. There are no specific transfer pricing issues that receive greater scrutiny from the authorities.
APA	Currently, the Hungarian transfer pricing regime does not explicitly include the possibility of APAs. However, based on the Act on Tax Procedure, it is possible for taxpayers to obtain a binding ruling from the Ministry of Finance for their future transactions. In the ruling, the Ministry may approve the transfer pricing method to be applied in the given transaction. As of January 1, 2007, a formal APA regime will be introduced in Hungary. Under the new rules APA can be requested for future transactions and can be effective for three to five years. Under this regime unilateral, bilateral, and multilateral APAs will be allowed. Refer to sections 132/A and 132/B of the Act on Tax Procedures effective from January 1, 2007.

India

Taxing Authority and Tax Law	Section 40A(2), Sections 92-92F, Section 271, 271AA, 271BA, and 271G of the Income Tax Act.
Regulations and Rulings	Rule 10 to 10E of the Income Tax Rules.
Priorities/Pricing Methods	<p>The tax authorities prescribe the following methods: CUP, Resale Price, Cost Plus, Profit Split, and TNMM.</p> <p>No hierarchy of methods exists. The most appropriate method should be applied.</p>
Transfer Pricing Penalties	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 effort to determine the arm's-length price has not been made by the taxpayer, then 100% to 300% of incremental tax on transfer pricing adjustment may be levied by the tax officer. For not furnishing an Accountant's Certificate along with the return, the taxpayer is fined US\$2000.
Reduction in Penalties	Penalties can be avoided if due effort is made to determine the arm's length price. This is also demonstrated through proper documentation and timely submission of documentation to the tax authorities during assessment proceedings.
Documentation Requirements	<p>A detailed list of "mandatory" documents are listed in Rule 10D (1). Some of the documents include: Description of the group (e.g., ownership structure and description of business and industry); description of the international transactions; description of functions performed; description of risks assumed and assets employed; assessment of comparables; selection and application of methods; and business plans, sales plans, forecasts, budgets, and other relevant documents.</p> <p>A list of "optional" documents is provided in Rule 10D (3). The taxpayer is required to obtain and furnish an Accountant's Certificate regarding adequacy of documentation maintained.</p>
Categories of Documentation Required	<ul style="list-style-type: none">■ Ownership structure■ Profile of the multinational group■ Business description■ The nature and terms (including prices) of international transactions■ Description of functions performed, risks assumed and assets employed■ Record of any financial estimates■ Record of uncontrolled transaction with third parties and comparability evaluation■ Description of methods considered■ Reasons for rejection of alternative methods■ Details of transfer pricing adjustment■ Any other information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price
Deadline to Prepare Documentation	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 October 31 following the end of the financial year.
Deadline to Submit Documentation	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 an Accountant's Report at the time of filing the tax return. Transfer pricing documentation must be submitted to the assessing officer within 30 days of the notice, during assessment proceedings.
Statute of Limitations on Transfer Pricing Assessments	All tax assessments are to be completed within three years from the end of the financial year (April 1 to March 31). If the tax authority is of the opinion that income has escaped assessment, an assessment may be reopened within seven years from the end of the fiscal year.

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India (continued)

**Return Disclosure-
Related Party
Disclosure**

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.

In accordance with Accounting Standard–18, the company is required to disclose related party transactions in its financial statements.

**Audit Risk/Transfer
Pricing Scrutiny**

The second year of transfer pricing audits was recently completed. Internal guidelines have been issued by the revenue authorities, pursuant to which companies with related party transactions in excess of US\$1,000,000 are being scrutinized. In most cases the revenue authorities do not seem to be adopting 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 scrutiny proceedings. The banking, pharmaceutical, and information technology industries are receiving particular attention. The revenue authorities have sought for an updated analysis using data that may not be able available to the taxpayer at the time of preparation of contemporaneous documentation. Furthermore, the officers are insisting on unbundling transactions in cases where the taxpayer has adopted an "aggregate" or "combined" approach to its transfer pricing documentation.

APA

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.



Indonesia

Taxing Authority and Tax Law	Article 18 of the Indonesian Income Tax Law.
Regulations and Rulings	A new Income Tax Law implemented on January 1, 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 applies because there is no grouping of tax losses in Indonesia.
Priorities/Pricing Methods	CUP is favored; other acceptable methods include Cost Plus Method, Sales Minus Resale Price Method and those accepted by the OECD (usually profit based methods).
Transfer Pricing Penalties	There is a penalty of 2% per month up to a maximum of 48% on any tax underpayment discovered during a transfer pricing audit.
Reduction in Penalties	N/A
Documentation Requirements	There are no formal documentation requirements at this stage; however, the tax authorities usually require production of invoices and agreements as a minimum requirement.
Categories of Documentation Required	N/A
Deadline to Prepare Documentation	N/A
Deadline to Submit Documentation	N/A
Statute of Limitations on Transfer Pricing Assessments	N/A
Return Disclosure-Related Party Disclosure	Disclosure of related party transactions in the tax return is required from January 1, 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 methodology used to determine the transfer price.

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Indonesia (continued)

Audit Risk/Transfer Pricing Scrutiny

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 their export prices of related entities differ from the local sale price. In the past, the Indonesian tax authorities' 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 transfer pricing of tangible goods.

In practice, taxpayers that exhibit the following characteristics are more at risk of being subject to a transfer pricing audit:

- A large number of related party transactions
 - Losses for longer than two consecutive years
 - An increase in gross revenue/receipts but no change in net profit
 - Erratic profit and loss histories
 - Associated parties in tax havens
 - Lower net profit in comparison to the industry average or other similar enterprises
-

APA

The Income Tax Law of 2001 contains a bilateral and unilateral APA mechanism. The Income Tax Laws 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.

Ireland

Taxing Authority and Tax Law	The Revenue Commissioners. Ireland does not have comprehensive transfer pricing rules. However, the arm's length standard is included in several sections of the Taxes Consolidation Act of 1997, including sections: 234, 453, 547, and 1036.
Regulations and Rulings	Regulations generally apply only to companies that qualify for the 10% tax rate.
Priorities/Pricing Methods	The tax authorities do not prescribe a specific pricing method. An arm's length or open market value test applies in many situations involving connected parties. Arm's length requirements do apply to patent royalty income flows that benefit from the tax exemption available to income from patents. The market value rule also applies to transactions for capital gains tax purposes.
Transfer Pricing Penalties	The tax authorities have not issued specific penalty guidelines.
Reduction in Penalties	N/A
Documentation Requirements	There are no specific documentation requirements. It is normally recommended as a best practice, to clearly document intra-group transactions in a formal legal agreement.
Categories of Documentation Required	N/A
Deadline to Prepare Documentation	There is no specific deadline.
Deadline to Submit Documentation	There is no specific deadline.
Statute of Limitations on Transfer Pricing Assessments	Since there is no specific transfer pricing legislation, there is no specific transfer pricing statute of limitations. In accordance with corporate tax legislation, no assessment shall be made after the end of a four year period commencing at the end of the period in which the relevant tax return is delivered. However, in a case in which any form of fraud or neglect has been committed by or on behalf of any company in connection with or in relation to corporation tax, an assessment may be made at any time.
Return Disclosure-Related Party Disclosure	There are no specific disclosure requirements.
Audit Risk/Transfer Pricing Scrutiny	Since no transfer pricing rules are generally applicable, there is minimal audit risk. However, in the limited circumstances where transfer-pricing rules apply (e.g., companies qualifying for the 10% effective tax rate), the risk is medium. In general the principal categories of interest are where assets are transferred between connected parties, or by way of gift.
APA	Ireland does not have a formal bilateral APA program. However, Irish tax authorities engage in bilateral APAs and consider each case on its own facts and merits.

Italy

Taxing Authority and Tax Law	Amministrazione Finanziaria (Administration of Finance). Presidential Decree n. 917 of December 22, 1986, Article 110 (7) and Article 9 (3)-(4) (resulting from the Legislative Decree of December 12, 2003, n. 344).
Regulations and Rulings	Circular Letter n. 32/9/2267 of September 22, 1980 and Circular Letter n. 42/12/1587 of December 12, 1981.
Priorities/Pricing Methods	The Administration of Finance prefers transaction-based over profit-based methods, but accepts CUP, Resale Price, Cost Plus, Profit Split, Profit Comparison, Economic Sector Gross Margin, and Invested Capital Profitability.
Transfer Pricing Penalties	General penalties for underpayment of taxes apply (Legislative Decree n. 471 of December 18, 1997). Because of the relatively high amount of potential tax revenue at stake in a transfer pricing audit, tax officers often refer assessments to the public prosecutors to explore possible criminal tax law ramifications, as permitted under Legislative Decree No. 74 of March 10, 2000.
Reduction in Penalties	N/A
Documentation Requirements	No specific documentation requirements are provided. However, tax officers expect the availability of best practices documentation. Documentation should adhere to the OECD Transfer Pricing Guidelines. All income and deduction items should be adequately substantiated. In fact, according to Article 32 of Presidential Decree n. 600 of September 29, 1973, Italian tax authorities may require taxpayers to produce or send deeds and documents (or respond to questionnaires) concerning the assessment to which they are subject. In this case, taxpayers are required to comply with tax authorities' requests.
Categories of Documentation Required	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.
Deadline to Prepare Documentation	There is no statutory deadline.
Deadline to Submit Documentation	Italian authorities can request a deadline, which cannot be less than 15 days from the date of notification (Article 32 of Presidential Decree n. 600 of September 29, 1973). The Tax Authority retains discretion over extension requests.
Statute of Limitations on Transfer Pricing Assessments	There is no specific statute of limitations on assessment for transfer pricing. The general statute of limitations period for tax purposes applies. Therefore, according to Article 43 of Presidential Decree n. 600 of September 29, 1973, taxpayers must be notified of tax assessments by December 31 of the fourth year following that in which the tax return has been filed for tax returns filed after January 1, 1999, and by December 31 of the fifth year following that in which the tax return has been filed for tax returns filed before January 1, 1999. Whether a tax return has been omitted or is null and void, taxpayers must be notified of tax assessments by December 31 of the fifth year following that in which the tax return should have been filed. Furthermore, for companies that do not benefit from the 2002/2003 Italian Tax Amnesty, the assessable period for the fiscal years covered by the latter is extended by two additional years.
Return Disclosure-Related Party Disclosure	Italian companies have to officially communicate (in documents, correspondence, register of companies) whether they are "managed and controlled" by another company and the name of this company (Article 2497-bis of the Italian Civil Code). Financial statement should include the essential data of the last managing/controlling company's financial statement and the 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/expenses.
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing scrutiny during an 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 establishment (especially since the 'Philip Morris' case).
APA	Under certain circumstances, the Italian government will allow a unilateral ruling scheme related to transfer pricing. Other rulings are available on issues such as the application of the anti-tax-haven law, but on a separate basis.



