

# MAZARS TRANSFER PRICING INSIGHT

## Pocket Guide to European Countries Transfer Pricing Legislations

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### ABOUT MAZARS

Mazars is an integrated international partnership of independent professional service firms that provide a full range of audit and assurance, tax and advisory services. Our team consists of tax specialists, accountants and economists, which ensures that we can provide, develop and implement customized transfer pricing solutions that fit with our clients' commercial and tax strategies. Our experience includes many years working in the „Big 4” professional service firms. Our team has dealt with clients on a range of issue, includes transfer pricing assurance and documentations, planning and structuring, and audit defence. This provides us with a broad and deep knowledge of the solutions that have proved successful with a range of clients across various industries. We also draw upon transfer pricing expertise from across the world to ensure that we provide our clients with truly global transfer pricing solutions.

### INTRODUCTION

Welcome you to the next edition of Mazars' Transfer Pricing Insight. This time we would like to draw your attention to the *European countries' transfer pricing legislations*. Similarly to our previous newsletter on Latin American and Caribbean legislation, in the first part of this publication we summarize the cornerstones of the transfer pricing rules and experience in the European countries. Furthermore, we provide some additional info on Germany, Portugal and Turkey.

We hope you find the year-end edition of our Transfer Pricing Insight very useful.

## I. SUMMARY ON CORNERSTONES OF TRANSFER PRICING RULES AND EXPERIENCE IN EUROPE

Concept	Austria
Name of Tax Authority	Bundesministerium für Finanzen / Federal Ministry of Finance, Johannesgasse 5, 1010 Wien
Year	Austrian Transfer Pricing Guidelines 2010 published as administrative guidelines: 2010. OECD guidelines adopted as administrative guidelines: 1996,1997,1998,2000.
Does the TA request preparation of TP documents?	Yes. Austrian Transfer Pricing Guidelines refer mainly to OECD guideline, chapter V.
Does the TA have a special auditing unit?	Yes. There is a special unit, all auditors may turn to this unit if an issue with regard to transfer pricing arises during an audit.
Burden of proof	Taxpayer
Days allowed for delivery of documents following request	At request of tax auditor in case of an audit. The documents should be available from the time on when transfer pricing regulations are (or have to be) applied.
Are there penalties?	No specific TP penalties. (Adjustment of tax base + late payment interest.)
Do internationally accepted methods apply?	Yes (5 methods).
OECD Guidelines	Yes.
Hierarchy in method application	Yes, traditional methods vs. profit based methods. In practice, the comparable uncontrolled price method is preferred over other transaction methods.
Ease of locating cases with the Authority	Tendency: increasing importance of transfer pricing issues during tax audits.
Use of secret comparables?	Formally they are not allowed (tax authorities are barred from publishing such data.) Nevertheless, sometimes they are used in practice.
Concept of "related party"	Threshold for transfer pricing rules to apply: ownership of more than 25%.
Analyzed party	Not specified.
Type of Comparables	Not specified.
APAs	Bilateral APAs: on discretionary basis. Unilateral APAs: advance rulings
Thin capitalization	No.

Concept	Belgium
Name of Tax Authority	Administration of Direct Taxes ("Directie Directe Belastingen")
Year	2004 (Article 185, § 2 BITC 1992)
Does the TA request preparation of TP documents?	No legislative rules are imposed, however the taxpayer should retain documentation, which demonstrates that the taxpayer's pricing complies with the arm's length principle.
Does the TA have a special auditing unit?	Yes, a specialized transfer pricing audit team ('STPT') was officially established within the Belgian Tax Authorities on July 1, 2006.
Burden of proof	In theory, the burden of proof lies with the tax authorities. In practice however, the taxpayer needs to provide information on its transfer pricing policies applied.
Days allowed for delivery of documents following request	One month upon the tax authorities request.
Are there penalties?	Yes, the penalties vary from 10% to 200% of the additional tax.
Do internationally accepted methods apply?	Yes
OECD Guidelines	Yes
Hierarchy in method application	No (follows OECD TP Guidelines)
Ease of locating cases with the Authority	Some cases are available
Use of secret comparables?	No
Concept of "related party"	Very Broad
Analyzed party	Not specified
Type of Comparables	May be international
APAs	Yes, uni-, bi- and multilateral
Thin capitalization	New 'general' 5:1 ratio introduced in 2012

Concept	Croatia
Name of Tax Authority	Croatian Tax Authority, Boškovićeva 5, 10000 Zagreb, Croatia
Year	Arm's length principle: from 2004., documentation liability: n/a
Does the TA request preparation of TP documents?	Yes. Although TP study is not directly mentioned in the law, law stipulates that relations between related parties will be upheld only if the taxpayer can submit documentation about related parties, transactions with related parties and methods used in determination of arm's length principle.
Does the TA have a special auditing unit?	Yes. Transfer pricing has been in the focus of the TA since 2012. During 2012, special teams for TP have been set up for large entrepreneurs.
Burden of proof	Taxpayer
Days allowed for delivery of documents following request	They should be readily available after submitting the relevant corporate tax return. However, in practice usually up to 8 working days
Are there penalties?	Lack of documentation: general fine of HRK 200.000 (~EUR 26.000)
Do internationally accepted methods apply?	Yes, 5 methods prescribed by OECD Model apply
OECD Guidelines	Although not officially, almost all the TP rules of OECD Guidelines apply
Hierarchy in method application	No
Ease of locating cases with the Authority	Yes
Use of secret comparables?	No
Concept of "related party"	50% of direct and indirect ownership of voting rights, common majority shareholders, electing more than 50% of the board members
Analyzed party	Not specified
Type of Comparables	Not specified
APAs	No
Thin capitalization	4:1

