November 2018
2.2018

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WTS Transfer Pricing Newsletter

Editorial

Dear Reader,

It is our pleasure to present to you the second edition of our WTS Transfer Pricing Newsletter in 2018.

The global transfer pricing environment is still changing in a dynamic way. Therefore, in order to keep you up-to-date, our WTS Transfer Pricing Newsletter provides you an overview on current developments in the transfer pricing area in ten selected countries as well as an update on a relevant OECD topic.

We hope you will find this newsletter useful and we would appreciate your feedback and suggestions.

If you have any questions regarding any aspects of this newsletter, our experts of the global WTS TP team will be happy to answer all of the questions you may have.

Yours sincerely,

WTS Global Transfer Pricing Team

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Please find the complete list of all contacts at the end of the newsletter.

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Austria

The expanded Advance Tax Ruling Procedure

In accordance with Section 118 of the Federal Tax Code (BAO), the responsible tax office must – upon receipt of a written application and through an '**advance ruling**' – pronounce its judgment on tax assessment of a particular situation that had not yet materialized at the time of the application if there is a particular interest in view of considerable tax ramifications. Since the introduction of the advance tax ruling procedure in Austria (unilateral 'advance ruling') on **January 1, 2011,** the **subject** matter covered by advance rulings has consisted of legal matters pertaining to reorganization, corporate groups and transfer prices. The **Annual Tax Act of 2018** (Jahressteuergesetz 2018) stipulates that **from January 1, 2019,** this will be extended to include legal questions pertaining to **international tax law, VAT law** and cases of **misuse.**

The **application** must describe the situation that has not yet materialized, explain the particular interest of the applicant in formulating the specific legal questions, present a detailed legal opinion on the legal questions formulated, and contain information on the amount of the contribution to administrative costs (in particular on the amount of revenue and group membership). Such an interest should generally be recognized in legal matters relating to reorganization, groups of companies and transfer pricing. There may also be special interests on which the Austrian tax authorities have already expressed their position.

The advance tax ruling has **binding force** for the Austrian tax authorities if the situation that materialized does not deviate or only deviates insignificantly from that on which the advance ruling was based. There is no binding effect that might be detrimental to the party. The binding force of this ruling is not negated by changes in case law or by decrees issued by the Federal Ministry of Finance.

Pursuant to Section 118 Para. 5a of the Federal Tax Code, as amended by the Annual Tax Act 2018, from July 1, 2019 the advance ruling must be issued – 'if possible' – **within two months** of the application being submitted. However, the explanation of this requirement qualifies this statement by noting that the deadline can be extended – for example due to the complexity of the enquiry.

The legal and planning certainty to be achieved through advanced rulings is subject to a charge. Depending on revenue or group affiliation, a '**contribution to administrative costs**' of between EUR 1,500 and EUR 20,000 must be paid. This contribution is based on an application concerning a specific situation.

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As early as March 2, 2011 the Austrian Ministry of Finance issued guidelines on advance rulings (advance rulings pursuant to Section 118 of the Federal Tax Code), which can be accessed HERE in German.

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Belarus

Transfer pricing reform in Belarus

The Belarusian Finance Ministry has published a draft of the new Tax Code for 2019 (version of October 17, 2018). This document introduces significant changes to domestic TP rules. This is probably not the final version and the proposed amendments could still be changed or cancelled altogether in practice. However, we believe that the majority of changes will be passed. Below we comment on changes and the latest TP trends that we consider to be the most important.

Cancellation of 20% deviation from the arm's length price

Current TP rules allow a deviation of 20% from the arm's length price (profitability range). If the changes come into force, any deviation from the arm's length price (profitability range) in controlled transactions may trigger additional corporate income tax liabilities in Belarus.

Advance pricing agreements

Taxpayers with controlled transactions exceeding a value of BYN 2 million excluding indirect taxes (currently approx. EUR 800 k) and high taxpayers will be entitled to enter into advance pricing agreements with the tax authorities.

The list of related persons will be extended

A person that directly or indirectly influences the business conditions or economic results of another person will be recognized as a related person. The draft introduces the new term "beneficiary of the company" which is defined, for tax purposes, as an individual who directly or indirectly takes key managerial decisions and decisions affecting the business activities of the company. Such beneficiaries and the company will be related persons.