Japan

Taxing Authority and Tax Law	National Tax Agency (NTA). Special Taxation Measures Law (STML) Article 66-4.
Regulations and Rulings	STML-Enforcement Order 39-12, STML-Circular 66-4-(1)-1 to 66-4-(8)-2, Enforcement Regulation 22-10, Administrative Guidelines were issued on June 1, 2001 and partly revised on June 20, 2002, and in April 2005 and March 2006.
Priorities/Pricing Methods	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). TNMM is available for fiscal years starting on or after April 1, 2004. When these methods are not applicable, methods similar in methodology to these methods may be used.
Transfer Pricing Penalties	There are no transfer pricing penalties specified, but general tax penalty provisions apply.
Reduction in Penalties	There are no specific provisions for reductions in penalties.
Documentation Requirements	There are no statutory documentation requirements. The documentation that will be examined during the transfer pricing audit is disclosed in the Administrative Guideline issued on June 1, 2001 and partly revised in June 2002, April 2005, and March 2006. 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. (The comparables are not disclosed to the taxpayer because transactional data of the comparables are confidential.)
Categories of Documentation Required	The NTA released the Transfer Pricing Administrative Guidelines in June 2001 that list items that may be requested by the NTA in order to assess whether there are problems under the transfer pricing system. Possible documentation that can be requested includes: <ul style="list-style-type: none">■ Capital relationships■ Comparables information (search methodology, comparable company background information)■ Functional analysis write-up■ Documentation describing the methodology chosen in setting intercompany prices
Deadline to Prepare Documentation	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.
Deadline to Submit Documentation	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.
Statute of Limitations on Transfer Pricing Assessments	The statute of limitations on transfer pricing assessment is six years.
Return Disclosure-Related Party Disclosure	The taxpayer must file Schedule 17-3 "Detailed Statement Concerning Foreign Affiliated Persons and Related Party Transactions." For fiscal years beginning on or after April 1, 2003, the taxpayer must state its transfer pricing methodologies used for intercompany transactions.

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Japan (continued)

Audit Risk/Transfer Pricing Scrutiny

Audit risk is generally medium-high for large taxpayers with significant related party transactions. The risk is increased for taxpayers:

- In industries targeted by the NTA
 - With low profits, or losses in Japan
 - With fluctuating profitability
 - Who have significant transactions with tax havens
 - In industries that consist of high-margin comparables (often secret comparables) which are readily available to the NTA
-

APA

Unilateral and bilateral APAs are available, though the NTA prefers bilateral. APA Guideline is included in the Administrative Guideline issued on June 1, 2001 and partially revised in June 2002, April 2005, and March 2006. While the NTA generally prefers transactional methods over profit-based methods, the NTA has recently shown a willingness to accept more profit-based methods. For the tax year that ended in June 2005, the NTA processed more profit-based and "other" methods than traditional transactional methods. The NTA has recently announced that APAs are the preferred method for dealing with double taxation issues.

Kazakhstan

Taxing Authority and Tax Law	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, "On State Control of the Application of Transfer Prices," of January 5, 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.
Regulations and Rulings	The TCMF and the CCC issued a joint order approving the Instruction "On Implementing State Control of Application of Transfer Prices in International Business Transactions" and the list of goods and transactions that are subject to monitoring (effective September 8, 2003). Also of importance is the Government of Kazakhstan Resolution No. 788 "On Approval of the List of Official Sources of Information on Market Prices for Goods Subject to Transfer Pricing Monitoring" (effective June 9, 2001).
Priorities/Pricing Methods	The law allows for three pricing methods: CUP, Cost Plus, and Resale Price.
Transfer Pricing Penalties	Interest for delayed payment is 2.5 times the National Bank refinancing rate on the day of payment of additionally assessed tax. The fine for understatement of tax payment up to 50% of the additionally accrued tax amount.
Reduction in Penalties	N/A
Documentation Requirements	There are no set documentation requirements.
Categories of Documentation Required	While conducting a transfer pricing audit, the TCMF may request the following documents: <ul style="list-style-type: none">■ Contracts■ Payment documents for settlements with third parties■ Foundation documents of the parties■ Invoices for intermediary and brokerage services■ Accounting documents■ Bills of lading■ Other related documents
Deadline to Prepare Documentation	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 additional five years after the contract's expiration date.
Deadline to Submit Documentation	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 such formal request should indicate the deadline for submission. The tax authorities may also request supporting documentation upon the transfer pricing audit. In such a 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 15 working days after the relevant adjustment notification is received by the taxpayer.

Kazakhstan (continued)

Statute of Limitations on Transfer Pricing Assessments

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

Return Disclosure-Related Party Disclosure

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.

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. Export of goods from Kazakhstan receives greater scrutiny. The review methodology, 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.

APA

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 deviation of prices applied by parties from market prices within one month.

Luxembourg

Taxing Authority and Tax Law	The Luxembourg Tax Administration Law dated December 4, 1967, as amended; EU directive 69/335 for capital contributions, relevant double tax treaties provisions.
Regulations and Rulings	Article 56 of the Income Tax Law (ITL) on Transfer of Business Profits and Article 164(3) ITL on Hidden Profit Distribution. Both articles encourage the general application of the arm's length standard. Luxembourg ITL does not, however, contain any other specific guidelines or regulations. Moreover, the Luxembourg tax authorities have not issued any specific guidelines or regulations.
Priorities/Pricing Methods	There are no specific pricing methods mentioned in Luxembourg tax law. Luxembourg tax authorities usually refer to the OECD Transfer Pricing Guidelines. All methods that are based on the OECD recommendations are acceptable, such as CUP, Resale Price, Cost Plus method, TNMM, and Profit Split.
Transfer Pricing Penalties	Adjustments may be necessary to the taxable income when the Luxembourg tax authorities disagree with the transfer prices used by the taxpayer. There are no specific penalties for transfer pricing.
Reduction in Penalties	Since there are no specific transfer pricing penalties in Luxembourg tax law, Luxembourg tax law does not provide for specific reduction in penalties.
Documentation Requirements	Even though no specific documentation is required, it is recommended to document and keep adequate justifications for each transaction at the time it is executed. Reference is made to the OECD Transfer Pricing Guidelines.
Categories of Documentation Required	No specific categories of documents are required. A written transfer pricing contract is recommended, including a comprehensive reference to current market conditions.
Deadline to Prepare Documentation	There is no specific requirement in the context of transfer pricing. In accordance with general rules, documentation should be prepared contemporaneously with the transaction.
Deadline to Submit Documentation	No specific deadline is specified in the Luxembourg tax law as documentation will only be required if Luxembourg tax authorities requests it. The deadline for submitting the transfer pricing documentation is set by the tax administration upon request. The deadline is generally three weeks but an extension may be requested from the tax authorities.
Statute of Limitations on Transfer Pricing Assessments	There are no specific limitations on transfer pricing adjustments but the general regime applies. The Luxembourg tax authorities, if informed of new elements, may issue new tax assessments within five years (10 years in case of fraud) of the initial assessment.
Return Disclosure-Related Party Disclosure	Detailed information on the related parties involved in related party transactions should be attached to the tax return. No other specific disclosures are required when filing tax returns.
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an audit is medium.
APA	Although no formal APA procedure exists in Luxembourg, tax authorities may express an opinion on transfer prices used by taxpayers on a case-by-case basis.

Malaysia

Taxing Authority and Tax Law	Inland Revenue Board (IRB). Transactions by Non-Residents, Section 141 of the Malaysian Income Tax Act. General Anti-Avoidance Provision, Section 140 of the Malaysian Income Tax Act.
Regulations and Rulings	The IRB released "Transfer Pricing Guidelines" on July 8, 2003.
Priorities/Pricing Methods	The Malay tax authorities accept CUP, Resale Price, Cost Plus, Profit Split and TNMM. However, the traditional methods are preferred over the profit methods.
Transfer Pricing Penalties	There are no specific penalties for transfer pricing. However, the existing legislation and penalty structure are applicable. These penalties can range from 100% to 300% of the undercharged tax.
Reduction in Penalties	N/A
Documentation Requirements	Documents pertaining to transfer pricing are not to be submitted with the return forms but should be made available to the IRB upon request. All relevant documentation must be in, or translated into, Malay or English.
Categories of Documentation Required	The IRB expects the taxpayer to maintain documents that are applicable to their circumstances. Documents or information relevant for the derivation of the arm's length price must be provided. The type of information which is expected to be contained in transfer pricing documentation includes: <ul style="list-style-type: none">■ Detailed analysis of the company and its related party transactions■ Functional analysis■ Comparability analysis that supports the application of one of the approved transfer pricing methods in testing the arm's length nature of the related party transactions
Deadline to Prepare Documentation	There is no deadline. However, documentation should be prepared contemporaneously.
Deadline to Submit Documentation	There is no submission requirement or deadline. However, documentation should be made available upon the IRB's request.
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.
Return Disclosure-Related Party Disclosure	Disclosure of arm's length values is required in the tax return for the following transactions: <ul style="list-style-type: none">■ 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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Malaysia (continued)

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 recent release of the IRB "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.

APA

APAs are available upon request. However, at this stage, there are no formal guidelines on APA, and the IRB indicated that it will consider any terms and conditions which are the norm observed in the transfer pricing regimes in other jurisdictions. To date, no APA has been concluded, nor are we aware of any case where APA negotiations have begun.