Concept	Czech Republic
Name of Tax Authority	Financial Administration of the Czech Republic
Year	Arm's length principle: from 1993
Does the TA request preparation of TP documents?	Czech tax payers are obliged to document the arm's length character of intra-group transactions according to the Czech Tax Code. Czech legislation does not contain any specific provision on the obligatory scope of the TP documentation; however, tax payers are highly recommended to have documentation in the scope defined by the Decree D-334 of the Ministry of Finance.
Does the TA have a special auditing unit?	Yes. The super tax authority exist for all companies with a turnover exceeding CZK 2 billion and other selected types of companies (e.g. financial institutions). One of the core agenda of the super tax authority is a transfer pricing scrutiny. In addition, special transfer pricing "strike-teams" exist as part of the financial administration that frequently perform transfer pricing audits also in other Czech companies, which are not subject to the super tax authority.
Burden of proof	Taxpayer: generally, in relation to all information that it states in the income tax return (including proving appropriateness of costs and revenues from the transactions with related parties). Tax authority: in relation to proving that the arm's length principle was not observed.
Days allowed for delivery of documents following request	Depending on a specific request of a tax authority. Generally 14 days, but it can be lower even higher.
Are there penalties?	Lack of documentation: none Tax underpayment: The interest rate is applied for each day of the tax arrears in the amount of the Repo rate of the Czech National Bank p.a. + 14 percent. In addition, if the discrepancy was discovered by the tax authorities, the taxpayer must pay penalty of 20 percent on additional tax assessed (5 percent if decreasing a tax loss).
Do internationally accepted methods apply?	Yes, all the methods stipulated in the OECD Guidelines.
OECD Guidelines	Yes
Hierarchy in method application	No, in line with the OECD Guidelines.
Ease of locating cases with the Authority	Yes
Use of secret comparables?	No
Concept of "related party"	<p>a) Parties related through capital whereby:</p> <ol style="list-style-type: none"> <li>1. One party (person, entity) directly participates in another entity's capital or voting rights, or one party participates in the capital or voting rights of more entities whereby this entity has a holding of at least 25% in the other's (others') registered capital or voting rights.</li> <li>2. One party indirectly participates in another entity's capital or voting rights, or one party directly or indirectly participates in the capital or voting rights of more entities, and has at least a 25% holding in the other's or others' registered capital or voting rights.</li> </ol> <p>b) Otherwise related parties:</p> <ol style="list-style-type: none"> <li>1. Whereby one party (person, entity) participates in the management or control of another entity.</li> <li>2. Whereby identical persons or close persons (next of kin) participate in the management or control of other entities and such other entities are regarded as otherwise related parties. However, where one person (party) is a member of the supervisory boards of two entities, such entities shall not be regarded as otherwise related parties.</li> <li>3. Involving a controlling entity and a controlled entity, and/or also entities controlled by the same controlling entity.</li> <li>4. Being close persons (pursuant to the provisions of the Civil Code).</li> </ol>

Concept	Czech Republic
	5. Being persons (entities) having established a legal relationship predominantly for the purpose of reducing their tax base or increasing their tax loss.
<b>Analyzed party</b>	Generally, the one with the least complex functional profile.
<b>Type of Comparables</b>	Pan-European searches accepted.
<b>APAs</b>	Yes, from 2010
<b>Thin capitalization</b>	4:1

Concept	France
Name of Tax Authority	French Tax Authority (FTA)
Year	Arm's length principle: from 1933 (article 57 of the French tax code); TP documentation for "big entities": from 2010 (article L13 AA and L13AB of the Tax procedure code), for other entities from 1996 (article L 13 B of the TPC)
Does the TA request preparation of TP documents?	Yes. "Big companies" have to establish a documentation justifying prices charged in transactions with related companies. This TP documentation consists of two parts: a general one related to the group, a more specific one concerning the company itself (the obligation of documentation is higher when transactions are realized with non-cooperative countries and territories).  Other companies can be asked during a tax audit to provide information on the determination of their TP if the TA proves that profits were transferred to related companies located out of France.
Does the TA have a special auditing unit?	Yes, during a tax audit, FTA can use specific procedure to appreciate if the arm's length principle is respected.  Moreover, in order to fight against international fraud, the French law is being strengthened the rules in matter of TP (for example TP documentation for big entities).
Burden of proof	Big companies: taxpayer  Other companies: FTA has to prove the existence of profits indirectly transferred to related companies out of France (the taxpayer can produce counter-evidence)
Days allowed for delivery of documents following request	Big companies  A complete TP documentation must be held at the disposal of the TA at the time of the beginning of the tax audit (or in the delay of 30 days after the summons of the TA to provide it). It also must be sent to the TA in the delay of 6 months following the income tax return (bill).  Other entities  During a tax audit, information concerning the method of TP must be provided by the tested company in the delay of 2 months from the demand of the TA (extension possible to 3 months at the request of the taxpayer)
Are there penalties?	Lack of documentation:  Big companies: a fine of € 10 000 for each year tested or if it is superior, 5% of profits transferred to related companies out of France.  Other companies: a fine of €10 000 for each year tested concerned by the demand of the TA.  Profits indirectly transferred:  bases of taxable income are reassessed by reintegration of transferred profits or in case of lack of documentation, by comparison with taxable bases of similar companies.
Do internationally accepted methods apply?	Yes (5 methods + other methods under the condition to justify it and to respect the arm's length principle)
OECD Guidelines	Yes
Hierarchy in method application	Officially not but the TA indicates than traditional methods (comparable uncontrolled price, cost plus or resale price methods) are the most reliable.
Ease of locating cases with the Authority	Yes, companies can ask the TA to appreciate the conformity of their TP regarding the arm's length principle by rescript.
Use of secret comparables?	Yes, FTA has its own comparables based on their experience tax audits.
Concept of "related party"	Very broad (facto or jure dependence)

Concept	France
<b>Analyzed party</b>	French companies
<b>Type of Comparables</b>	Internal or external
<b>APAs</b>	Yes, unilateral and bilateral (simplified process for SMEs)
<b>Thin capitalization</b>	French thin cap rules are very complex. In broad terms, the only limitation involving TP matters consists in the limitation of the tax deductible interest rate applicable to related party debts. If the related lender is an individual or a non-controlling shareholder, the maximum rate of tax deductible interest is the “tax reference rate (TEM) issued by the FTA on a quarterly basis. If the related lender is a controlling shareholder (either direct or indirect), then any rate may be used as the maximum rate of tax deductible interest.

Concept	Germany
<b>Name of Tax Authority</b>	Local competent tax office ("zuständige Finanzamt")
<b>Year</b>	Arm's length principle: from first codification (1983); documentation obligations: June, 30 2003
<b>Does the TA request preparation of TP documents?</b>	Yes. Taxpayers are required to prepare the relevant transfer pricing ("TP") documentation which sustains the arm's length character of its cross border transactions with related parties. This documentation would be submitted to the tax authorities only upon request in the frame of a standard tax audit. In such case, taxpayers have to communicate the relevant TP documentation within the following timeframe: <ul style="list-style-type: none"> <li>- within 60 days as from the date of the request for ordinary business transactions ("gewöhnliche Geschäftsvorfälle")</li> <li>- within 30 days as from the date of the request for extraordinary business transactions ("außergewöhnliche Geschäftsvorfälle")</li> </ul>
<b>Does the TA have a special auditing unit?</b>	Transfer Pricing can be audited during a general tax examination (no specific tax audit for TP matters) by a tax officer specialized in TP issues.
<b>Burden of proof</b>	Taxpayer
<b>Days allowed for delivery of documents following request</b>	<ul style="list-style-type: none"> <li>- within 60 days as from the date of the request for ordinary business transactions</li> <li>- within 30 days as from the date of the request for extraordinary business transactions</li> </ul> Delay's extension officially not possible, however granted on a case-by-case basis.
<b>Are there penalties?</b>	In case of lack of TP documentation (no submission or insufficient documentation), the tax authorities would proceed to a TP evaluation which can lead to a significant increase of the taxpayer's tax basis through the recognition of additional income (assumption of need for profit adjustment). In addition, the taxpayer faces a fine corresponding to 5% to 10% of the abovementioned additional income with a minimum of EUR 5.000. For late filing, the fine would amount to EUR 100 per day of delay, with a maximum of EUR 1 Mio.
<b>Do internationally accepted methods apply?</b>	Yes
<b>OECD Guidelines</b>	Yes
<b>Hierarchy in method application</b>	Yes. The so-called "transaction based methods" (i.e. comparable uncontrolled price method, resale price method, cost-plus method) should be used at first instance. Should those methods not be appropriate, the "profit based methods" (i.e. transactional net margin method, comparable profits method, profit split method) are accepted (even if more and more admitted at first instance).
<b>Ease of locating cases with the Authority</b>	Transfer Prices are more frequently checked as part of a standard tax audit by tax officers who are more and more specialized in TP matters.
<b>Use of secret comparables?</b>	No
<b>Concept of "related party"</b>	Broad definition - mainly given if direct or indirect participation in the management, control or capital (more than 25%) of another party.
<b>Analyzed party</b>	Not specified
<b>Type of Comparables</b>	Not specified
<b>APAs</b>	Yes
<b>Thin capitalization</b>	Yes - general rules for thin capitalization applicable, not only between related parties.