TP treatment of trade in shares of companies

The current opinion of the Belarusian tax authorities regarding TP control of transactions involving shares between related persons is not crystal clear. On the one hand, the tax authorities have commented that such transactions are outside TP control. On the other hand, some argue that the sale of shares can be interpreted as transactions involving property rights which are subject to TP control. There is even more uncertainty because the Tax Code does not specify how to determine the arm's length price of shares. Currently there is no rule that taxpayers should stick to the value of net assets per share or similar.

Latest practice of the supervisory authorities

President Lukashenko publicly announced a campaign against corruption and manipulations in structures involving intermediaries. Financial investigators of the State Control Committee now pay close attention to structures involving related intermediary companies during their audits, especially those registered outside Belarus. We expect that the supervisory authorities will focus even more on deals involving intermediary companies in 2019.

Please contact us if you have any questions and we would be happy to assist you on the matter.

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Brazil

Benchmark Price and Renowned Research Companies: Challenges in Brazil

Brazilian transfer pricing rules were introduced by Law 9430/96 and are regulated by Normative Instruction (IN) 1312/12 issued by the Brazilian Federal Revenue Service.

Article 43 of the referenced Normative Instruction allows taxpayers to determine the benchmark price under the Brazilian Comparable Independent Price – PIC (similar to the Comparable Uncontrolled Price – CUP) method based on reports and publications as well as on research performed by an entity or institution with renowned technical knowledge on the subject.

Although this may seem straightforward, the use of information obtained from such entities can present practical difficulties. This is evidenced by a recent decision issued by the High Chamber of Tax Appeals (CSRF) (decision 9101-003.343, 17/1/18), which is the last level of administrative discussion.

In this case, tax authorities challenged a benchmark price under the PIC method calculated by a company in the chemical sector on the basis of the prices disclosed by ICIS-LOR, an internationally reputable entity in the chemical products market.

In the case under analysis, the tax authorities did not accept the use of such data, based on the argument that ICIS-LOR does not disclose the period analyzed, companies researched, and data obtained as required by article 43 of IN 1312. Due to this, tax authorities used the International Trade Integrated System (SISCOMEX) to find other Brazilian companies that imported the same product and demanded information from them on the prices used in such transactions. Such data, however, were not available to taxpayers when the calculations were made, but were presented in the administrative proceedings.

The CSRF's decision, which was rendered by the casting vote, agreed with the tax authorities that the prices shown in the ICIS-LOR research could not be used by the taxpayer if such entity does not disclose the information required by IN 1312, and that the use of SISCOMEX was possible in this case because this information was attached to the administrative proceedings.

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Although the decision was unfavorable to the taxpayer, the dissenting opinion of one of the judges was that the transfer pricing legislation cannot require the taxpayer to have information that is not available prior to the tax assessment, since SISCOMEX data cannot be accessed by the public.

Therefore, although the legislation allows the use of data gathered by reputable research entities, in practice the information may be disregarded by the tax authorities if – as usually happens – such entities do not disclose all the information required in article 43 of IN 1312.

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Czech Republic

Functional and risk profile identification as a key issue in current transfer pricing controls

In transactions between two independent enterprises, compensation will usually reflect the functions that each enterprise performs (taking into account assets used and risks assumed). Therefore, delineating the controlled transaction and determining comparability between controlled and uncontrolled transactions or entities requires a functional analysis.

The OECD Guidelines further state that an independent enterprise would not continue loss-generating activities unless it had reasonable expectations of future profits. Also, simple or low risk functions in particular are not expected to generate losses for a long period of time. In the current view of the Czech tax authority, they are not expected to generate profitability lower than the profitability calculated from the financial data of comparable independent companies.

In this respect, we have to point out our particular concern regarding the relationship between identified functional and risk profiles of particular companies and the profit expectations of the Czech tax authority. Based on the information mentioned above, let's assume a company can be considered, for example, as a limited functional and risk entity, i.e. its position is somewhere between fully fledged distributor and commissionaire. In this situation such a company is generally expected to generate profit, however, under some conditions a loss is also acceptable according to a transfer pricing theory. But not according to the current opinion and approach of the Czech tax authority, which considers limitation of each level as a reason to adjust tax in line with the profitability of independent comparable companies (from our general experience no less than 3% of EBIT related to operating revenue).