Mexico

Taxing Authority and Tax Law	<p>The Administración Central de Auditoría de Precios de Transferencia of the Mexican Tax Administration Service (SAT) enforces transfer pricing rules, performs audits, and manages the APA Program.</p> <p>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.</p> <p>Article 216-Bis of the Income Tax Act provides special rules for maquiladoras.</p>
Regulations and Rulings	<p>Tax regulations are issued by Mexico's President. The SAT publishes administrative rules on regular basis. Few of these rules and regulations deal with transfer pricing issues.</p>
Priorities/Pricing Methods	<p>The transfer pricing methods in Mexico are the CUP, Resale Price, Cost Plus, Profit Split, Residual Profit Split and Transactional Net Margin Method. 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>
Transfer Pricing Penalties	<p>There are no specific transfer pricing related penalties except for information return related penalties. Failure to pay penalties range from 75% to 100% of the tax. If the transfer pricing adjustment reduces a NOL the penalty ranges from 30% to 40% of the difference between the real and the NOL in the return.</p> <p>There are no penalties for valuation misstatement. A penalty of US\$4,100 to US\$8,037 can be assessed if the information return on related party transaction is not filed, is incomplete, or is incorrect. In case of self-correction before an audit, there are no penalties. Waivers and abatements are possible under limited circumstances (see below). The SAT has taken the position that failure to comply with transfer pricing documentation requirements results in non-deductibility of payments to non-resident related parties.</p>
Reduction in Penalties	<p>Penalties can be reduced by half if taxpayer prepares and maintains annual documentation in accordance with Article 86 §XII of the Income Tax Act. Waivers and abatements are possible under limited circumstances such as financial hardship (during 2006). Penalties may be reduced after the audit has started by self-correction procedures.</p>
Documentation Requirements	<p>Documentation requirements include the name, address and tax residency of the non-resident related persons with whom transactions are carried out, evidence of direct and indirect participation between related parties. It is also necessary to include information on the functions, activities, assets used, and risks assumed by the taxpayer by transaction. Information and documentation are required with respect to each transaction with each related party and their amounts by type of transaction, as well as the method applied according to Article 216 of the Income Tax Act by type of transaction. It is also necessary to include information and documentation on comparable transactions or companies, by type of transaction. Taxpayers are required to identify non-resident related party transactions clearly in their accounting records.</p>
Categories of Documentation Required	<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">■ Names, country and tax identification of affiliates■ Type of transactions and the corresponding amounts■ Transfer pricing method■ Gross or operating margin earned on each transaction (only applicable under certain types of transactions)

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Mexico (continued)

Deadline to Prepare Documentation	<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. 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), which must be filed by certain companies by June 30th 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 Mexican Law. Auditors may be granted an extension of one or two months to issue the Annual Tax Report.</p>
Deadline to Submit Documentation	<p>The information return on related party transactions must be filed electronically along with the annual income tax return. Transfer pricing documentation must be readily available as part of the accounting records by March 31.</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>
Statute of Limitations on Transfer Pricing Assessments	<p>The statute of limitations on assessment in Mexico is five years. This term is affected by amended returns with respect to items changed, and it is suspended by audit. SAT has two years to complete a transfer pricing audit.</p>
Return Disclosure-Related Party Disclosure	<p>The information return discussed above must be filed during March of each year. Information to be disclosed includes non-resident related parties' tax address and tax identification number, transaction classification, amounts, method to be applied for analysis, and profit/loss obtained.</p>
Audit Risk/Transfer Pricing Scrutiny	<p>Limited risk structures and highly leveraged structures are two areas of significant audit risk.</p>
APA	<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 one year rollback.</p>

Netherlands

Taxing Authority and Tax Law	Articles 3.8 and 3.25 of the Income Tax Act. Articles 8 and 8b of the Corporate Income Tax Act.
Regulations and Rulings	Decree IFZ2001/292M, IFZ2001/295M of March 30, 2001; Decree IFZ 2004/124 of August 11, 2004; Decree IFZ2004/653M of August 21, 2004.
Priorities/Pricing Methods	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 transaction-based methods over profit-based methods. The Dutch transfer pricing regulations include specific provisions for the use of intellectual property, services and the use of arm's length ranges. The Transfer Pricing Decree of 2004 is an excellent source for transfer pricing guidance. It has specific guidance on CCAs, intra-group services, and numerous other topics.
Transfer Pricing Penalties	The tax may be increased with a penalty varying from 0% to 100% of the additional tax. The rate depends on the degree of intent to avoid tax or the degree of the taxpayer's gross negligence. The lack of transfer pricing documentation will shift the burden of proof to the taxpayer.
Reduction in Penalties	It is highly unlikely that there would be transfer pricing related tax penalties if there is proper transfer pricing documentation.
Documentation Requirements	<p>Taxpayers are obligated 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 information that would enable the Dutch tax authorities to assess whether the taxpayer's transactions were concluded under arm's length conditions.</p> <p>In this respect, reference is made to the OECD Transfer Pricing Guidelines and the following elements may be included:</p> <ul style="list-style-type: none">■ Characteristics of goods and services■ Analysis of activities performed (include assets used and risks incurred)■ Contractual terms and conditions■ Economic circumstances■ Company strategies■ Transfer pricing method■ Transfer price used
Categories of Documentation Required	<p>Based on Article 8-b and specific input from the Dutch Ministry of Finance, it is generally expected of taxpayers to prepare the following:</p> <ul style="list-style-type: none">■ Overview of transactions and relevant characteristics■ Business and company overview■ Functional analysis■ Description of transfer pricing method and resulting transfer price■ A substantiation of the arm's length nature of prices and/or conditions
Deadline to Prepare Documentation	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, there is a minimum timeframe of four weeks to prepare the documentation.
Deadline to Submit Documentation	If documentation is not available upon request, then the taxpayer would be granted a minimum of four weeks and a maximum of three months, depending on the complexity of the transactions.

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Netherlands (continued)

Statute of Limitations on Transfer Pricing Assessments

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 3 years from the end of the fiscal year. If the tax inspector has granted an extension for filing the tax return, this period is extended with the period of extension. An additional assessment must be made within a period of 5 years, starting from the end of the fiscal year. With respect to foreign-source income, the period for making an additional assessment is 12 years.

Return Disclosure-Related Party Disclosure

Dutch corporate income taxpayers are required to confirm 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.

Audit Risk/Transfer Pricing Scrutiny

The risk of transfer pricing issues being scrutinized during a tax authority audit is high. Transfer pricing is a key issue in any audit. In addition, many companies receive separate transfer pricing audits. The tax authorities often focus on services, intangible property and characterizations in terms of alignment of functions and risks.

APA

Unilateral and bilateral APAs with rollback features are available.

New Zealand

Taxing Authority and Tax Law	Inland Revenue Department (IRD). Sections FB 2, GC 1, GD 13 of the Income Tax Act of 2004. New Zealand's Double Tax Agreements.
Regulations and Rulings	Final version of "Transfer Pricing Guidelines" issued in October 2000. The New Zealand transfer pricing guidelines should be read as supplementing the OECD Transfer Pricing Guidelines, rather than supplanting them.
Priorities/Pricing Methods	IRD accepts the most reliable method chosen from CUP, Resale Price, Cost Plus, Profit Split, and CPM/TNMM.
Transfer Pricing Penalties	Penalties are imposed under §141A-F of the Tax Administration Act of 1994: 20% penalty for not exercising reasonable care; 20% penalty for unacceptable interpretation; 40% penalty for gross carelessness; 100% penalty for an abusive tax position; 150% penalty for evasion or similar act.
Reduction in Penalties	Shortfall penalties may be reduced upon voluntary disclosure to the Commissioner of the details of the shortfall. If 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%.
Documentation Requirements	There is no explicit statutory requirement to prepare and maintain transfer pricing documentation. However, Section GD 13 requires taxpayers to select and apply an appropriate transfer pricing method for tax return purposes.
Categories of Documentation Required	There are no explicit requirements in New Zealand's transfer pricing legislation (Section GD 13) for any particular category of documentation or 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 the taxpayer can readily demonstrate to the IRD that a transfer pricing method has been used by the taxpayer to determine whether the taxpayer's transfer prices are consistent with the arm's length principle in light of the facts and circumstances.
Deadline to Prepare Documentation	There is no explicit 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 who 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.
Deadline to Submit Documentation	There is no legislative deadline for taxpayers to submit transfer pricing documentation. Taxpayers selected for a Risk Assessment Review by the IRD may be asked to submit a transfer pricing and thin capitalization questionnaire and/or transfer pricing documentation for review by the IRD.
Statute of Limitations on Transfer Pricing Assessments	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 the current dispute.
Return Disclosure-Related Party Disclosure	Income tax return requires disclosure of whether: <ul style="list-style-type: none">■ Payments such as dividends, interest, management fees, "know-how" payments, royalties, or contract payments were made to non-residents■ The company is controlled or owned by non-residents■ The company holds an interest in a controlled foreign company
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an 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 IRD transfer pricing review process.
APA	No formal APA guidelines exist. Unilateral APAs are available under Section 91E of the Tax Administration Act of 1994. Bilateral and multilateral APAs are available under mutual agreement procedure.

Norway

Taxing Authority and Tax Law	<p>Norwegian Tax Authorities.</p> <p>There is general reference made to arm's length principles in Paragraph 13-1 of the General Taxation Act. Additionally, 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 Assessment Act.</p>
Regulations and Rulings	<p>There are no regulations specific to transfer pricing, but Supreme Court decisions and letters from the Minister of Finance generally support the OECD Transfer Pricing Guidelines. According to the Company Law, all major intercompany transactions shall have written agreements. Please note that according to the §13-1 of the General Taxation Act, the burden of proof is on the taxpayer. A white paper on transfer pricing documentation requirements is expected before the summer of 2006. Effective documentation requirements are expected starting from 2007. Recent administrative rulings 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.</p>
Priorities/Pricing Methods	<p>The Norwegian tax authorities adhere to OECD Transfer Pricing Guidelines. There is no specified priority; however, the transactional pricing methods seem to be preferred in practice. The profit methods are in general not accepted without proper documentation, which clarifies why the transaction based methods are not applicable.</p>
Transfer Pricing Penalties	<p>Transfer pricing penalties (surtax) range from 15% to 45% penalty based on 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 (7%) will apply per year.</p>
Reduction in Penalties Documentation Requirements	<p>A 30% penalty is normal; however, the penalty may be reduced or even eliminated if proper documentation has been prepared in advance. There are currently no formal documentation requirements. However, the reference to OECD Transfer Pricing Guidelines is strong and is in fact assessed as a documentation requirement. The burden of proof determines when actions by the tax authorities, or a court decision would be appropriate. There are some formula requirements in specific industries. A white paper on transfer pricing documentation requirements is expected before the summer of 2006. Effective documentation requirements are starting from 2007.</p>
Categories of Documentation Required	<p>There are specific formulas required for shipping companies.</p>
Deadline to Prepare Documentation	<p>There are no formal requirements to have documentation prepared. However, contemporaneous documentation will strongly improve the case of the taxpayers, and will shift the burden of proof to the Tax Authorities.</p>
Deadline to Submit Documentation	<p>There is no statutory deadline to submit documentation. However, the tax authorities may at any time, according to §4-8 of the Tax Assessment Act, ask the taxpayer to present documentation which supports the contention that their 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.</p>
Statute of Limitations on Transfer Pricing Assessments	<p>The normal statute of limitations is two years. However, this assumes that the information submitted together with the tax return is sufficient and correct, so that it is possible for the tax authorities to correctly assess the taxpayer. If information in a tax return deemed insufficient or incorrect, then the statute of limitations can reach as far back as 10 years from the end of the assessment year. In most transfer pricing matters the taxpayer is deemed to have provided insufficient or incorrect information, hence, a 10-year rollback is generally applicable.</p>
Return Disclosure-Related Party Disclosure Audit Risk/Transfer	<p>There are separate disclosure requirements in the shipping industry. The required information is to be filed together with tax return.</p>

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Norway (continued)

**Audit Risk/Transfer
Pricing Scrutiny**

The risk of transfer pricing issues being reviewed under an audit is high. Norwegian Tax Authorities have announced that they will launch a transfer pricing audit campaign against limited risk companies in Norway in 2005. Especially LRD/commissionaires with low margins and those that have recently experienced reduction in margins will be targeted.

APA

APAs are currently unavailable.

