

INTERNATIONAL
TAX SERVICES

TRANSFER PRICING
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 **ERNST & YOUNG**

FROM THOUGHT TO FINISH.™

Transfer Pricing Global Reference Guide



Transfer Pricing Global Reference Guide

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

The Ernst & Young *Transfer Pricing Global Reference Guide* is a comprehensive tool designed to enable international tax executives to quickly identify the transfer pricing rules, practices and approaches that have been adopted by 38 countries. These approaches must be understood in order to complete both compliance and planning activities.

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

A web-based version of this document can be found at www.ey.com/transferpricingguide. Please check this version periodically for late breaking country developments. Commentaries from transfer pricing specialists are also available at this site.

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

Disclaimer

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



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Transfer Pricing Global Reference Guide Legend

All rules are current as of November 2001.

Tax Law: Statutory provisions currently in effect in each country.

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

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

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

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

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

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

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Argentina

Tax Law	<p>Administracion Federal de Ingresos Publicos (Federal Administration of Public Revenues);</p> <p><i>Transactions between independent parties:</i> Income Tax Law (ITL) 8, Regulatory Decree: 10,11, 21</p> <p><i>Transactions between related parties (tax haven entities included):</i> ITL 14; 15; 15,1; 129; 130.</p> <p>Regulatory Decree:19; 20; 21; 21, 1; 21, 2; 21, 3; 21, 4; 21, 5; 21, 6; 21, 7</p> <p>ITL amended by Law 25,063 and Law 25,239.</p>
Regulations and Rulings	<p>General Resolution 702 amended by 1007/01.</p> <p>New General Resolution should be issued by the Federal Administration of Public Revenues (currently at draft stage).</p>
Priorities/Pricing Methods	<p>Most appropriate method.</p> <p><i>Transactions between independent parties:</i></p> <p>First: Wholesale Price.</p> <p>Then: CUP, Resale Price, Cost Plus, Profit Split, and TNMM.</p> <p><i>Transactions between related parties (tax haven entities included):</i></p> <p>CUP, Resale Price, Cost Plus, Profit Split, and TNMM.</p>
Transfer Pricing Penalties	<p>General penalties apply.</p> <p>Interest: 3% monthly basis (4% after trial filed),</p> <p>Fines: Unpaid taxes: From 50% to 100% of the adjustment, Fraud: From 10 to 20 times the adjustment.</p>
Documentation Requirements	<p>Documentation required; contemporaneous documentation preferred.</p> <p>New General Resolution would establish contemporaneous documentation requirements.</p>
Return Disclosures/ Related Party Disclosures	<p>Semi-annual filings compiling basic information on intercompany transactions. Form 662.</p> <p>More detailed information expected under new General Resolution.</p>
APA Availability	<p>Not available.</p>

Brazil

Tax Law	Secreteria da Receita Federal; Ordinary Federal Law 9430/96, Articles 18 to 24 and 28.
Regulations and Rulings	Regulatory Instruction No. 32/01.
Priorities/Pricing Methods	Method that yields lowest taxable income. CUP, Resale Price (20% or 60% statutory margin on imports, 15% or 30% on exports), Cost Plus (20% statutory margins on imports, 15% on exports).
Transfer Pricing Penalties	Yes, for underpayment of tax and interest.
Documentation Requirements	No contemporaneous documentation required; but government may make an upward adjustment if there is no study.
Return Disclosures/ Related Party Disclosures	Parties and transactions involved. Information regarding the products and related parties is required in specific schedules that makes up part of the annual income tax return.
APA Availability	Unilateral APA available. Bilateral APA unavailable. APA procedures available under Federal Revenue Service's Regulatory Instruction 38 published in April 1997.



Canada

Tax Law	Canadian Income Tax Act Section 247.
Regulations and Rulings	CCRA Information Circular 87-2R (September 27, 1999).
Priorities/Pricing Methods	Most appropriate method. CUP, Resale Price, Cost Plus, Profit Split, TNMM. CPM not acceptable.
Transfer Pricing Penalties	Yes, a 10% penalty on total adjustment to transaction, plus non-deductible interest. The penalty applies to transactions on income account (e.g., operations, inventory) as well as to adjustments on capital account (e.g., purchase of capital assets). The penalty is not dependent upon whether there is an actual cash tax payable.
Documentation Requirements	Contemporaneous documentation required.
Return Disclosures/Related Party Disclosures	Form T106. When the CCRA revised Form T106, it added two questions to identify transfer pricing transgressions: Question number six, “Do you have contemporaneous documentation pursuant to sub-section 247(4) on hand?” and Question number seven, “Have any of the transfer pricing methodologies changed since the previous reporting period with respect to the non-resident?”
APA Availability	Unilateral and bilateral/multilateral available under Circular 94-4R (March 2001), but bilateral/multilateral preferred.