Basic information on the functional and risk profile can be obtained from the questionnaire that the tax authority requires entities to fill in before the start of the tax control itself. Based on our experience from recent cases, we believe that a significant tax risk exists for those companies whose profitability differs from what is expected for the identified profile. The tax authority usually challenges this situation and if the company is not able to prove its financial position properly, the tax base for the relevant year is increased, which results in additional tax and penalties.

The extent of this risk depends on the tax authority's behavior during the tax control and on the strength of the company's ability to present a reasonable and robust economic explanation.

Our recommendation

Based on the above, we recommend the following:

- Verify that the functional profile specified in the documentation/questionnaire corresponds to the actual profile of the company.
- If the limited functional profile presented in the documentation is in line with the actual profile, we recommend preparing a profitability analysis of independent companies to confirm that the profitability of the company is within the arm's length range.
- If the profitability of the company is outside the arm's length range, we recommend finding such arguments (economic circumstances) that would justify a lower operating profit.

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Italy

Implementing BEPS Actions 8 to 10

Introduction

The new principles introduced by BEPS Actions 8 to 10 and the 2017 OECD Transfer Pricing Guidelines were reflected in Italy through Decree-Law 50/2017 amendments to Article 110 (7) of the ICT. The new Article 110 (7) includes a specific reference to the arm's-length principle and provisions issued by the Ministry of Finance on May 14, 2018. The main points of the ministerial decree concerning transfer pricing guidelines are summarized below.

Definitions

For the purposes of the new provision, "associated enterprise" means controlled companies with a majority share (i.e. higher than 50%) in capital, voting rights or profits; or a controlling influence based on contractual obligations or shareholding interests. "Controlled transactions" are outlined via written contracts (where they exist) and the parties' behavior.

Comparability

The notion of comparability reflects the economically relevant characteristics or comparability factors set out in the new Chapter 1 of the 2017 OECD Guidelines. An independent transaction is considered comparable to a controlled transaction when there are no material differences that significantly affect the profit level indicator that can be used in application of the most appropriate transfer pricing method. In the case of differences, comparability can be achieved by eliminating or materially reducing the differences through proper adjustments. In this regard, comparability adjustments (e.g. working capital adjustments) appear to be legitimate.

Methods

The ministerial decree of May 14, 2018 considers the five transfer pricing methods set out in the OECD Guidelines as consistent with the arm's length principle and recommends the following selection procedure. Where the comparable uncontrolled price (CUP) method is deemed to be applied in as equally reliable a manner as another method, the former should be preferred; and when both a traditional and a transactional method are deemed to have been applied in an equal and reliable manner, the former should be selected. The taxpayer also has the option to apply a further method (the "sixth method"), demonstrating that none of the five OECD methods can be reliably applied and that it is consistent with results that would have been established among independent enterprises.

Portfolio approach

Where two or more transactions are so strictly connected that a standalone evaluation would not be reliable, the "portfolio approach" has to be applied to perform the comparability analysis.

Arm's-length range

One of the most relevant provisions of the decree in question is article 6, where the whole range of results from the profit level indicator selected, as mentioned above, has to be considered to comply with the arm's length principle. Thus, the entire range (and not only the median value) can be applied, but only in the case of perfect comparability between controlled and uncontrolled transactions. This interpretation of this condition needs further clarification from the competent authority.

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Low-value adding services

In accordance with the OECD Guidelines, the ministerial decree introduces a simplified approach to defining arm's-length remuneration for low-value adding services, which is a 5% flat mark-up applied to direct and indirect costs associated with such services, if they meet the conditions set in BEPS Action 8–10.

Transfer pricing package

The Italian Revenue Agency is working on the provisions regarding transfer pricing documentation, updating them to be consistent with the new international best practices. The new provision is expected to change the requirements for proper documentation, replacing the rules established in 2010 and introducing a more substantial assessment of local and master files.

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Further provisions will be issued by the Revenue Agency to reflect the 2017 OECD guidelines as periodically updated.