Peru

Taxing Authority and Tax Law	Superintendencia Nacional de Administración Tributaria (SUNAT). Article 32 Item 4 and 32-A of Income Tax Law Supreme Decree 054-99-EF of April 14, 1999, which was modified by Law 27356 of October 18, 2000 and recently modified again by Legislative Decree 945.
Regulations and Rulings	Article 24 and Chapter XIX (articles 108 to 119) of the Peruvian Income Tax Regulations (recently modified by Supreme Decree 190-2005-EF).
Priorities/Pricing Methods	Peruvian Law does not place a priority on specific pricing methods. CUP, Resale Price, Cost Plus, Residual Profit Split, Profit Split and Net Margin Method are all accepted.
Transfer Pricing Penalties	The penalty for non-compliance with the annual obligation of keeping a transfer pricing study is 30 Tax Units (approximately, US\$30,000). Moreover, Peruvian tax authorities are entitled to adjust the taxpayer's taxable result based on the transfer pricing methods established by local law. These adjustments to annual taxable income resulting from the tax authorities' application of transfer pricing provisions will be subject to additional penalties, which may be up to 50% of the resulting tax deficiency (income misstatement penalties).
Reduction in Penalties	The new provisions establish an incentive regime, under which income misstatement penalties are reduced upon payment, as follows: <ul style="list-style-type: none">■ 20% reduction if the taxpayer acknowledges the tax liability after the tax audit has begun but before the official notification of an income assessment■ 30% reduction if the taxpayer timely files the transfer pricing return■ 50% reduction if the taxpayer has a complete technical report (transfer pricing study)
Documentation Requirements	<p>According to Peruvian income tax law, related parties must keep documentation, which supports the contention that transactions between related parties were agreed at arm's length (i.e., market value, according to Peruvian income tax law). The information must be supported in a transfer pricing technical report.</p> <p>Another obligation established in the law (the transfer pricing disclosure obligation) is the requirement to file an annual Transfer Pricing Informative Return. Although the format of the transfer pricing return has not been published yet, it is expected that the contents of such return would be derived from the technical report.</p>
Categories of Documentation Required	The Annual Transfer Pricing Study must contain the following data: information on controlled transactions, financial information of the tested party, functional analysis (functions, assets, and risks), selection of transfer pricing analysis methods, comparables used, and application of the methods selected.
Deadline to Prepare Documentation	There is no deadline to prepare documentation.
Deadline to Submit Documentation	N/A
Statute of Limitations on Transfer Pricing Assessments	According to Articles 87-7 and 43 of the Peruvian Tax Code, the statute of limitations on transfer pricing assessments is four years after January 1 of the year that follows the year the Annual Income Tax return is due (generally March 31 of the following year), and six years for returns that were never filed.
Return Disclosure-Related Party Disclosure	A Transfer Pricing Informative Return submission is required. However, regulation is still pending in this matter.
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an audit is moderate. The Peruvian Tax Administration has not yet initiated any tax audits regarding transfer pricing issues.
APA	APAs are available for cross-border transactions only.



Philippines

Taxing Authority and Tax Law	Bureau of Internal Revenue (BIR). National Internal Revenue Code of 1997, Section 50.
Regulations and Rulings	Section 179, R.R. No. 2; RMO 61-98; RMO 63-99; RAMO 1-95; RAMO 1-98.
Priorities/Pricing Methods	The BIR accepts CUP, Resale Price, Cost Plus, CPM, Profit Split, and other unspecified methods. Taxpayers are required to use the best method.
Transfer Pricing Penalties	General penalties apply. Taxpayers face a 25% surcharge penalty, and if found fraudulent, a 50% penalty of basic tax assessed. A 20% interest p.a. is also applicable.
Reduction in Penalties	The surcharge is waived if the deficiency assessment is paid within the period prescribed for payment (usually 30 days).
Documentation Requirements	There are no specific documentation requirements. However, this will change once the draft regulation which imposes contemporaneous documentation requirements is finalized.
Categories of Documentation Required	No categories of documentation requirements are specified.
Deadline to Prepare Documentation	N/A
Deadline to Submit Documentation	N/A
Statute of Limitations on Transfer Pricing Assessments	General statute of limitations rules apply: three years from the time prescribed for filing the tax return, and 10 years from discovery of fraud in case of fraudulent or false return.
Return Disclosure-Related Party Disclosure	Related party disclosures are required in the 'Notes to Financial Statements' that accompany the annual income tax return.
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an audit is medium. However, once the draft transfer pricing regulation is finalized, the BIR is expected to be more pro-active in pursuing transfer pricing audits.
APA	To date, there are no formal APA procedures, but the BIR may issue rulings on a case-by-case basis. The draft transfer pricing regulations, however, provides for an APA procedure.

Poland

Taxing Authority and Tax Law	Inland Revenue. The arm's length principle can be found in Article 11 of the Corporate Profits Tax Act and in Article 25 of the Personal Income Tax Act. Documentation requirements can be found in Article 9a of the Corporate Profits Tax Act and in Article 25a of the Personal Income Tax Act. Pricing methods specifications were outlined in the Ministry of Finance Decree of October 10, 1997 on the Method and Procedure for Assessing Taxpayers' Income by Estimating the Prices in Transactions Conducted by these Taxpayers. Reporting requirements are specified in the Ministry of Finance Decree of May 4, 2001.
Regulations and Rulings	Dz. U. 128 dated Oct. 22, 1997, Item 833. Corporate Profits Tax Act (amended 2003). Personal Income Tax Act of July 26, 1991 (Dz. U. of 2000, No. 14, item 176, with further amendments). Tax Ordinance of August 29, 1997 (Dz. U. of 1997 No. 137, item 926, with further amendments).
Priorities/Pricing Methods	Inland Revenue accepts CUP, Resale Price, Cost Plus, Profit Split, and TNMM. Priority is given to transaction-based methods over profit-based methods.
Transfer Pricing Penalties	Taxpayers face a 50% penalty tax rate for income assessed by tax authorities.
Reduction in Penalties	The 50% penalty tax rate can be reduced only if taxpayer exercised reasonable care during preparation of the documentation in due time.
Documentation Requirements	<p>The documentation requirement applies to transactions whose value exceeds the equivalent of:</p> <ul style="list-style-type: none">■ €100,000—if the transaction value does not exceed 20% of the share capital■ €30,000—in the case of provision of services, sale or making available of intangibles■ €50,000—in other cases <p>Furthermore, the documentation requirement refers also to transactions as a result of which the payment of amounts due under the transaction is made directly or indirectly to the entity in the territory or country applying harmful tax competition rules (the so-called "tax havens"), if the transaction's value exceeds the equivalent of €20,000.</p>
Categories of Documentation Required	<ul style="list-style-type: none">■ Method selected■ Analysis of the controlled transactions■ Description of the functions of the parties to the transaction (including assets used and risks taken)■ All expected costs of the transaction and the method and terms of payment■ The method of profit calculation and a description of the transaction price■ A description of the business strategy and any other related activity if this strategy affects the transaction value■ An indication of any other factors which were taken into account when determining the transaction value■ A description of the benefits that the entity required to prepare the documentation expects from transactions of an intangible nature (including services)
Deadline to Prepare Documentation	There is no deadline for preparing transfer pricing documentation.
Deadline to Submit Documentation	Taxpayers are obligated to submit the documentation within seven days of a tax authority or tax inspection authority request.
Statute of Limitations on Transfer Pricing Assessments	According to Article 70 §1 of the Polish Tax Ordinance, tax liability is enforceable within five years from the end of the calendar year in which there was a deadline for tax payment.

Poland (Continued)

Return Disclosure-Related Party Disclosure	An annual report is required to be filed within three months from the end of the given tax year, along with the annual corporate profits tax return. Reporting requirements are specified in the Ministry of Finance Decree of May 4, 2001. Taxpayers are required to inform tax authorities when filing a corporate profits tax return whether they have prepared transfer pricing documentation or not.
Audit Risk/Transfer Pricing Scrutiny	The risk of audit is high for all types of transactions.
APA	<p>As of January 1, 2006, unilateral, bilateral, and multilateral APAs are available in Poland.</p> <p>The main benefit for the taxpayer will be the tax authorities' confirmation of the transfer pricing methodology. If an APA is concluded for a particular transaction, and the price is verified during a tax audit, then the tax authorities will be required to accept the methodology selected by the taxpayer and approved by the APA.</p> <p>APAs in Poland may consider a transaction that has not yet been executed or a transaction that is in progress at the time the taxpayer submits an application for an APA.</p> <p>The Polish APA regulations do not limit the value of the transaction covered by an APA. In order to submit an application for the APA, the taxpayer must pay a fee generally amounting to 1% of the transaction value. However, fee limits have been set forth in the Polish APA regulations:</p> <ul style="list-style-type: none">■ Unilateral APA—fee cannot be lower than 5,000 PLN (approximately €1,250) and cannot exceed 50,000 PLN (approximately €12,500)■ Bilateral APA—fee cannot be lower than 20,000 PLN (approximately €5,000) and cannot exceed 100,000 PLN (approximately €25,000)■ Multilateral APA—fee cannot be lower than 50,000 PLN (approximately €12,500) and cannot exceed 200,000 PLN (approximately €50,000)

Portugal

Taxing Authority and Tax Law	Article 58 of the Corporate Income Tax Code.
Regulations and Rulings	Administrative Decree 1446-C/2001 of 21 December 2001.
Priorities/Pricing Methods	The Portuguese tax authorities recognize both the transactional and profit-based methods included 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. However, the Portuguese tax authorities prefer the transactional-based methods described in the OECD Transfer Pricing Guidelines over profit-based methods.
Transfer Pricing Penalties	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.
Reduction in Penalties	The general tax penalty regime applies.
Documentation Requirements	The Portuguese transfer pricing rules require taxpayers with a net turnover and other income in excess of €3,000,000 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 intra group services.
Categories of Documentation Required	<p>Transfer pricing documentation should include:</p> <ul style="list-style-type: none">■ 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 is included in the Portuguese offshore blacklist is considered as being a related party, independent of other related party criteria)■ Characterization of the taxpayer's activity and that of the related parties with whom it engages in commercial transactions■ Identification of all intercompany transactions■ The volumes and the terms and conditions of the transaction(s) for the past three years■ The counterparties to the transaction(s)■ A functional analysis for each relevant transaction(s)■ Technical studies focusing on essential areas of business■ A description of the method used and demonstration of how the prices are calculated■ Information about comparables■ The legal entity organization structure■ A description of the activities■ All intercompany contractual agreements and unrelated party agreements
Deadline to Prepare Documentation	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.
Deadline to Submit Documentation	Companies must maintain their transfer pricing documentation file on the premises, and they do not have to submit the transfer pricing file to the tax authorities unless requested. Normally the tax authorities issue requests for contemporaneous documentation pack with 10-days notice. Contemporaneous documentation is not required for audited financial statements. Auditors should report in the appropriate form (or even include a reserve) the non-preparation of the obligatory documentation.