Concept	Greece
Name of Tax Authority	Tax Office of Large Enterprises
Year	Arm's length principle: from 1994; documentation liability: from 2008
Does the TA request preparation of TP documents?	Yes. The regulations require taxpayers to document each related party agreement also the method in which the arm's-length price was determined, by the time the corporate income-tax return is filed.
Does the TA have a special auditing unit?	Yes. Transfer pricing has been in the focus of the TA since 2008. Transfer Pricing can be audited during a general examination or audits only with transfer pricing focus can be ran.
Burden of proof	Taxpayer
Days allowed for delivery of documents following request	They should be readily available within maximum 30 days after the request.
Are there penalties?	Lack of documentation: In the case of non-submission of either the summarized table of the TP documentation file or the TP documentation file itself in cases of a TA, the fine is calculated at a percentage of 1/100 of the turnover of the enterprise and cannot fall below the amount of EUR 10,000 and exceed the amount of EUR 100,000. In the case of delay of either the summarized table of the TP documentation file, or the TP documentation file itself in cases of a TA, the fine is calculated at a percentage of 1/1000 of the turnover of the enterprise and cannot fall below the amount of EUR 1,000 and exceed the amount of EUR 10,000.  Tax underpayment: It should be noted that if the TA proves that the prices of intra-group transactions of a tax-payer are not complied with the arm's length principle, then the extra profits the tax-payer would have made by applying the arm's length prices in the respective transactions are subject to income taxation as well as other taxes (e.g. VAT, stamp duty).
Do internationally accepted methods apply?	Yes (5 methods + other methods)
OECD Guidelines	Yes
Hierarchy in method application	No
Ease of locating cases with the Authority	Yes
Use of secret comparables?	No
Concept of "related party"	Direct or indirect capital participation of minimum 33% (on the basis of either number or value of stocks/shares, or voting or profit rights). Direct or indirect substantial managerial or financial control or dependence, or even influence possibility in the decision making.
Analyzed party	Not specified
Type of Comparables	Not specified
APAs	Yes, from 2014 Advance Pricing Agreements ("APA's") are allowed for financial years beginning 1 January 2014 onwards. Applications can be made for future transactions on unilateral, bilateral or multilateral basis for a period of 2 years. APA's can be renewed twice – each time for a period of 2 years – and must be revised or even canceled if

Concept	Greece
	<p>their crucial assumptions (on the economic environment, market conditions, risks, group's functions, etc) change significantly.</p> <p>In cases that the terms of an APA are not fulfilled by the tax-payer, the APA is repealed by the tax authority and a default penalty is charged on the tax-payer (the fine is calculated at a percentage of 1/1000 of the turnover of the tax-payer and cannot fall below the amount of EUR 1,000 and exceed the amount of EUR 10,000).</p>
<b>Thin capitalization</b>	3:1

Concept	Hungary
Name of Tax Authority	National Tax and Customs Administration, Nemzeti Adó- és Vámhivatal
Year	Arm's length principle: from 1992; documentation liability: from 2003
Does the TA request preparation of TP documents?	Yes. The regulations require taxpayers to document each related party agreement also the method in which the arm's-length price was determined, by the time the corporate income-tax return is filed.
Does the TA have a special auditing unit?	Yes. Transfer pricing has been in the focus of the TA since 2004. Transfer Pricing can be audited during a general examination or audits only with transfer pricing focus can be ran. Those taxpayers can expect scrutinizes with higher probability that generate losses on notorious basis and have management service charges with proportionally high value. Currently, the new focus is the financial services.
Burden of proof	Taxpayer
Days allowed for delivery of documents following request	They should be readily available after submitting the relevant corporate tax return.
Are there penalties?	Lack of documentation: This fine can be up to HUF 2 million (~EUR 6,700) per missing documentations. For subsequent violations, the TA may impose a default fine of up to HUF 4 million (~ EUR 13,000) per documentation. For repeated omissions in connection with the same documentation, the fine may be up to four times the amount first imposed (HUF 8 million, that is EUR 26,700). Tax underpayment: A 50 percent tax penalty can be charged on the additional tax payable, if any. Late payment interest equal to twice the base rate of the Hungarian National Bank (currently 2*3.6%) can also be charged.
Do internationally accepted methods apply?	Yes (5 methods + other methods)
OECD Guidelines	Yes
Hierarchy in method application	No
Ease of locating cases with the Authority	Yes
Use of secret comparables?	No
Concept of "related party"	50% of direct and indirect ownership of voting rights, common majority shareholders, electing more than 50% of the board members
Analyzed party	Not specified
Type of Comparables	Not specified
APAs	Yes, from 2007
Thin capitalization	3:1