OECD

WTS Global Comments to the OECD Discussion Draft on Financial Transactions

On July 3, 2018, the OECD published a 43-page discussion draft on cross-border financial transactions. The OECD Transfer Pricing Guidelines (TPG) as well as most national regulations currently only contain rudimentary guidance on the subject of intra-group financing, meaning the discussion draft has been awaited with great interest. The publication of the discussion draft was announced about two years ago, but was postponed several times due to inconsistencies among the OECD member states. For this reason, it is not surprising that the discussion draft does not present a consensus of the OECD, but rather an overview of concepts regarding financial transactions.

78 interested parties, including T/A Economics and WTS Germany, as part of WTS Global, submitted comments to the OECD Discussion Draft[1]. The following provides an overview of the most fundamental issues raised by T/A Economics and WTS Germany:

- We have urged that any further draft in relation to transfer pricing considerations for financial transactions (i) should primarily safeguard the arm's length principle as the sole standard for assessing the conditions of the controlled transaction and thus not make any reference or give any consideration to non-economic taxation measures such as interest deduction limitations (BEPS action 4) and (ii) maximize measures to resolve double taxation issues (e.g. article 25 of the mutual tax convention).
- In particular, in our view, the discussion draft may be interpreted in such a way that it sets certain standard presumptions that could be considered **to contradict** the arm's length principle, such as:
  - The (rebuttable) presumption that all subsidiaries within an MNE group should be attributed the same level of creditworthiness as the group as a whole;
  - The presumption that group treasury activities, and more particularly as a cash pool leader, would generally constitute a mere service provider not incurring any of the risks attached to the cash pool;

1 The discussion draft can be accessed at the following link:
http://www.oecd.org/tax/transfer-pricing/oecd-releases-beps-discussion-draft-on-the-transfer-pricing-aspects-of-financial-transactions.htm

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- The presumption that to qualify as a captive insurance entity entitled to file an insurance-related return, all (or substantially all) features of an independent insurer should be met, which in our observation feels like an "all-or-nothing" approach to transaction delineation; and
- The presumption that if a guarantee does not lead to a credit enhancement beyond the implicit group support for the borrower, the guarantee is presumed to provide access to more financing and thus, according to the discussion draft, the loan should be re-characterized as a loan to the guarantor followed by an equity contribution from the guarantor in relation to the original borrower.

Accordingly, we have suggested that the next versions of the discussion draft should touch upon these points.

- It should be appreciated that the freedom to finance is broad and that the rationale for capital structures within the boundaries provided by the market economy is very case-specific. Therefore, when taxpayers carefully substantiate their rationale for particular capital structures, taxpayers should be able to rely on any (sound) economic argument. Tax administrations should bear the burden of proof of whether such rationale would be abusive as a precondition for the requalification of debt to equity and vice versa.
- Whilst actual conduct in respect of financial transactions should obviously also be assessed, it should be recognized that contractual reality is not only a starting point for financial assets, it is, relatively speaking, the most important comparability factor in accurately delineating the controlled transaction.
- In our view, the discussion on the risk-free rate and risk-adjusted return does not specifically belong to the scope of financial transactions and should not be used as a single measure of return, certainly not for the purposes proposed – i.e., returns in the event of lack of control over certain assets.

Our complete set of comments can be accessed at the following link:
https://www.wts.com/global/insights/transfer-pricing-for-financial-transactions-wts-global-reply-to-oecd~publishing

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Poland

Poland changes TP regulations

The Polish parliament is currently proceeding with the amendment to the Polish Tax Law that covers transfer pricing. This is the most complex revision of the transfer pricing regulations since their introduction. The amendment aligns Polish regulations with the latest OECD Guidelines following the BEPS projects. The new law comes into effect from January 1, 2019. The most important changes include:

Transfer pricing methods: Apart from the standard TP methods (CUP, C+, resell minus, TNMM and Profit Split) in justified cases taxpayers will be allowed to use valuation techniques and other methods.

Recharacterization or non-recognition of the transactions: the tax authorities will have the power to disregard or delineate transactions that apply the principle of substance over form.

Safe harbor for low value-adding services: the OECD cost plus 5% for low-value-added services will be implemented. Taxpayers will be required to keep detailed calculations of the fees paid.