Continued on next page



Portugal (continued)

Statute of Limitations on Transfer Pricing Assessments

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.

Return Disclosure-Related Party Disclosure

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.

Audit Risk/Transfer Pricing Scrutiny

The risk of transfer pricing issues being reviewed under an audit is very high. According to a January 2006 report on inspection guidelines issued by the tax authorities, transfer pricing has been selected as an inspection priority for relevant companies in 2006. Transactions most intensely scrutinized are those with royalty charges, management and service charges, cost sharing and contribution arrangements. Since January 2004, entities resident in blacklisted offshore countries/territories are deemed related parties for transfer pricing purposes.

APA

The domestic transfer pricing law does not yet foresee APAs.

Russia

Taxing Authority and Tax Law	State Tax Service within the Ministry of Finance of the Russian Federation. Article 40 of Part One of the Russian Tax Code (defining general principles for determination of prices for taxation purposes) and Article 20 (defining interdependent persons). The Parliament is expected to consider significant amendments to these articles, the main effect would expand the range of transactions for which price can be controlled; however, all previous attempts to change current legislation in that respect were blocked.
Regulations and Rulings	No specific regulations or rulings exist.
Priorities/Pricing Methods	The tax authorities accept the following methods in order of preference: CUP, Resale Minus, and Cost Plus.
Transfer Pricing Penalties	There are no specific sanctions for transfer pricing, but general fines and interest for underpayment of taxes apply. The fine for tax underpayment is 20% to 40% of tax underpayment. The interest for late payment of tax is computed at the rate of 1/300 of the refinancing rate established by the Central Bank of Russia.
Reduction in Penalties	N/A
Documentation Requirements	At this time no specific documentation is required. However, this rule potentially may change significantly. If the current proposals are enacted by the Parliament, an onerous documentation obligation would be placed on taxpayers. There is a medium likelihood that the rules will change in the near future.
Categories of Documentation Required	N/A
Deadline to Prepare Documentation	N/A
Deadline to Submit Documentation	N/A
Statute of Limitations on Transfer Pricing Assessments	An audit conducted by the tax authorities may cover only the three calendar years immediately preceding the year in which the audit is carried out.
Return Disclosure-Related Party Disclosure	No specific disclosures are required.
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an audit is medium. The practical risk is particularly high in relation to goods exported outside Russia, as well as in the oil & gas industry. The tax authorities also often question prices in cases where the fluctuation in the taxpayers' prices exceeds 20% during a short period of time.
APA	APAs are not available.

Singapore

Taxing Authority and Tax Law	Inland Revenue Authority of Singapore (IRAS). Section 53 (2A) of the Income Tax Act concern related party business dealings between a non-resident and a resident. Section 33 of the Income Tax Act is a general anti-avoidance provision.
Regulations and Rulings	The IRAS issued Transfer Pricing Guidelines on February 23, 2006 ("Singapore Transfer Pricing Guidelines"), which are consistent with the OECD Transfer Pricing Guidelines.
Priorities/Pricing Methods	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.
Transfer Pricing Penalties	There are no specific penalties regarding transfer pricing. Under general tax provisions relating to understatement of income, the penalty range is from 100% to 400% of tax underpaid.
Reduction in Penalties	In general, tax penalties can be mitigated if there is reasonable cause for the understatement of income.
Documentation Requirements	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. Depending on the level of transfer pricing risk, taxpayers should consider adopting either a cost/risk documentation approach or a more detailed transfer pricing documentation approach.
Categories of Documentation Required	<p>Cost/risk documentation would typically be appropriate for taxpayers with small or less-complex related party transactions. Typically, cost/risk documentation would include the following:</p> <ul style="list-style-type: none">■ 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■ 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■ An outline of the taxpayer's assessment of its tax risk. <p>If a Singaporean 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">■ Detailed factual information regarding the related party dealings, including the functions performed, assets developed, assets used, and risks assumed in relation to the transaction■ An analysis of the applicable industry in which the taxpayer operates■ Selection and application of one of the transfer pricing methods indicated in the Singapore Transfer Pricing Guidelines■ An economic analysis that supports the use of the selected method using appropriate benchmarking data/analysis
Deadline to Prepare Documentation	There is no deadline. However, when a taxpayer believes that it has a potential transfer pricing risk, then transfer pricing documentation should be prepared contemporaneously.
Deadline to Submit Documentation	There is no submission requirement or deadline. However, documentation should be made available if requested by the IRAS.
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.
Return Disclosure-Related Party Disclosure	No specified disclosures are required on Form C, Singapore Income Tax Return.

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Singapore (continued)

Audit Risk/Transfer Pricing Scrutiny

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

APA

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 Pricing Guidelines outline the procedures for applying for an APA.

Slovak Republic

Taxing Authority and Tax Law	Tax Directorate and the Ministry of Finance. Sections 2, 17 (5, 6, 7) and 18 of the Income Tax Act. Act on International assistance and cooperation by tax administrations.
Regulations and Rulings	No regulations specific to transfer pricing regulation exist. The OECD Transfer Pricing Guidelines were published in the Slovak Financial Newsletter but is not legally binding.
Priorities/Pricing Methods	The acceptable methods listed in the Income Tax Act correspond with the methods recommended in the OECD Transfer Pricing Guidelines. The Income Tax Act prefers the methods based on the comparison of prices over methods based on the comparison of profits or combined methods or other allowed methods. In addition, general recommendations provided in the OECD Transfer Pricing Guidelines should be followed.
Transfer Pricing Penalties	No penalties specific to transfer pricing exist. However, the penalty for unpaid tax is three times the basic interest rate. Taxpayer's failure to fulfill a non-financial obligation can be fined up to SKK1 million.
Reduction in Penalties	There are no specific reductions in penalties. Generally, a penalty is reduced by half if the taxpayer submits a supplementary income tax return where the transfer pricing difference is declared. Upon a successful challenge of transfer prices by the tax authorities, no specific reduction of penalties is available. In very limited circumstances, (e.g., bankruptcy), the Ministry of Finance or Tax Authorities may provide a special relief from penalties.
Documentation Requirements	There are no statutory requirements for documentation. Taxpayers should follow OECD Transfer Pricing Guidelines.
Categories of Documentation Required	No rules (legally binding, or otherwise) exist that would specify the means by which the appropriateness of the transfer prices applied is to be proven. The tax authorities may require information on comparable transactions between unrelated subjects, contracts and agreements between companies within the group, information on comparable goods/services, and information on business strategy of the transactions.
Deadline to Prepare Documentation	N/A
Deadline to Submit Documentation	If the Slovak tax authority challenges a taxpayer's transfer pricing, the taxpayer must file information within the statutory deadlines for tax proceedings, depending on the tax authority's decision.
Statute of Limitations on Transfer Pricing Assessments	The general regime of the statute of limitations applies. The general time limit is five years from the end of the taxable period during which the duty to file a tax return arose, unless the tax authorities undertake an act directed at the assessment of tax. In this case, the five-year time limit begins to run anew. Tax may be assessed, however, no later than 10 years after the end of the taxable period during which the duty to file a tax return arose.
Return Disclosure-Related Party Disclosure	There are no specific disclosure requirements. However, in general, the Income Tax Act requires that the taxpayer keeps sufficient supporting documentation for the expenses incurred. In case of a tax audit the taxpayer must document and substantiate that prices agreed with related parties comply with the arm's length principle.
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an audit is low to medium. Due to Slovak tax authorities having been relatively inactive in this area, we can only speculate on their approach during the future transfer pricing audits. Management fees are usually an area of interest for the tax authorities. It is, therefore, crucial to have these fees supported with proper documentation.
APA	According to Section 18.4 of the Slovak Income Tax Act, in cases of cross-border transactions, the taxpayer may request the tax authorities to approve the selected transfer pricing method. If approved, the method must be used during at least one tax period.

South Africa

Taxing Authority and Tax Law	South African Revenue Services (SARS). Section 31 of the Income Tax Act 58 of 1962.
Regulations and Rulings	There are no specific regulations or rulings; however, guidance for the application of Section 31 is contained in Practice Notes Number 2 (May 14, 1996) and 7 (August 6, 1999).
Priorities/Pricing Methods	The SARS accepts CUP, Resale Price, Cost Plus, TNMM, and Profit Split. Although there is no hierarchy of methods, the taxpayer should choose the most reliable method. However, the SARS prefers transaction-based methods over profit-based methods. The reasons for discounting other methods must be given. The SARS may require that adjustments be made on foreign comparable company results used as a comparable in benchmarking the results of the South African entity, to compensate for differences in risks assumed by entities operating in different jurisdiction.
Transfer Pricing Penalties	No specific penalties for transfer pricing, but general penalty rules are applicable.
Reduction in Penalties	N/A
Documentation Requirements	The taxpayer has the burden of proof that prices are arm's length. The only way to successfully discharge the burden of proof is by maintaining contemporaneous documentation. There is no specific statutory requirements to prepare transfer pricing documentation. However, a company that has such documentation is required to submit it together with its tax return.
Categories of Documentation Required	Where documentation is prepared, Practice Note 7, which is based on the OECD Transfer Pricing Guidelines, gives guidance as to what it should contain.
Deadline to Prepare Documentation	There is no deadline. However, SARS urges taxpayers always to be in a position to demonstrate the arm's length nature of their dealings.
Deadline to Submit Documentation	If a taxpayer has transfer pricing documentation, this must be submitted together with its tax return. A taxpayer has 30 days to respond to a request for information from SARS.
Statute of Limitations on Transfer Pricing Assessments	The statute of limitations is three years from the date of assessment where full disclosure has been made in the tax return. There is no limitation if the disclosure is incomplete or inaccurate.
Return Disclosure-Related Party Disclosure	The Company Tax Return asks specific questions to identify cross border transactions such as: <ul style="list-style-type: none">■ Did the company enter into any cross-border transactions in terms of an international agreement as defined in Section 31?■ Has the company provided goods or services of value to a non-resident connected person for no consideration?■ Does the company have a transfer pricing policy in support of its transfer prices?■ Has any transaction with a non-resident connected party been subject to an APA in another jurisdiction?
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing issues being reviewed under an audit is high. The SARS has substantially expanded its knowledge and resources. The SARS obtains ongoing and regular training from other Revenue Authorities, particularly the UK.
APA	APAs are not available.