Concept	Ireland
<b>Name of Tax Authority</b>	The Office of the Revenue Commissioners
<b>Year</b>	Transfer pricing provisions were introduced in respect of accounting periods commencing on or after 1 January 2011.
<b>Does the TA request preparation of TP documents?</b>	<p>The legislation requires the taxpayer to have transfer pricing documentation available. It does not however stipulate the form in which it should be kept. Guidance issued by the Revenue Commissioners does not provide an exhaustive list of documentation required. However it is recommended that the documentation available clearly identifies the:</p> <ul style="list-style-type: none"> <li>• associated persons,</li> <li>• nature and terms of transactions,</li> <li>• method by which the pricing of transactions was undertaken. This should include a study of comparables and any functional analysis undertaken,</li> <li>• budgets, forecasts or other documentation relied upon in arriving at arm's length terms, and</li> <li>• terms of relevant transactions with third parties and associates.</li> </ul>
<b>Does the TA have a special auditing unit?</b>	Transfer pricing has only been introduced in Ireland in recent years. The Revenue Commissioners have established a special audit unit. It is understood that this unit is to be expanded.
<b>Burden of proof</b>	The taxpayer is expected to demonstrate the fairness of its intercompany transactions in the event of an assessment by the Revenue Commissioners.
<b>Days allowed for delivery of documents following request</b>	Revenue monitors the compliance through a Transfer Pricing Compliance Review ("TPCR") program. The TPCR program involves companies being selected by Revenue to perform self-reviews of their own transfer pricing procedures. The companies selected must then report their findings to Revenue within a period of three months from the date of initial notification. Subject to the quality of the information and provided Revenues are satisfied with it, the taxpayer may not be subject to a Revenue audit.
<b>Are there penalties?</b>	If during the course of a Revenue audit a transfer pricing adjustment is required to be made, Revenue have indicated that the quality of supporting documentation will be a factor in determining the level of the penalty. No transfer pricing specific penalties have been introduced. The standard interest and penalty provisions will apply (these apply in the cases of all tax audits). These penalties range from 5% to 100% of the underpaid tax.
<b>Do internationally accepted methods apply?</b>	The legislation provides that transfer pricing provisions are to be interpreted in accordance with the OECD Transfer Pricing Guidelines.
<b>OECD Guidelines</b>	Yes, the legislation specifically provides that the OECD Guidelines are to be applied.
<b>Hierarchy in method application</b>	The Irish tax authority has not indicated a hierarchy of models. The selection of a model should be made in accordance with the OECD Guidelines.
<b>Ease of locating cases with the Authority</b>	The Irish tax authority is only in the process of commencing to review taxpayer documentation. There is a limited amount of experience of transfer pricing audits to date.
<b>Use of secret comparables?</b>	No
<b>Concept of "related party"</b>	Yes, the legislation provides for the concept.
<b>Analyzed party</b>	Not specified
<b>Type of Comparables</b>	The Irish tax authorities have access to various international databases. The database should be selected depending on whether the benchmarking study is performed in order to identify local comparable or international comparable. In principle, the presence of local comparable in a benchmarking set is preferred, although it is recognized that the choice between local comparable and broader sets depends on the geographical scope of the transaction under analysis.
<b>APAs</b>	At present, there is no facility to obtain an APA.
<b>Thin capitalization</b>	Ireland does not have thin capitalization legislation. However, in order to be able to obtain a tax deduction for interest on borrowed monies, it is necessary to be able to demonstrate that the monies were borrowed wholly and exclusively for the business.

Concept	Italy
<b>Name of Tax Authority</b>	Revenue Agency ("Agenzia delle Entrate"), it is a branch of the Economic and Finance Ministry, in charge for CIT and VAT. Custom Duty Agency ("Agenzia delle Dogane), again it is a branch of the Economic and Finance Ministry, in charge for custom duty.
<b>Year</b>	The effective date of transfer pricing rule (arm's length principle) is January, 1st, 1988. In 2003 the APA regulation was enacted. In 2010 the regulation concerning the TP documentation was introduced.
<b>Does the TA request preparation of TP documents?</b>	Italy does not have a statutory requirement, but documentation is recommended to avoid shifting the burden of proof regarding arm's length pricing to the taxpayer. Documentation which is considered to meet the requirements of the regulation on transfer pricing documentation will protect taxpayers from tax-gear penalties on any transfer pricing adjustments. The format is prescribed in detail and is mandatory.
<b>Does the TA have a special auditing unit?</b>	There are units dedicated to transfer pricing, and the number of audits has increased in recent years. There are more qualified personnel performing audits, and staff members in local offices also have received transfer pricing training. There is an improved level of preparation and appreciation of resources that can be used in conducting transfer pricing audits. The Italian administrations have created specific task forces to monitor larger companies on all their tax issues, with particular emphasis on transfer pricing and permanent establishments where appropriate.
<b>Burden of proof</b>	The general principle is that the burden of proof lies with the Revenue Agency. However, the taxpayer is expected to demonstrate the fairness of its intercompany transactions in the event of an assessment by the Revenue Agency. Particular rules apply to cross-border transactions involving counterparties resident in tax havens.
<b>Days allowed for delivery of documents following request</b>	On tax auditor request, the documentation must be produced within 10 days. Taxpayers have a further seven days to produce additional supplementary information if requested. If the taxpayer is unable to meet these deadlines, penalty protection is lost. General rules on tax documentation apply; accordingly, the company should be able to adequately substantiate all income and expense items. The Revenue Agency may require taxpayers to produce contracts or other documents (also in the form of answers to questionnaires) during an audit. In this case, taxpayers are obliged to comply with the requests. If a taxpayer fails to submit documentation within the time frame provided in the tax authorities' request, an assessment may be made based on the tax authority's assumptions.
<b>Are there penalties?</b>	Administrative penalties range from 100% to 200% of the amount of tax unpaid. Special rules apply where similar violations are repeated over various fiscal years. Administrative penalties arise because of an adjustment. Based on tax criminal law transfer pricing adjustments may trigger criminal penalties as related to issues of "valuation." In case of a transfer pricing adjustment, no administrative penalty should apply if the taxpayer has prepared documentation to support its intercompany transactions draw up in accordance with the regulation on transfer pricing documentation and had notified the possession on tax return.
<b>Do internationally accepted methods apply?</b>	The regulation on transfer pricing documentation does not impose specific methodologies but refers in general to the OECD Guidelines and emphasizes the preference for traditional transaction-based methods.
<b>OECD Guidelines</b>	The regulation on transfer pricing documentation explicitly refers to the 2010 OECD Guidelines and to the EU Code of Conduct as the basis underlying Italian documentation and to the transfer pricing methodologies of the OECD Guidelines.
<b>Hierarchy in method application</b>	Transaction profit-based methods are acceptable provided there is sufficient justification, in the presence of potential traditional transaction-based methods, of the reasons why the latter are not used.
<b>Ease of locating cases with the Authority</b>	Yes
<b>Use of secret comparables?</b>	No
<b>Concept of "related party"</b>	In addition to the control relationship considered in Article 2359 of the Civil Code, transfer pricing rules apply to any kind of relationship determining actual or potential economic influence on business decisions, by means of combination of, but not limited to, exclusive agreement, joint ventures, the presence of

Concept	Ireland
	common members on the boards of directors, family relationship, participation in trust etcetera.
<b>Analyzed party</b>	Not specified
<b>Type of Comparables</b>	There are databases allowing research of comparable companies at the European and Italian levels. The Italian tax authorities have access to these databases. The database should be selected depending on whether the benchmarking study is performed in order to identify local comparable (Aida) or international comparable (Amadeus). In principle, the presence of local comparable in a benchmarking set is preferred, although it is recognized that the choice between local comparable and broader sets depends on the geographical scope of the transaction under analysis.
<b>APAs</b>	Tax payers may apply for a so-called "International Ruling". This advance ruling is unilateral, although it is possible to achieve a bilateral effect by using two unilateral agreements.
<b>Thin capitalization</b>	Interest payable and similar charges are wholly deductible, in each fiscal year, to the extent of interest receivable and similar income. Any excess of interest payable over interest receivable is deductible up to 30% of EBITDA. The nondeductible amount may be carried forward without any time limit.