Safe harbor for IC loans: applicable for loans up to five years in the event i) total loans from the related entities do not exceed PLN 20 million, and (ii) there are no warranty fees or other charges for granting a loan, and (iii) the interest rate is set based on the official announcements published by the MoF.

Transfer Pricing Adjustments: the purpose is to eliminate divergent tax rulings issued by the National Fiscal Information on the tax treatment of TP adjustments. The TP adjustment should be reported as income or cost for tax purposes in the period to which it relates, providing that the taxpayer has a statement from the related party confirming recognition for tax purposes.

Local File Documentation: new materiality thresholds apply for local files to limit the documentation burden: PLN 10 million (for transactions concerning tangible assets and financing) and PLN 2 million (for services and other transactions). Domestic transactions will be excluded from the Local File requirement unless the counterparties are located in an SEZ, receive tax relief or have incurred losses in a tax year. A Benchmark analysis will be an obligatory element of the documentation for each transaction in a Local File. The deadline for preparing the Local File will be nine months after the end of the tax year.

Master File Documentation: related entities consolidated using the full or proportional method will be required to have a Master File if the group achieved consolidated revenues over PLN 200 million in the preceding financial year. The deadline for preparing the Master File will be 12 months after the end of the tax year. Master Files in English will be accepted (however, the tax authorities may request submission of a Polish version within 30 days).

However, taxpayers could choose to prepare its Local File and Master File documentation for 2018 under the new system.

Formal statement on documentation: all members of the taxpayer's management board will have to submit a **statement** that the Local File was prepared and IC pricing is **arm's length.** The lack of such a statement or making a false statement would trigger a potential fiscal penal liability consisting of a fine up to approx. PLN 21.5 million. The first submission deadline will be **September 2020.**

Penalties for the TP assessment: A new penalty system will replace the famous "50%" tax rate (applied where there is no TP documentation). The additional tax (over 19%) could range from 10% to 30% (the latter where the TP assessment is over PLN 15 million and there is no documentation).

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Portugal

Latest news on the implementation of BEPS in Portugal

With the aim of adopting the 15-point Action Plan that has been developed by the OECD/G20 countries to address the BEPS issues, Portugal has approved or been involved in a set of initiatives to put such an action plan into practice.

For instance, within the scope of Action 5, associated with harmful tax practices, Portugal transposed Directives 2015/2376/EU of December 8, 2015 and 2016/881/EU of May 25, 2016 on mandatory automatic exchange of information in the taxation area into Portuguese law (Law 98/2017 of August 24).

Under these new legal provisions, the mandatory automatic exchange of tax information mechanism is now also applied to advance pricing agreements (APA) and to tax rulings related to multinational groups of companies.

Concerning Action 13, related to the transfer pricing documentation and country-by-country reporting, Portugal has already introduced a rule that anticipates the obligation of multinational groups to submit electronic country-specific declarations into its national legislation for tax periods beginning on or after January 1, 2016, disclosing detailed financial and tax-related information to the Portuguese tax authority.

To allow the taxpayers to comply with this obligation, a new reporting model (Model 54) has been approved by the Portuguese government through Ministerial Order 367/2017 of December 11, 2017.

On the other hand, in order to set Action 15 in motion, Portugal, together with more than 80 jurisdictions from all continents and with various levels of development, has signed the Multilateral Convention to implement tax treaty-related measures to prevent BEPS (MLI).

The MLI predicts specific measures that can be implemented by governments to reduce the differences in existing international tax rules by transposing results from the BEPS Action Plan into bilateral tax treaties worldwide.

The MLI modifies the way thousands of bilateral tax treaties concluded to eliminate double taxation are applied, without creating opportunities for non-taxation or for tax evasion. It also establishes minimum standards to address treaty shopping abuses and to improve dispute resolution mechanisms, while providing the flexibility to accommodate specific tax treaty policies.

In a recent development (associated with the signature of MLI and with tax treaty updates), Portugal has been recognized by OECD, in the *"Making Dispute Resolution More Effective – MAP Peer Review Report, Portugal"* published on August 31, 2018, as complying with most of the minimum standards foreseen in Action 14 to ensure that treaty-related disputes under the mutual agreement procedure (MAP) are resolved in a timely, effective and efficient manner.