South Korea

Taxing Authority and Tax Law	National Tax Service (NTS). The Law for Coordination of International Tax Affairs (LCITA).
Regulations and Rulings	Presidential Enforcement Decree, Ministerial Enforcement Ordinance, Notice of NTS.
Priorities/Pricing Methods	The NTS accepts CUP, Resale Price, Cost Plus, Profit Split, TNMM, and other reasonable methods. The taxpayer should use the most reasonable method. However, according to the LCITA, CUP, Resale Price, and Cost Plus have priority over Profit Split, TNMM, and other reasonable methods.
Transfer Pricing Penalties	There is a 10%-30% penalty for underreported taxable income. Underpaid tax is multiplied by 0.05% or 0.03% days of underpaid periods (for the period which due date for tax return begins after January 1, 2003, 0.03% penalty rate applies). Maximum penalty of 30,000,000 Won for failure to submit additional documentation requested by the NTS within 60 days.
Reduction in Penalties	Failure to provide the transfer pricing documentation in a timely manner may increase possibility of being subject to field tax audit. If it is considered that the taxpayer was not at fault, and this is identified as a result of Mutual Agreement Procedures, taxpayers may avoid under-reporting penalties related to their transfer pricing. Taxpayers will be deemed not to be at fault if the following three requirements are met: <ul style="list-style-type: none">■ The taxpayer can demonstrate that it selected the best method with documents prepared on a timely basis■ The selected method is in fact applied■ The taxpayer has prepared and maintained adequate documentation with regard to the selected transfer pricing method
Documentation Requirements	Documentation is required, and contemporaneous documentation is preferred.
Categories of Documentation Required	<p>The regular documents required annually as part of the tax return are:</p> <ul style="list-style-type: none">■ Transfer pricing methodology selected and the reason for the selection■ Schedule of related party transactions by related party, type of transaction, and amount of transaction■ Condensed P&L of overseas related parties <p>According to a Presidential Decrees, the following documentation may be requested during documentation reviews by the NTS:</p> <ul style="list-style-type: none">■ Contracts in connection to the sale and purchase of goods and services■ Price lists of manufactured goods and services■ Statements of cost of goods manufactured and cost of services■ Statements of all transactions by product category and whether entered into with related parties■ Organization chart of entity and details of division of duties in the entity■ Materials used to determine prices used in related party transactions■ Internal guidelines used to determine prices with related parties■ Accounting treatments used for the entity's related party transactions■ Activities undertaken by the entity in relation to its related party transaction■ Equity relationships with the entity's related parties <p>The NTS can, at any time, request any relevant documents in addition to the documents listed above.</p>
Deadline to Prepare Documentation	The NTS prefers contemporaneous documentation.

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South Korea (continued)

Deadline to Submit Documentation

The following documents need to be filed within three months of the end of each fiscal year as part of the annual tax return:

- Transfer pricing methodology selected and the reason for the selection
- Schedule of related party transactions by related party, type of transaction, and amount of transaction
- Condensed profit & loss (P&L) statement of overseas related parties

An extension for a period less than one year may be granted for the schedule of related party transactions (by related party, type of transaction and amount of transaction) and condensed P&L of overseas related parties.

Any additional transfer pricing documentation requested by the tax office during documentation reviews or tax audits is due within 60 days from date of the request; an application for an extension for additional 60 days may be made.

Statute of Limitations on Transfer Pricing Assessments

The statute of limitations on transfer pricing adjustments is five years.

Return Disclosure-Related Party Disclosure

The taxpayer is required to submit:

- The transfer pricing methodology and reason for its selection
- Schedule of taxpayer's international transaction with related parties
- Summary of income statements for foreign related parties

Audit Risk/Transfer Pricing Scrutiny

The risk of transfer pricing issues being reviewed under an audit is high. The NTS has recently begun to ask routinely for transfer pricing documentation, even outside of the audit context. More and more clients have stated that they have been asked for transfer pricing documentation. All related party transactions are reviewed. However, management fees, service transactions, royalty transactions, loan transactions, and other international transactions are also reviewed. NTS closely monitors the companies having experienced operating losses in recent years and is likely to conduct tax audits on them.

APA

Unilateral and bilateral APAs are available under the Article 6 of LCITA and Presidential Enforcement Decree Articles 9 to 14. The NTS currently encourages the use of APAs. Concluded bilateral APAs may be applied to the previous five years upon the applicants' requests. Under the amendment to LCITA that was passed in May 2006, concluded unilateral APAs may be applied to the previous three years upon the applicants' requests.

The amendment also extended the benefit of the mutual agreement procedure (MAP). Prior to the amendment, the negotiation results of a MAP could be applied only to the transactions between relevant contracting states under the application of the MAP. Under the amendment, the negotiation result of a transaction subject to the MAP may be applied to transactions with other countries in cases where the transactions are substantially comparable in terms of transaction structure.

Spain

Taxing Authority and Tax Law	Spanish Tax Administration (STA). Article 16 of the Spanish Corporate Income Tax Act (CITA) reordered by Royal Decree Law 04/2004.
Regulations and Rulings	Articles 16 to 29 of Royal Decree 1777/2004.
Priorities/Pricing Methods	CUP is considered the primary method. At a subsidiary level, the Cost Plus and Resale Price methods become applicable. As a residual method, where none of the other three are applicable, the Profit Split method will be applied.
Transfer Pricing Penalties	No specific provisions exist. Tax adjustments may be carried out only by the STA, under lower taxation or deferral, derived from their non-market values. Therefore, penalties are unlikely, as the taxpayer is not required to adjust the taxable base. According to the Spanish courts, tax penalties will be imposed only when it has been proven that the taxpayer's purpose is to avoid taxes or commit fraud.
Reduction in Penalties	N/A
Documentation Requirements	There are no documentation requirements. However, the deduction of R&D costs and contributions and the management support expenses require specific documentation (i.e., prior written contracts). Documentation is required for an audit defense.
Categories of Documentation Required	N/A
Deadline to Prepare Documentation	N/A
Deadline to Submit Documentation	N/A
Statute of Limitations on Transfer Pricing Assessments	The general statute of limitations is four years.
Return Disclosure-Related Party Disclosure	The taxpayer is not required to file disclosure documentation together with the corporate tax return.
Audit Risk/Transfer Pricing Scrutiny	The transfer pricing risk for a Spanish company being examined is medium. There is no evidence to suggest that the STA is performing specific transfer pricing audits. However, as part of the general tax audit process, the STA is showing an increased interest in the transfer pricing policy of Spanish companies. Risk is higher in the audit of management fees and intra-group charges borne by Spanish subsidiaries of foreign groups. Soon, it is likely that specific transfer pricing documentation requirements will be introduced, which will assist the STA to identify taxpayers with transfer pricing risks.
APA	The APA program provides unilateral and bilateral APAs for three fiscal year terms. The APAs are effective in respect to transactions commencing after the approval is given. The APA process involves application, submission, negotiation and resolution. (See Article 16 of the CITA and Articles 16 to 29 of Royal Decree 1777/2004.)

Sweden

Taxing Authority and Tax Law	Swedish Tax Agency. Sections 14:19-20 of the Income Tax Act. The Swedish Tax Agency is responsible for the correct and uniform implementation of the tax laws. It issues guidelines and recommendations to the local tax offices.
Regulations and Rulings	The tax authorities issue general taxation guidelines, which include general information on transfer pricing. According to case law and tax authorities, taxpayers should adhere to the OECD Transfer Pricing Guidelines.
Priorities/Pricing Methods	The tax authority generally follows the OECD Transfer Pricing Guidelines. Transaction-based methods are preferred over profit-based methods.
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 are generally imposed at a rate of 40%.
Reduction in Penalties	N/A
Documentation Requirements	<p>Multinational enterprises are required to document transactions with related companies as of January 1st, 2007. The new legislation introduces formal transfer pricing documentation requirements in relation to cross-border transactions within multinational enterprises. According to the legislation, the documentation shall include:</p> <ul style="list-style-type: none">■ 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. <p>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.</p> <p>Documentation prepared in accordance with the code of conduct regarding European Transfer Pricing Documentation (EU TPD), shall be considered to comply with the proposed Swedish documentation requirements.</p>
Categories of Documentation Required	See above.
Deadline to Prepare Documentation	The underlying analysis should in principle be prepared in connection with the transaction. The final documentation should be available upon request.
Deadline to Submit Documentation	Upon request
Statute of Limitations on Transfer Pricing Assessments	A general statute of limitations applies, which is five years from the year of assessment.

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Sweden (continued)

**Return Disclosure-
Related Party
Disclosure**

No specific disclosure requirements currently exist for the filing of the tax return.

**Audit Risk/Transfer
Pricing Scrutiny**

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

APA

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



Switzerland

Taxing Authority and Tax Law	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.
Regulations and Rulings	There are no specific transfer pricing regulations. However, the Federal Tax Administration 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.
Priorities/Pricing Methods	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.
Transfer Pricing Penalties	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.
Reduction in Penalties	N/A
Documentation Requirements	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.
Categories of Documentation Required	N/A
Deadline to Prepare Documentation	N/A
Deadline to Submit Documentation	N/A
Statute of Limitations on Transfer Pricing Assessments	The general rule provides up to 10 years back from the end of the assessment year, if new facts or circumstances are discovered.
Return Disclosure-Related Party Disclosure	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.
Audit Risk/Transfer Pricing Scrutiny	The risk that transfer pricing issues are scrutinized during an audit has increased (medium level of audit risk). Transfers of intangibles and transfers with offshore entities receive specific scrutiny.
APA	There are no formal APA procedures. However, the Federal Tax Administration participates in multilateral APAs.

Taiwan

Taxing Authority and Tax Law	National Tax Administration (NTA); Republic of China (ROC). Articles 43-1 and 80 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.
Regulations and Rulings	The Taiwan Transfer Pricing Examination Guidelines (the "TP Guidelines") were put in effect on December 30, 2004.
Priorities/Pricing Methods	In accordance with the TP Guidelines, the pricing methods are as follows: <ul style="list-style-type: none">■ Comparable uncontrolled price method■ Resale price method■ Cost plus method■ Profit split method■ Comparable profit margin (TNMM)■ Other methods prescribed by the Ministry of Finance (MOF)
Transfer Pricing Penalties	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.
Reduction in Penalties	N/A
Documentation Requirements	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 TP 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.
Categories of Documentation Required	<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">■ The total annual revenue of the profit-seeking enterprise does not exceed TWD100 million.■ The total annual revenue of the profit-seeking enterprise exceeds TWD100 million but does not exceed TWD300 million, and<ul style="list-style-type: none"><input type="checkbox"/> The profit-seeking enterprise does not utilize tax credit for more than TWD1 million or loss carry-forward for more than TWD4 million to reduce the income tax or undistributed earnings surplus tax, and<input type="checkbox"/> 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); any other profit-seeking enterprise has no overseas related parties.■ The total annual controlled transactions amount is less than TWD100 million. <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)