Concept	Luxembourg
Name of Tax Authority	Administration des Contributions Directes
Year	documentation liability: from 2012
Does the TA request preparation of TP documents?	Yes for intra-group financing activities. Not applicable in other cases.
Does the TA have a special auditing unit?	The tax office/tax inspector who normally follow the tax affairs of the tax payer. The APAs are granted by a specific tax office
Burden of proof	In the event that the tax authorities seek to adjust a taxpayer's return, then the burden lies to the taxpayer
Days allowed for delivery of documents following request	28 days following the request.
Are there penalties?	If no APA has been concluded, the tax authorities may readjust the remuneration of the company. With regards to intra-group financing activity, there is a risk of exchange of information with the country of residency(is) of the borrower(s). If an adjustment is sustained, the general tax penalties could result in 0,6% per month of the tax assessed for the tax payer.
Do internationally accepted methods apply?	Yes
OECD Guidelines	Yes
Hierarchy in method application	No. The principle for financing activity is that a functional analysis is to be carried out to determine the remuneration of each entity based on the functions performed and taking into account the assets used and risks borne.
Ease of locating cases with the Authority	Yes
Use of secret comparables?	Not specified
Concept of "related party"	In the context of the TP circular, two entities are deemed to be related where one enterprise participates directly or indirectly in the management, control or share capital of the other; or if the same persons participate directly or indirectly in the management or in the share capital of both companies.
Analyzed party	Not specified
Type of Comparables	Not specified
APAs	Yes, from 2012
Thin capitalization	Minimum 1% equity of the nominal value of the financing at risk capped at EUR 2 Million.

Concept	The Netherlands
Name of Tax Authority	National Tax and Customs Administration, Belastingdienst
Year	Arm's length principle: historically documentation liability: from 2002
Does the TA request preparation of TP documents?	Not automatically. The burden of proof will shift to the taxpayer in the absence of qualifying documentation.
Does the TA have a special auditing unit?	There is no separate transfer pricing audit unit. There is a coordination group on transfer pricing, which is responsible for advanced pricing arrangements and for support to tax inspectors and tax auditors.
Burden of proof	Tax authorities, if qualifying documentation is available. Otherwise the burden of proof lies on the taxpayer.
Days allowed for delivery of documents following request	Upon audit or request the tax authorities should grant the taxpayer 4 weeks to deliver this. Depending on the complexity of the situation. The period may be extended to 3 months.
Are there penalties?	Lack of documentation: Shift of the burden of proof to the taxpayer. Theoretically, the absence of documentation may be considered a failure to maintain the administrative documents for tax purposes, which may theoretically trigger criminal charges. Tax underpayment: 25-100 percent tax penalty can be charged on the additional tax payable. However, no penalties arise when the taxpayer has taken a defensible position.
Do internationally accepted methods apply?	Yes (5 methods + other methods)
OECD Guidelines	Yes
Hierarchy in method application	No
Ease of locating cases with the Authority	Yes
Use of secret comparables?	No, unless the burden of proof is shifted.
Concept of "related party"	Sufficient power to influence transfer pricing by participation in capital, management or supervision
Analyzed party	Not specified
Type of Comparables	Not specified
APAs	Yes, historically. Since 2002
Thin capitalization	no abolishment as per 1 January 2013

Concept	Poland
<b>Name of Tax Authority</b>	Ministry of Finance, Ministerstwo Finansów (MF)
<b>Year</b>	Arm's length principle: from 1992. In 2001 the regulation concerning the TP documentation was introduced.
<b>Does the TA request preparation of TP documents?</b>	Mandatory transfer pricing documentation for the transactions above certain thresholds is to be submitted only upon the tax authorities' request. Therefore, as there is no statutory deadline for documentation preparation it is recommended to prepare it no later than the transaction is concluded and updated subsequently. Documentation must be in Polish. Taxpayer must disclose in annual income tax return whether it is obligated to prepare transfer pricing documentation. Information on significant transactions with related parties that are not at arm's length have to be included in the statutory financial statements.
<b>Does the TA have a special auditing unit?</b>	Yes. Additionally, in recent years transfer pricing has been mentioned as one of the top priorities in the circular issued each year by the Polish Ministry of Finance to the tax inspectors describing the main areas which should be subject to thorough scrutiny during tax audits.
<b>Burden of proof</b>	Tax authority. Transfer pricing documentation prevents the tax authorities from shifting the burden of proof to the taxpayer and makes challenging the established prices more difficult.
<b>Days allowed for delivery of documents following request</b>	7 working days from the request
<b>Are there penalties?</b>	If a taxpayer fails to submit such documentation or provides documentation which does not meet the legal requirements, and the tax authorities therefore assess an additional income, the assessed income will be taxed at the penal 50 percent tax rate (instead of standard rate – currently 19 percent). Penalty interest for late payment of the outstanding tax is due as well. Persons responsible for the company's tax compliance may be held responsible under the penal-fiscal code for not submitting required tax information.
<b>Do internationally accepted methods apply?</b>	Yes
<b>OECD Guidelines</b>	Not directly. OECD Guidelines are considered by administrative courts as a part of law, although they do not formally constitute the domestic legislation. Polish tax authorities apply the rules of decree of Ministry of Finance related to transfer pricing issues for tax audits, not the OECD Guidelines directly.
<b>Hierarchy in method application</b>	No, since TP Ordinance amendment in 2013. However, traditional transactional methods are preferred before the transactional profits methods.
<b>Use of secret comparables?</b>	Secret comparables are not allowed; nevertheless, in practice cases of the tax authorities using secret comparables occur.
<b>Concept of "related party"</b>	Five percent of direct or indirect share in capital. Other types of relationship (e.g. effective control) in particular personal relationships are also taken into account. Applicable for: both Polish and foreign parties; for foreign entrepreneurs operating through a permanent establishment in Poland; for transactions with entities in tax havens (regardless the relationship). Except for entities in a Polish tax capital group.
<b>Analyzed party</b>	Not specified
<b>Type of Comparables</b>	Not specified. Polish tax authorities prefer to rely on Polish comparables when analyzing benchmarking studies.
<b>APAs</b>	Yes, from 2006 (unilateral; bilateral; trilateral, multilateral).
<b>Thin capitalization</b>	3:1