In any case, OECD also identified certain issues in this report that need to be addressed by Portugal to be fully compliant with such minimum standards.

OECD recommended the amendment and update of several of its tax treaties to make the provision related to MAP compliant with the requirements set under Action 14 (e.g. by following the 2015 version of article 25 of OECD Model Tax Convention).

Moreover, it is recommended that Portugal should adopt further measures to enhance the prevention of tax disputes, namely those related to APA (for instance, Portugal should allow the roll-back of bilateral APAs).

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In any case, OECD acknowledged in this report that Portugal is working to overcome such deficiencies.

Russia

Development of TP court practices in Russia

Court practices regarding the application of TP rules in Russia is evolving. In the recent PJSC Togliattiazot case, the court initially supported the tax authorities' position with respect to additional tax charges of an approximate amount of RUB 40 million. This is the third high-profile TP case (after similar cases involving PJSC Uralkali and NK Dulisma).

The subject of the dispute in this case was the supply of chemicals from PJSC "Togliattiazot" (RusCo) to the company NITROCHEM DISTRIBUTION AG (SwitzCo) in 2012 for a value of more than RUB 1 billion.

The dispute focused on two issues:

- Recognition of the transaction as controlled due to the level of interdependency between parties in the transaction
- Application of a specific TP method for determining market prices in the transaction

Recognition of the transaction as controlled due to the level of interdependency between parties in the transaction

Pursuant to the Russian Tax Code, cross-border transactions are recognized as controlled if the counterparties in the transaction are interdependent (if there is a direct or indirect capital participation between them of at least 25%).

Despite, according to official data, the level of participation between RusCo and SwitzCo being less than 25%, the Russian tax authorities have managed to establish interdependency of the parties in the transaction through "a complex scheme of nominal ownership, trust management and custody of shares".

The court initially supported the tax authorities and established interdependency of RusCo and SwitzCo on the basis of paragraph 7 of Art. 105.1 of the Russian Tax Code ("on other grounds").

Application of a specific TP method for determining market prices in the transaction

In order to confirm the market level of prices in the transaction, PJSC "Togliattiazot" submitted TP documentation on the analyzed export transactions to the Russian tax authorities. The TP documentation was prepared using the transactional net margin method (TNMM).

The approach of PJSC "Tolyattiazot" to calculating the market range was challenged by the Russian tax authorities for the following reasons:

- As far as it is possible to use the CUP method in this case, the use of other methods (including TMNN) are not correct from a Russian tax legislation perspective.
- The results of the benchmark analysis (list of comparable companies) do not meet the criteria for comparable companies stated in the Russian Tax Code

The court supported the tax authorities' approach regarding the need to apply the CUP method (the comparable market price method) to this transaction, and agreed with the tax authorities on the results of the analysis carried out under the TNMM method.

Why is it important?

- The Russian Tax authorities may recognize the interdependency of companies "on other grounds", even if the counterparties do not meet the criteria for interdependency specified in the Russian Tax Code;
- The Russian tax authorities continue to insist on the use of the CUP method to determine the market range of prices in controlled transactions (if applicable);
- The Russian tax authorities pay special attention to the quality of information and calculations provided by taxpayers in TP Documentation.

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Republic of Serbia

Interest rates in accordance with the "arm's length principle" for fiscal year 2018

According to Article 61, Paragraph 3 of the Corporate Income Tax Law, the Ministry of Finance is entitled to specify the interest rates considered to be in accordance with the "arm's length" principle and determine interest rates on the basis of data provided by the National Bank of Serbia. The interest rates in accordance with the "arm's length" principle are determined individually for each fiscal year.