Categories of Documentation Required	<ul style="list-style-type: none">■ Business overview■ Organization structure■ Description of controlled transactions■ Transfer pricing report:<ul style="list-style-type: none"><input type="checkbox"/> Industry and economic analysis<input type="checkbox"/> Functions and risks analysis<input type="checkbox"/> Application of arm's length principal<input type="checkbox"/> Selection of comparables and related information<input type="checkbox"/> Comparability analysis<input type="checkbox"/> Transfer pricing methods selected by profit-seeking enterprises<input type="checkbox"/> Transfer pricing methods selected by related parties under the same control<input type="checkbox"/> 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
Deadline to Prepare Documentation	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.
Deadline to Submit Documentation	In accordance with the TP Guidelines, upon audit, the profit-seeking enterprise has to provide the tax authority with the transfer pricing report and relevant document within one month. With the approval of the tax authority, the submission could be extended for one month under special circumstances.
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 the tax return was not timely filed.
Return Disclosure-Related Party Disclosure	<p>Beginning in 2004, a taxpayer must disclose related party transactions and enclose the disclosure under the annual income tax return pursuant to the TP Guidelines. The disclosure generally includes:</p> <ul style="list-style-type: none">■ Investing structure■ Related parties■ Related party transaction amount■ Related party transaction balance■ Completed transfer pricing report <p>In December 2005, the Taiwan Tax Authority issued a safe harbor rule for related party transactions disclosure 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:</p> <ul style="list-style-type: none">■ Has related parties without the territory of the ROC (including the headquarters and branches)■ Utilizes tax credit for more than TWD500 thousands or utilizes loss carry-forward 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)

Audit Risk/Transfer Pricing Scrutiny

In general, audit risk is moderate. On August 2, 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 fluctuation on 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 requirement.
- A profit-seeking enterprise fails to determine whether its related party transactions are within 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. 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 transaction with related parties in tax haven or low tax jurisdictions.
- An enterprise has significant or frequent controlled transactions with related parties entitled to tax incentives.
- Any other transactions fail to meet the arm's length requirement in accordance with TP Guidelines

APA

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

According to tax letter ruling No. 9404540920, under an APA, a tax return shall not be subject to a TP audit except for the following circumstances:

- The profit-seeking enterprise fails to provide the tax authority with the annual report of 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; or
- The profit-seeking enterprise conceals the material facts, provides false information, or conducts wrongful acts.

Thailand

Taxing Authority and Tax Law	Thai Revenue Department (TRD). 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. Departmental Instruction No. Por. 113/2545.
Regulations and Rulings	On May 16, 2002, the TRD issued its first specific transfer pricing guidelines. The guidelines are written in the form of an internal departmental instruction, which provides guidance to tax officials for tax audit purposes.
Priorities/Pricing Methods	The TRD accepts the Fair Market Value Method, CUP, Resale Price Method and Cost Plus Method. Other commercially used methods are acceptable such as OECD's Profit Split Method and the TNMM.
Transfer Pricing Penalties	There is no explicit penalty regulation for transfer pricing, but if the company is assessed by the tax authorities, 100% or 200% of the tax shortfall, and a 1.5% per month surcharge could be imposed. The surcharge is capped at 100% of the tax shortfall.
Reduction in Penalties	Penalties could be reduced by half if the taxpayer voluntarily declared the tax shortfall. Surcharges are a form of interest and cannot be reduced. Contemporaneous documents cannot be used to reduce the transfer pricing penalty. However, they are used for transfer pricing defenses should a tax audit take place.
Documentation Requirements	Extensive contemporaneous documentation is required.
Categories of Documentation Required	<ul style="list-style-type: none">■ Organizational structure relationship among entities in the same group and nature of each entity with the group■ Budgets, business plans, and financial forecasts■ Business strategies of the taxpayer and reasons for use of such business strategies■ Sales figures, operating results, and nature of business transactions with entities in the same group■ Reason for entering into cross-border business transactions with entities in the same group■ Pricing policies, product profitability, market information, and the share of profit of each entity taking into consideration the function, assets and risks of the related entity■ Reasons for selecting a particular pricing method■ Reasons for rejecting alternative method(s).■ Evidence of basic principles; and negotiating position of the taxpayer in business transactions with entities in the same group■ Other documentation relating to pricing (if any)
Deadline to Prepare Documentation	There is no deadline for a taxpayer to prepare transfer pricing documentation. It would only apply to negotiations between the tax authority and taxpayer.
Deadline to Submit Documentation	In practice, the taxpayer is required to submit transfer pricing documentation under the Transfer Pricing Guideline within one to two months after receiving a letter from the TRD.
Statute of Limitations on Transfer Pricing Assessments	Under Section 19 of the Revenue Code, the statute of limitations is two years from the date of filing the tax return, which is extendible to five years if tax evasion or fraud is suspected.
Return Disclosure-Related Party Disclosure	CPA report in terms of sale of goods, services or properties, lending of money or property without any compensation or with compensation lower than the market value.

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Thailand (continued)

Audit Risk/Transfer Pricing Scrutiny

The risk of transfer price scrutiny during an audit is moderate to slightly high. The TRD focuses on the cooperation of taxpayers in providing necessary transfer pricing support documentation. Failure to do so would likely lead to a tax audit. There has not yet been a single formal transfer pricing audit in Thailand. Rather, tax adjustments have, up to now, all been settled through negotiation. More commonly, tax adjustments are made by the TRD with respect to the deductibility of expense items through its yearly routine visit to taxpayers' offices to review their business operations. During such checks, if officials find anything suspicious (including deductibility of certain expense items), an investigation will be conducted. In most cases, the taxpayer under investigation would be required to add back the deemed excessive amount of expense as its taxable income and to pay additional tax accordingly. Beginning in 2006, there has been demonstrably more aggressive enforcement and challenges by the TRD in all areas of tax issues, especially transfer pricing; that is done through routine visits to taxpayers' business premises. The increased level of enforcement mainly stems from heavy tax collection pressure on the authority. The Thai government is trying to recover additional funds lost from customs duties and excise taxes that have been curtailed as a result of enforcing various Free Trade Agreements to which Thailand is now a party.

APA

Currently there is not much development and movement regarding transfer pricing in Thailand. In addition, the TRD has slowed down negotiations of APAs with taxpayers, due to the tremendous tax collection pressure on the TRD. Recently however, the TRD has become cautiously willing to enter into bilateral APA negotiations with taxpayers. The TRD has expressed a preference for bilateral APAs over unilateral APAs.

Ukraine

Taxing Authority and Tax Law	The State Tax Administration of Ukraine. Paragraphs 1.20, 5.3.9, 5.4.6, 7.1, 7.2, 7.4, 7.8.2 and 7.9.6 of the Law of Ukraine on Corporate Profit Tax. Paragraph 4.1, 4.2, 4.8, 4.9, 7.4, 9.8 of the Law of Ukraine on VAT.
Regulations and Rulings	Resolution 597 of the National Bank of Ukraine, although it is of a non-tax nature (it was originally adopted as an anti-money-laundering tool), it establishes certain transfer pricing rules in respect of prices for work or services purchased from non-resident entities. Resolution 597 requires pricing scrutiny by a special state body on the price of works or services purchased from non-residents when the total price exceeds €50,000 either under single contract or under several contracts for provision of the similar services with the same counterparty. Order 3259 by the State Committee for Regulation of the Markets of Financial Services, of December 30, 2004, titled "On Adoption of Method for Calculation of the Arm's Length Price of Insurance Tariff."
Priorities/Pricing Methods	Comparable Uncontrolled Price method is used as the primary method. If CUP is inapplicable, then other OECD-followed methods may arguably apply, such as Resale Price Method and Cost Plus Method. The contract price is assumed to correspond to the arm's length price. If the tax authority believes the contract price is not set at an arm's length level, it is required challenge the price in court in order to reassess taxes.
Transfer Pricing Penalties	There are no specific penalties for transfer pricing. However, if the tax authorities successfully challenge the applied price in court, understated amounts of corporate profit tax and value added tax may eventually be reassessed. Various general penalties for underpayment would also apply.
Reduction in Penalties	N/A
Documentation Requirements	No specific documentation is required.
Categories of Documentation Required	N/A
Deadline to Prepare Documentation	N/A
Deadline to Submit Documentation	N/A
Statute of Limitations on Transfer Pricing Assessments	The statute of limitations for transfer pricing related issues is three years after the deadline for submission of tax return for the relevant tax reporting period (currently the end of the reporting period plus 40 days for corporate profit tax and 20 days for VAT). However, if the company's officials are condemned by a court for tax evasion or the tax return has not been filed, no limitation period would apply. This statute of limitations is applicable for assessments made for tax purposes.
Return Disclosure-Related Party Disclosure	Generally, there are no specific disclosures required. However, there are provisions concerning information disclosure by banks and joint-stock companies (though these disclosure requirements are not transfer pricing driven). Additionally, related party disclosure is required for Antimonopoly Committee purposes in the case of mergers or acquisitions of control over Ukrainian companies.
Audit Risk/Transfer Pricing Scrutiny	The risk of transfer pricing scrutiny during an audit is medium to high.
APA	N/A



United Kingdom

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 April 1, 2004, transfer pricing laws are no longer restricted to cross border transactions. This is to ensure that UK rules are not discriminatory within the European Union (EU) and is a defense against recent European Court of Justice (ECJ) decisions. The revisions include exemptions for dormant companies and transactions of small and medium sized enterprises, including cross border as well as domestic transactions. They also include proposals for simple claims for corresponding adjustments on UK/UK 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 April 1, 2007. Where a company's accounting period straddles a relevant date (March 4, 2005/ April 1, 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 2006 did not introduce any specific changes to the transfer pricing legislation.

Regulations and Rulings

There are no specific regulations (with the exception of provisions for APAs as below) but there are "Guidance Notes" 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 make sections of their internal manuals available.

Priorities/Pricing Methods

The OECD Transfer Pricing Guidelines are effectively adopted into UK tax legislation. As such, the most appropriate method of pricing is effectively required by the UK legislation. HMRC prefers transaction methods over transactional profit methods. However, there is a recent move by the HMRC towards testing results against systems profits. This may also be mirroring OECD developments.

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 January 1, 2004; this period has now ended. UK tax law provides that tax-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 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 under the Finance Act of 2004 relaxation. This penalty will not apply if the only evidence of neglect is failure to maintain adequate documentation. A flat penalty of £3,000 applies for failure to keep proper records under Paragraph 23 Schedule 18 of the Finance Act of 2004. It is noted that 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.

Reduction in Penalties

The best protection against neglect penalties is a transfer pricing policy which fully documents and evidences due consideration of the arm's length principle. Mitigation of tax-geared penalties will generally be made in relation to size, gravity, disclosure, and cooperation.

Documentation Requirements

The HMRC has long struggled with guidance in this 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 report acknowledges that the extent and depth of documentation should be informed by a risk analysis, which could gauge the extent of the tax at stake. Further guidance on what documentation may include is also set out in the report. Documentation is especially important to audit defense and refutation of neglect arguments.