Concept	Portugal
<b>Name of Tax Authority</b>	Autoridade Tributaria e Aduaneira, Portuguese Tax Authority
<b>Year</b>	Documentation Liability: since 2002
<b>Does the TA request preparation of TP documents?</b>	Yes, documentation should be prepared by the 15th of July, the deadline for filing the annual accounting and tax information declaration. This deadline may move to the 15th day of the 7th month after the end of the fiscal year, for those taxpayers whose fiscal year does not match with civil year.
<b>Does the TA have a special auditing unit?</b>	Transfer Pricing can be audited during a general examination or audits only with transfer pricing focus can be ran.
<b>Burden of proof</b>	Under the terms of Portuguese TP legislation, the burden of proof rests with the taxpayer whereas Transfer Pricing Documentation exists and argues the arm's length standard, otherwise it rests with the Tax Authorities.
<b>Days allowed for delivery of documents following request</b>	Taxpayers have 10 days from the day of the request to deliver the necessary documents.
<b>Are there penalties?</b>	Lack of documentation: In case the Tax Authority sets a deadline for the presentation of transfer pricing documentation and, if after the deadline, the files are not delivered, penalties ranging from € 1.000 to € 10.000 (per tax file) shall be assessed, assuming a negligent behavior by the taxpayer.  Deviation from the arm's length standard: the non-compliance with transfer pricing rules may lead to corrections in the assessment of the taxable income, which may result in additional CIT liabilities over which compensatory interest at 4% per year should be charged, as well as penalties ranging from € 750 to € 22.500, if additional CIT liabilities are assessed.
<b>Do internationally accepted methods apply?</b>	Yes, The Portuguese legislation follows the recommendation of the OECD Guidelines. The following methods are accepted: <ul style="list-style-type: none"> <li>• Comparable Uncontrolled Price Method</li> <li>• Resale Price Method</li> <li>• Cost Plus Method</li> <li>• Transactional Net Margin Method</li> <li>• Profit Split Method</li> </ul> If none of them are applicable, the tax payer has the opportunity to define and use other approaches.
<b>OECD Guidelines</b>	Yes.
<b>Hierarchy in method application</b>	Yes. Under Portuguese TP legislation the transactional methods are priority.
<b>Ease of locating cases with the Authority</b>	Yes
<b>Use of secret comparables?</b>	No
<b>Concept of "related party"</b>	Related party definition scope: <ol style="list-style-type: none"> <li>I) An entity and its shareholders, that have directly or indirectly, a participation not inferior to 10% of the capital or the voting rights;</li> <li>II) Entities in which the same shareholders have, directly or indirectly, a participation not inferior to 10% of the capital or voting rights;</li> <li>III) Other situations of economic dependency.</li> </ol>
<b>Analyzed party</b>	Not specified
<b>Type of Comparables</b>	Not specified
<b>APAs</b>	Yes, since 2008
<b>Thin capitalization</b>	2:1

Concept	Romania
Name of Tax Authority	National Agency for Fiscal Administration
Year	Arm's length principle: from 2004; documentation liability: from 2008
Does the TA request preparation of TP documents?	Yes. The regulations require taxpayers to document each related party transaction. The documentation must be available upon TA's written request
Does the TA have a special auditing unit?	Yes. Transfer pricing has been in the focus of the TA since 2008. Transfer Pricing can be audited during a general tax examination, but audits focused only on transfer pricing can also be performed. So far companies incurring operating losses were the main target of a transfer pricing audit, as well as companies receiving services (management, consultancy, technical assistance etc.) from related parties.
Burden of proof	Taxpayer
Days allowed for delivery of documents following request	The deadline is of maximum 3 months from the TA's request depending on the number and complexity of the transactions. The initial deadline established by the TA can be prolonged with a period equal to the initial one
Are there penalties?	Lack of documentation: fine of between RON 12,000 (~ EUR 2,700) and RON 14,000 (~ EUR 3,100). In addition, lack of documentation gives the TA the possibility to easily adjust the transfer prices based on 3 similar transactions that the TA will choose on the market. This may lead to additional corporate income tax liabilities and potential late payment interest and penalties.  If documentation exists but the transactions under review will not fall within the interquartile range obtained for comparable independent companies the TA usually adjust the taxpayer's profits to the median
Do internationally accepted methods apply?	Yes (5 methods + other methods)
OECD Guidelines	Yes
Hierarchy in method application	No
Ease of locating cases with the Authority	No
Use of secret comparables?	No
Concept of "related party"	minimum 25% of direct or indirect ownership of the value/number of the participation titles or of the voting rights or control
Analyzed party	Not specified
Type of Comparables	Comparables must be searched at first on the Romanian market
APAs	Yes, from 2004
Thin capitalization	3:1

Concept	Russia
Name of Tax Authority	The Federal Tax Service of Russia
Year	2012
Does the TA request preparation of TP documents?	Taxpayer should file Notification on controlled transactions with rather detailed information on each shipment/operation. Such information is based purely on accounting data. Upon request from the TA the taxpayer should submit TP Documentation justifying market level of prices (including industry, company analysis, functional analysis, selection of TP method, economical analysis). If TP Documentation is not submitted, then the TA will not charge any penalties, but rather they become free to push their own approach (obviously, not favorable for the taxpayer).
Does the TA have a special auditing unit?	Yes, though no practice up to now.
Burden of proof	Taxpayer
Days allowed for delivery of documents following request	30 days after request
Are there penalties?	No penalties for absence of TP documentation. Penalties for underpayment of tax: during transition period 2012-2013 – penalties are not applicable, but tax underpayment and late payment interest are charged; Yrs. 2014-2016 – 20% of the amount of underpaid tax due; Starting from the yr. 2017 – 40% of the amount of underpaid tax due, but not less than RUR 30000 (~EUR 700).
Do internationally accepted methods apply?	Yes (5 methods similar to OECD, however, the taxpayer may use any method or combination of methods he believes are appropriate)
OECD Guidelines	No
Hierarchy in method application	CUP, otherwise any other method
Ease of locating cases with the Authority	No cases
Use of secret comparables?	No
Concept of "related party"	Rather broad
Analyzed party	Not specified
Type of Comparables	General requirements to comparables
APAs	Yes, but no practice (just a few APA were concluded)
Thin capitalization	3:1

Concept	Slovakia
Name of Tax Authority	Financial Directorate of the Slovak Republic, Finančné riaditeľstvo Slovenskej republiky
Year	Arm's length principle: from 2001; documentation liability: from 2009
Does the TA request preparation of TP documents?	Yes. The regulations require taxpayers to document the transaction with foreign related party with the amount exceeding the level of materiality for accounting purposes (as defined by International Financial Reporting Standards), also the method in which the arm's length price was determined.
Does the TA have a special auditing unit?	The transfer pricing audits are not carried out as a separate audit but as part of the corporate income tax review. Even though the obligation to compile TP documentation is effective as of 2009, the TA may scrutinize transfer prices between related parties also for prior periods (back to 2001).  TA focuses audits especially on taxpayers with losses generated for several periods and those that pay excessive fees for management services, royalties and interests. From industrial point of view, the focus is currently on the automotive, consumer products and telecommunication industries.
Burden of proof	Taxpayer
Days allowed for delivery of documents following request	The TP documentation should be provided within 60 days of the request of the TA.
Are there penalties?	Lack of documentation: Penalty up to EUR 3,000 may be imposed if the TP documentation is not submitted to TA within 60 days of their request. Penalty may be imposed repeatedly.  Tax underpayment: In case of tax underpayment, penalty is determined as three times the actual basic interest rate of the European Central Bank (a minimum of 10% applies). This penalty is imposed on the tax underpayment irrespective of the duration of the tax underpayment.
Do internationally accepted methods apply?	Yes (5 methods + other methods that have to be in line with the arm's length principle)
OECD Guidelines	Yes (however the 2010 revision was not officially adopted)
Hierarchy in method application	Yes
Ease of locating cases with the Authority	No
Use of secret comparables?	No
Concept of "related party"	Based on economic or personal interrelation which refers to participation in ownership, control or management rights with any direct, indirect or indirect derivative holding of more than 25% of the registered capital or voting rights; close relations of statutory bodies.  In addition following are considered related parties: - domestic entrepreneur with foreign permanent establishment; - foreign entrepreneur with domestic permanent establishment.  There have been discussions with Slovak TA whether two domestic permanent establishments are considered related parties for TP purposes. Unfortunately, no conclusion was yet reached.
Analyzed party	Not specified
Type of Comparables	Requirement of local comparables by TAs. Only if such data are not available, regional or European comparables are accepted.
APAs	Yes, from 2001
Thin capitalization	No