Interest rates in accordance with the "arm's length" principle for commercial banks and financial leasing companies for fiscal year 2018 as determined by the Ministry of Finance using the "Rulebook on interest rates in accordance with the 'arm's length principle' for 2018" (Official Gazette No.18/18) are presented in the following table:

Type of loan	Loan currency	Annual interest rate
Short-term loans	RSD	3.10%
Long-term loans	RSD	4.10%
Short-term loans and long-term loans	EUR	3.19%
Short-term loans and long-term loans	USD	2.45%
Short-term loans and long-term loans	CHF	3.12%
Short-term loans and long-term loans	SEK	3.70%
Short-term loans and long-term loans	GBP	1.15%
Short-term loans and long-term loans	RUB	3.33%

Interest rates in accordance with the "arm's length" principle for companies other than commercial banks and financial leasing companies for fiscal year 2018 as determined by the Ministry of Finance are presented in the following table:

Type of loan	Loan currency	Annual interest rate
Short-term loans	RSD	5.84%
Long-term loans	RSD	5.58%
Short-term loans	EUR	3.10%
Long-term loans	EUR	3.42%
Short-term loans	CHF	12.97%
Long-term loans	CHF	8.21%
Short-term loans	USD	4.41%
Long-term loans	USD	4.16%

We would like to note that the application of these interest rates in preparing local transfer pricing files in Serbia is not mandatory: Taxpayers can determine interest rates in accordance with the "arm's length" principle by following Serbian transfer pricing regulations and the OECD guidelines, i.e. by performing a full functional analysis and identifying comparable transactions.

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Ukraine

Transfer pricing in figures

Under Ukrainian legislation, taxpayers engaged in controlled transactions must file reports on controlled transactions (hereinafter "CT") by October 1 of the year following the reporting year. Taxpayers must also compose and keep annual TP documentation. The State Fiscal Service (hereinafter "the SFS") may request access to such TP documentation during the process of a TP audit. Below we have provided infographics outlining the main features of controlled transactions reported during the period 2013–2018 and basic results of TP audits, which were published by the SFS on its official website:

Reported controlled transactions 2013 – 2018

10 000
reports
filed since 2013

235
TP documentations
requested by the SFS throughout 2014 – 2018

€ 489 bn
of controlled transactions
covered by the report since 2013

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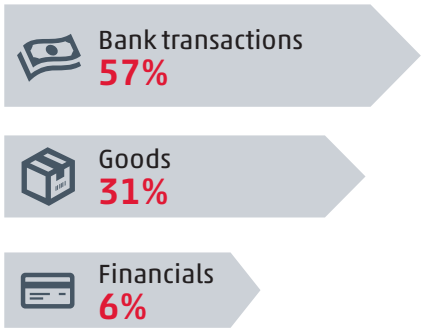
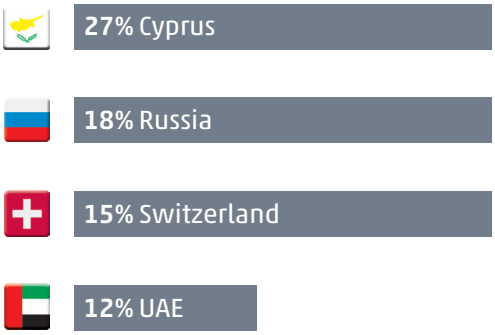
Most common CT



Most common counterparties



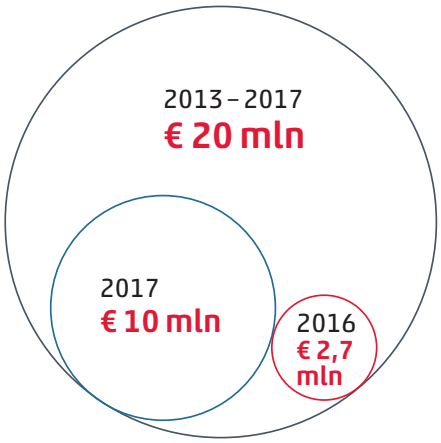
TP audits 2013–2018

In the results from four reporting periods, the SFS established 600 violations of the requirements on reporting deadlines and the completeness of the reports on CT. Therefore, taxpayers were fined EUR 8 million, of which 55% was actually paid to the state budget of Ukraine.

In 2015–2018 the SFS started 58 TP audits, 34 of which have already been completed, resulting in the corporate profit tax assessments presented in the graph here.

430 taxpayers performed self-adjustments of transfer prices and increased their taxable income or reduced losses from controlled transactions in 2013–2016 by a value greater than EUR 443 million.

Corporate tax assessment



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