Continued on next page

United Kingdom (continued)

Categories of Documentation Required	<p>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 Evidence. Documentation relating to Evidence of compliance with the arm's length principle is to follow OECD Guidance and HMRC set out some suggestions on what this should or may include such as:</p> <ul style="list-style-type: none">■ Identification of associated enterprises with whom transaction made■ Description of nature of business■ The contractual or other understandings between the parties■ Description of method used to establish an arm's-length result with explanation of why method chosen■ Explanation of commercial and management strategies, forecasts for the business or technological environment, competitive conditions and regulatory framework <p>With respect to the Finance Act of 2005, amendments for "acting in concert" referred to above, HMRC has clarified that in circumstances where little or no risk exists, and that the result of a transaction is other than an arm's length result, evidence of those circumstances should be all that is required for documentation purposes.</p>
Deadline to Prepare Documentation	<p>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.</p>
Deadline to Submit Documentation	<p>Transfer pricing documentation should be retained and submitted at the request of the HMRC Tax Inspector, who has the power to request information within 60 days notice, though extensions are usually available. Transfer pricing documentation should be preserved six years from the end of the accounting period or until the date on which inquiries to which documents are relevant are complete, whichever is later.</p>
Statute of Limitations on Transfer Pricing Assessments	<p>Discovery assessments can be raised six years after the company's accounting period ends but this is extended to twenty-one 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.</p>
Return Disclosure-Related Party Disclosure	<p>No return disclosures except those required in statutory accounts and annual reports filed in compliance with any current APAs. Absence of disclosure requirements will typically leave prior years open to discovery assessments (see statute of limitations).</p>
Audit Risk/Transfer Pricing Scrutiny	<p>HMRC now conducts a risk assessment before inquiry (Details contained in Tax Bulletin 60) and confirmed at the time of the 2003 pre-Budget report. HMRC has also highlighted areas of concern that are likely to lead to inquiries (i.e., changed business structures and characterizations, etc.) and are investing time and resource 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. There exists uncertainty in relation to the validity of the UK transfer pricing rules to Intra-EU transactions prior to April 2004; and clarification is anticipated on this matter from HMRC or from testing and through litigation in the ECJ.</p>
APA	<p>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 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.</p>

United States

Taxing Authority and Tax Law	Internal Revenue Service (IRS); Internal Revenue Code (IRC) §482, §6038A, §6038C, §6662(e)-(h).
Regulations and Rulings	Treasury Regulations §1.482, §1.6662, §1.6038A; §1.6038C; Rev. Proc. 2002-52; Rev. Proc. 99-32; and Rev. Proc. 2006-9. Final regulations (T.D. 9088) on compensatory stock options under §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 (QCSAs) under Treas. Reg. §1.482-7. Audit checklist on CSAs issued August 2005. Proposed regulations on CSA (REG-144615-02) issued August 22, 2005 introducing new methods for determining buy-in payments, providing IRS with discretion to make periodic adjustments, and formalizing other new requirements for compliance. New final, temporary, and proposed Regulations related to services issued on July 31, 2006. The new rules will be effective January 1, 2007, and apply to tax years beginning after December 31, 2006. In conjunction with the new regulations, the IRS also issued Announcement 2006-50, which contains 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.
Priorities/Pricing Methods	The IRS accepts CUP, Resale Price, Cost Plus, CPM, Profit Split, or other unspecified method. Taxpayers should use the best method. New services regulations provide for seven methods: Services Cost Method (SCM), Comparable Uncontrolled Services Price (CUSP), Gross Services Margin (GSM), Cost of Services Plus (CSP), CPM, Profit Split, and unspecified methods.
Transfer Pricing Penalties	Taxpayers must pay a 20% and 40% penalty for underpayment of tax.
Reduction in Penalties	Penalty for disregarding rules or regulations and for a substantial understatement of income tax may be avoided by adequately disclosing certain information. Penalties for negligence and for substantial valuation misstatement may not be avoided by disclosure. No penalties apply, however, if there was reasonable cause and the taxpayer acted in good faith with respect to such transaction.
Documentation Requirements	Documentation is not required by law; however, in practice, it is recommended that taxpayers maintain contemporaneous documentation in order to avoid penalties. In general, documentation must be provided to the IRS within 30 days of a request for an examination. The documents must generally be in existence when the return is filed. For penalty avoidance purposes, 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 TPM determined as part of an APA is a consideration for whether the taxpayer's method was reasonable.
Categories of Documentation Required	The types of documents generally requested include: business overview, organization structure, method selected, alternative method rejected, analysis of controlled transactions, identification of comparables, economic analysis, relevant data obtained after year-end, index, and any other documentation that may be requested, as described under Treasury Regulations §1.6662-6(d)(iii)(B) and (C).
Deadline to Prepare Documentation	Taxpayers must prepare documentation by the filing date of the income tax return.
Deadline to Submit Documentation	Taxpayers must submit documentation within 30 days upon examiner's request. Large and Mid-Size Business Division issued a directive on January 22, 2003 stating that it will more actively enforce the 30-day period for turning over transfer pricing contemporaneous documentation and violations will result in §6662(e) penalties.

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United States (Continued)

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
- 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.

Return Disclosure-Related Party Disclosure

The taxpayer is required to file Forms 5471 and 5472.

Audit Risk/Transfer Pricing Scrutiny

The risk of transfer pricing scrutiny during a tax audit is high. Transfer pricing is extensively regulated and the directive on enforcing contemporaneous documentation violations indicates that scrutiny will increase.

APA

Unilateral and bilateral APAs are available under Revenue Procedure 2006-9.

The new revenue procedure was released in December 2005 and updates Rev. Proc. 2004-40. There is a new fee scale. Rev. Proc. 2006-9 is effective as of February 2006. The IRS implemented the following changes to the APA Program including:

- Stricter case management procedures—instituting follow-up actions to speed up case resolution
- Additional taxpayer disclosure requirements
- APA case will not be processed until file is “substantially complete”
- Updating 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 increase in fees

Venezuela

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. The 1995 OECD rules will be applicable as a supplement to these rules for everything else not considered in these regulations.
Regulations and Rulings	Administrative Rulings 401, 3/05/01 (9 TPR 870, 4/4/01) (applicable only for the period from March 5, 2001 to December 28, 2001), establish gross margins for imports and exports 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.
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 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.
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 2005 tax unit is BS 29,400/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.
Reduction in Penalties	There are mitigating circumstances if the taxpayer complies with the transfer pricing method. However, this circumstance does not reduce the penalty itself; it is just an element taken into account in the determination of the adjustment.
Documentation Requirements	Effective as of 2002, taxpayers are required to prepare and maintain supporting and extensive contemporaneous documentation.
Categories of Documentation Required	Documentation of 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.
Deadline to Prepare Documentation	The taxpayer must prepare documentation by the filing date of annual income tax return and the end of every fiscal year.
Deadline to Submit Documentation	The taxpayer must submit documentation upon request by SENIAT during a transfer pricing audit.
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.
Return Disclosure—Related Party Disclosure	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)

Audit Risk/Transfer Pricing Scrutiny

In February 2005, SENIAT initiated an audit process related to transfer pricing. SENIAT is currently reviewing the fiscal year 2002-2003. 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 and distributors.

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
- Transfer pricing transactions return
- 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
- Additional ledger of financial transactions, open, primary or secondary market, internationally applicable

APA

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.)



The Ernst & Young Global Transfer Pricing Practice

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

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Ernst & Young is recognized as a leading innovator in transfer pricing. We pioneered the Advance Pricing Agreement process, conducting the first APA in 1990 and, since then, completing 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 immediately to the global and local needs of our multinational clients by providing real time transfer pricing advice.

Contacts

Global Leader	Robert Turner	+1 416 943 3513
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The Americas

Regional Leader	Robert Ackerman	+1 202 327 5944
------------------------	------------------------	------------------------

Argentina	Carlos Ochoa	+54 11 4318 1644
Brazil	Demétrio Barbosa	+55 11 2112 5486
Canada	Alfred Zorzi	+1 514 874 4365
Chile	Sergio Sapag	+56 2 676 1674
Colombia	Ignacio Arias	+571 651 2210
Ecuador	Javier Salazar	+593 9 9782 007
Mexico	Jorge Castellon	+1 305 415 1391
Peru	Marcial Garcia	+51 1411 4424
United States	Robert Ackerman	+1 202 327 5944
Venezuela	Katherine Pinzon	+58 212 953 5222

Europe, Africa

Regional Leader	Oliver Wehnert	+49 211 9352 10627
------------------------	-----------------------	---------------------------

Austria	Christa Heintz	+43 1 21170 1263
Azerbaijan	Erlan Dosymbekov	+99412 490 70 20
Belgium	Kurt Van der Voorde	+32 2 774 92 81
Czech Republic	Jiri Teichmann	+420 225 335 327
Denmark	Carsten Dall Larsen	+45 35 87 27 67
Finland	Antero Joutsu	+358 9 1727 7375
France	Antoine Glaize	+33 1 55 61 14 06
Germany	Oliver Wehnert	+49 211 9352 10627
Hungary	Dénes Szabó	+36 1 451 8209
Ireland	Joe Bollard	+353 1 2212457
Italy	Davide Bergami	+39 02851 4409
Luxembourg	Paul Leyder	+352 42 124 240
Malta*	Christopher Naudi	+356 2134 2134

Netherlands	Erik Kamphuis	+31 20 549 7327
Norway	Marius Leivestad	+47 24 00 23 86
Poland	Karen Chaczabian	+48 22 557 7000
Portugal	Paulo Mendonca	+351 21 791 2045
Russia	Julia Maximovskaya	+7 095 755 96 88
Slovak Republic	Dana Skodna	+421 2 59229 612
South Africa	Sean Kruger	+27 11 772 3996
Spain	Juan José Terraza	+34 93 366 3741
Sweden	Mikael Hall	+46 8 52059235
Switzerland	Salim Damji	+41 58 286 43 66
Ukraine	Marco Groen	+380 44 490 30 00
United Kingdom	Joel Segal	+44 20 7951 5339

Asia-Pacific

Regional Leader	Phil Anderson	+86 21 2405 2269
------------------------	----------------------	-------------------------

Australia	David Lewis	+61 39288 8063
China	Phil Anderson	+86 21 6219 1219
India	Srinivasa Rao	+91 80 223 0813
Indonesia	Ben Koesmoeljana	+62 21 5289 5030
Japan	Ken Okawara	+81 3 3506 2461
Kazakhstan	Aliya Dzhapayeva	+7 3272 58 59 60
Malaysia	Yvonne Chan	+60 3 7495 8311
New Zealand	Leslie Prescott Haar	+64 9 300 8111
Philippines	Romulo Danao	+632 894 8392
Singapore	Jesper Soolgaard	+65 6421 8038
South Korea	Sung Soo Han	+82 2 3787 6693
Taiwan	Charles Lu	+886 2 2720 4000
Thailand	Yupa Wichitkraisorn	+66 2264 0777
Vietnam	Thanh Nguyen	+84 8 824 5252

* Malta is expecting transfer pricing rules in the near future.

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