Concept	Spain
Name of Tax Authority	Spanish Tax Agency (Agencia Estatal de Administración Tributaria - AEAT-)
Year	Royal Decree 4/2004 is applicable to fiscal years that commenced before 1 December 2006. Subsequently, article 16 is applicable as modified by Law 36/2006 and further regulations. In accordance with Additional Disposition 7.2 of Law 36/2006, the terms of Royal Decree 1793/2008, and the documentation requirements therein specified, are applicable three months after the date of its publication. Since the official approval on 18 November 2008, these requirements are fully applicable as from 19 February 2009.
Does the TA request preparation of TP documents?	Yes. The documentation adopting the new content requirements can only be required by the Spanish tax authorities from the date of the filing of the corporate income tax return, which is 25 July 2010 for fiscal year-end 2009.
Does the TA have a special auditing unit?	Yes. It is called ONFI (Oficina Nacional de Fiscalidad Internacional).
Burden of proof	Taxpayer
Days allowed for delivery of documents following request	In general, 10 days.
Are there penalties?	Yes. Depending on the infringement, penalties could be very high.
Do internationally accepted methods apply?	Yes
OECD Guidelines	Yes (They are soft law)
Hierarchy in method application	Yes
Ease of locating cases with the Authority	Scarce
Use of secret comparables?	No
Concept of "related party"	Broad
Analyzed party	Not specified
Type of Comparables	Not specified
APAs	Yes
Thin capitalization	No

Concept	Switzerland
<b>Name of Tax Authority</b>	TP issues are not centralized with a single tax authority. Each state tax authority is competent to review TP issue for its local tax payers. However, the federal tax administration is regularly consulted by the local tax authorities as supervising administration
<b>Year</b>	Arm's length principle: always; documentation liability: none
<b>Does the TA request preparation of TP documents?</b>	No specific requirement applies. Generally, the tax payer should be able to defend the TP applied in case the local TA would ask questions.
<b>Does the TA have a special auditing unit?</b>	No. However, some state have now developed strong experts group in the area of TP who are able to assess TP issue in particular in the international field. These groups are usually useful for the TA in the frame of advanced tax ruling request.
<b>Burden of proof</b>	Taxpayer
<b>Days allowed for delivery of documents following request</b>	They should be readily available upon request from the tax authorities. As there is no documentation requirement, the tax authorities can provide with a certain time frame to make such documentation available.
<b>Are there penalties?</b>	No
<b>Do internationally accepted methods apply?</b>	Yes
<b>OECD Guidelines</b>	Yes
<b>Hierarchy in method application</b>	No
<b>Ease of locating cases with the Authority</b>	Yes
<b>Use of secret comparables?</b>	Yes if explained why
<b>Concept of "related party"</b>	Yes, but no specific rule to determine who is related, but generally based on common ownership at some point
<b>Analyzed party</b>	Not specified
<b>Type of Comparables</b>	Not specified
<b>APAs</b>	Yes
<b>Thin capitalization</b>	Yes, % will depend on the specific assets of the company. Each type of assets allows a different level of debt.

Concept	Turkey
Name of Tax Authority	Turkish Revenue Administration, Gelir İdaresi Başkanlığı
Year	Arm's length principle: from 2007; documentation liability: from 2007
Does the TA request preparation of TP documents?	Yes. Corporate taxpayers must prepare yearly transfer pricing reports for their related-party transactions. A different requirement applies for large corporation tax office members and other corporations. Members of the Large Corporations Tax Office must issue an annual report listing their international and domestic related-party transactions ,Corporate taxpayers other than those registered with the Large Corporations Tax Office are required prepare this annual report listing only their cross-border transactions with related parties, by the time the corporate income-tax declaration is filed.
Does the TA have a special auditing unit?	Yes. Directorate of Thin Capitalization, Transfer Pricing and Foreign Profits which is a branch of Turkish Tax Inspection Board is the special auditing unit in charge of Transfer Pricing Audit. The Ministry of Finance of Turkey has increased transfer pricing audits lately. Since second part of year 2012 tax auditors has increased transfer pricing audits especially on multinational corporations.
Burden of proof	Taxpayer
Days allowed for delivery of documents following request	They should be readily available after submitting the relevant corporate tax declaration.
Are there penalties?	There is not any special penalty if the transfer pricing regulations violated. General tax penalties are effective when the transfer prices are not arm's length and if there is a tax exposure. Turkish Tax Procedural Code Articles related with tax penalties will be applied for the taxpayers who are examined and observed to have been in transaction not in line with Arm's Length range and as a result distribute disguised profit via transfer pricing. There will be procedural in compliance penalty if documentation requirements are not fulfilled.
Do internationally accepted methods apply?	Yes (5 methods + other methods)
OECD Guidelines	Yes
Hierarchy in method application	Yes. Traditional methods have priority to transactional profit methods and unspecified methods. Comparable Uncontrolled Price Method has also priority among traditional methods.
Ease of locating cases with the Authority	No
Use of secret comparables?	Yes
Concept of "related party"	<p>The shareholders of an establishment; an individual or an establishment with which the establishment or its partners are related, or with which they are directly or indirectly connected or over which they have influence in terms of management, supervision or capital are considered related parties. The spouses of shareholders, and the ancestors and relatives up to and including the third degree of shareholders or their spouses shall be deemed related persons.</p> <p>In order for an establishment to be deemed a related party to another, the original establishment should control or be controlled by another establishment, or be under be jointly controlled by another establishment.</p> <p>Accordingly, from the perspective of an establishment, a related party refers to:</p> <ul style="list-style-type: none"> <li>o The shareholders of that establishment,</li> <li>o The individuals or establishments with which the establishment or its shareholders are related,</li> <li>o The individuals or establishments with which the establishment or its shareholders are directly connected in terms of management, supervision or capital,</li> <li>o The individuals or establishments over which it has influence in terms of management, supervision or</li> </ul>

Concept	Turkey
	capital o The spouses of shareholders, o The ancestors and relatives up to and including the third degree of shareholders or their spouses. In addition, an enterprise established overseas and an enterprise which acts as its distributor in Turkey are considered related parties, regardless of whether there is a partnership between the two or not.
<b>Analyzed party</b>	Not specified
<b>Type of Comparables</b>	Not specified
<b>APAs</b>	Yes, from 2008
<b>Thin capitalization</b>	3:1



## II. TRANSFER PRICING IN GERMANY

### Draft legislation for determining profits of PEs using arm's length standards

Further to the release of the OECD report of July 22, 2010, the German legislator has introduced in the national law through the addition of a fourth and fifth paragraph to article 1 of the German foreign tax law the so-called "Authorized OECD Approach" ("AOA"), according to which the allocation of profits between the head office and its permanent establishment ("PE") should be compliant with the dealing at arm's length principle.

In order to bring guidance on this rule in practice, the Ministry of Finance has released a draft version of a decree on 5 August 2013 whose provisions would be applicable with a retroactive effect as at 01 January 2013. Accordingly, while determining its result, the PE should be treated fictitiously as a separate and independent enterprise from a transfer pricing perspective. In the past, a split of the income/charges between the PE and its head office was already mandatory.

What is however new is the requirement of a two-step analysis to determine the taxable result of the PE:

- first, a functional and risk analysis must be conducted in which the significant people functions, i.e. the economic functions performed by employees for the PE exclusively must be determined. The related assets (including intangible and financial assets), risks, capital endowment and liabilities needed for the employees to carry out these activities are then attributed to the PE.
- second, a comparability analysis must be executed, whereby the dealings between the PE and its Head Office and related fictitious income/charges should be analyzed in the light of the dealing at arm's length principle in the same way as transactions with related and third parties.

The adoption of the decree as currently drafted would lead to a significant increase of the documentation burden, considering in particular the functional, risk and comparability analyses to be performed for the purpose of the allocation of assets/ liabilities as well as income/charges for each PE.

## III. TRANSFER PRICING IN PORTUGAL

### Development of Portuguese Transfer Pricing rules

The Commission for the reform of Corporate Tax in Portugal, has been making an effort with the intention of modernize the Tax Code, in order to attract more investment and increase their investors' confidence.

The proposals align themselves with some of the major request that economical agents have been making in recent, in order to update the legislation as well as simplify processes.

One of the biggest changes will be lowering Compliance Costs, following more recent suggestions from OECD, by shortening the scope on the definition of Related Parties.

This shall be achieved by increasing the necessary minimum capital from 10% to 20%, as it will give both the Taxpayer and the Tax Authority the opportunity to deliver more detailed information on their operations.



Following this topic, the commission is also attempting to increase the minimum value of net income to which it is no longer necessary to prepare the documentation, from €3.000.000 to €5.000.000, as well as to impose a minimum limit of € 100.000 on the individual analysis of a controlled transaction and € 500.000 at the aggregate (total amount of controlled transactions).

Of all the measures proposed by the Commission in terms of Transfer Pricing, just the one which predicts the increase from 10% to 20% of the percentage of participation in the capital or voting rights so the entities can qualify as related parties, was included in the proposed State Budget Law for 2014, which does not mean that during 2014 cannot be amendments to Decree n. ° 1446-C/2001, December 21, contemplating the other recommended changes.

## IV. TRANSFER PRICING IN TURKEY

### Background

In Turkey, the transfer pricing requirements have been stated under the Article 13 of Corporate Tax Law with

the heading of "disguised profit distribution via transfer pricing". The General Communiqué on disguised profit distribution via Transfer Pricing, dated November 18, 2007 and a government decree dated December 6 determines details about implementation.

### I. Methods can be used for determining arm's length price

The article 13 of the Corporate Tax Law (CTL) states that for determining arm's length price taxpayers should use the most appropriate method according to characteristic of the transaction. The article 13 states that traditional methods and unspecified methods can be used for determining transfer prices.

The methods are defined the article 13 of corporate tax law and the other regulations are:

1. **Traditional methods: Comparable Uncontrolled method, Cost Plus method, Resale Price method**
2. **Transactional profit methods: Profit split method, Transactional net margin method, Unspecified methods**

### II. Related Parties

The term "related party" means an entity's own shareholders, individuals and other entities associated with the entity and its shareholders, individuals and entities directly or indirectly attached to the entity in terms of management, audit or capital or under general influence of the entity. Likewise, a shareholder's spouse and any relative of the shareholder or spouse including upper and lower lineage with third degree relationship by blood or marriage are considered related parties.

Considering whether the tax structure of a country in which the income is generated has a capacity equivalent to the taxation capacity of the Turkish tax structure and the characteristics of informational exchange [between tax authorities], all transactions conducted with parties in countries or jurisdictions as

announced by the Council of Ministers will be regarded as related party transactions.

### III. Documentation Requirements

The obligation to generate a transfer pricing documentation is statutory determined. With the new rules, tax payers are obliged to fill a form attached to their annual corporate tax returns. In this form, taxpayers are required to present all the intra-group transactions within a year and the selected transfer pricing methods.

In addition, until the end of corporate tax return declaration date, Big Taxpayers Tax Office Taxpayers must issue annual report listing the international and domestic transactions which are the sales or purchases of goods or services to/from related parties during the calendar year and also must be ready to present information and documents with the report.

Corporate taxpayers other than the ones registered to Big Taxpayers Tax Office are liable to prepare this annual report listing only the international transactions with related parties.



### V. Advance Price Agreements (APA)

According to CTL article 13, corporate taxpayers can apply to the Ministry of Finance for and APA for determining of the method. If taxpayers and Ministry of Finance reach and APA, this cannot be used more than three years.

The Government Decree and the General Communiqué about transfer pricing sets details for APA procedures. According to the decree and the general communiqué the scope of an APA is all corporate tax payers. Tax payers can apply bilateral or multilateral APA

### VI. Penalties

There is not any special penalty if the transfer pricing regulations violated. General tax penalties are effective when the transfer prices are not arm's length and if there is a tax exposure.

Turkish Tax Procedural Code Articles related with tax penalties will be applied for the taxpayers who are examined and observed to have been in transaction not in line with Arm's Length range and as a result distribute disguised profit via transfer pricing. There will be procedural incompliance penalty if documentation requirements are not fulfilled.

### Recent Developments

[The Ministry of Finance of Turkey has increased transfer pricing audits lately](#)

The Ministry of Finance of Turkey has increased transfer pricing audits lately. Since second part of year 2012 tax auditors has increased transfer pricing audits especially on multinational corporations. As it may be known that there is a special audit unit within the tax inspection board called thin capitalization transfer pricing and income from abroad. This section of the tax inspection board specializes especially on transfer pricing and international transactions.

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