Chile

Tax Law	Chilean Internal Revenue Service; Chilean Income Tax Law, Article 38; Law 19,506.
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Regulations and Rulings	Form Letter No. 3.
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Priorities/Pricing Methods	Reasonable.
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Transfer Pricing Penalties	Penalties for underpayment of tax and interest.
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Documentation Requirements	None.
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Return Disclosures/ Related Party Disclosures	None.
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APA Availability	Not available.
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Mexico

Tax Law	Secretaria de Hacienda y Credito Publico; Mexican Income Tax Law, Articles 58, fracc. XIV and XV; 64; 64A; 65; 65A LISR; and Article 34A of the Fiscal Federal Code.
Regulations and Rulings	Annual Miscellaneous Tax Provisions, Rules 3.32.1 to 3.32.6.
Priorities/Pricing Methods	No Priority. CUP, Resale Price, Cost Plus, Profit Split, Residual Profit Split and Transactional Net Margin Method.
Transfer Pricing Penalties	Yes, same as for other income tax issues including tax on adjusted amount, inflation rates, interest, and a penalty of 70 to 100% of unpaid tax. Penalties reduced if there is documentation in accordance with Art. 58-XIV LISR. 3,500 to 7,000 USD if the Related Party's return is not presented or is incomplete.
Documentation Requirements	Contemporaneous documentation showing name, address and tax residency of the foreign related persons with whom transactions are carried out, as well as documentation which proves direct and indirect participation between related parties. Information with respect to the functions or activities, including assets used and risks assumed by the taxpayer. Information and documentation with respect to the main transactions with related parties and their amounts; and the method applied in conformity with Article 65 of the Income Tax Law, including information and documentation on comparable transactions or companies.
Return Disclosures/Related Party Disclosures	In February of each year, companies must submit an informative tax return with respect to their transactions with related parties abroad, (Article 58, Section XV of the Income Tax Law) and include general information regarding related parties abroad, transactions classification, amount, method applied and profit/loss obtained.
APA Availability	Unilateral and bilateral under Federal Fiscal Code Article 34-A.

Peru

Tax Law	Superintendencia Nacional de Administracion Tributaria (SUNAT) Art. 32, Item 4 of Income Tax Law; Supreme Decree No. 054-99-EF published on April 14, 1999 and modified by Law No. 27356 published on October 18, 2000.
Regulations and Rulings	Art.19, A and B of Income Tax Regulations; Supreme Decree No. 122-94-EF published on September 21, 1994 and modified by Supreme Decree No. 045-2001-EF on March 20, 2001.
Priorities/Pricing Methods	CUP has priority but Cost Plus and Resale Price methods accepted and profit-based methods will most likely be accepted.
Transfer Pricing Penalties	Any excess over and above an arm's-length price shall now be considered as an adjustment for both parties (buyer and seller) on their outcome (profit/loss). In case of non-resident suppliers, the withholding agent will be subject to a fine equal to 30% of the amount that is not properly withheld, plus interest. An additional fine of 100% of Annual Tax Unit (for tax year 2001, US \$860, approx.) is applicable when the corresponding tax return is not submitted with the tax authorities. Voluntary payment before any tax inspection may reduce the aforementioned fines.
Documentation Requirements	No specific statutory requirements but contemporaneous documentation is required to substantiate arm's length price.
Return Disclosures/ Related Party Disclosures	In case of local transactions (not necessarily between related parties), an annual declaration disclosing significant transactions with third parties (goods and service supplier). In case of cross-border transactions (not necessarily related parties) monthly declarations disclosing all transactions with third parties.
APA Availability	Available, but no formal procedure has been established.



United States

Tax Law Internal Revenue Service; Internal Revenue Code §482, §6038A, §6038C, §6062(e)-(h).

Regulations and Rulings §1.482, §1.6662; §1.6038A, §1.6038C, Rev. Proc. 96-53; Rev. Proc. 99-32.

Priorities/Pricing Methods Best method.
CUP, Resale Price, Cost Plus, CPM, Profit Split.

Transfer Pricing Penalties 20% and 40% penalty for underpayment of tax.

Documentation Requirements Extensive contemporaneous documentation required.


**Return Disclosures/
Related Party Disclosures** Forms 5471 and 5472.

APA Availability Unilateral and bilateral available under Rev. Proc. 96-53.

Venezuela

Tax Law	Servicio Nacional Integrado de Administracion Tributaria (SENIAT); Venezuelan Income Tax Law, Chapter III. In the current Organic Tax Code there is none. New rules will be included when officially published (The Master Tax Code was approved by the National Assembly—the Parliament—but still it is not official until it is published in the Official Gazette, which is scheduled for no later than December 2001.)
Regulations and Rulings	Administrative Rulings 401, March 5, 2001 Income Tax Law; Article 112 to 117. Master Tax Code: Art. 96, 104, 121, 220 to 229, and Art. 336.
Priorities/Pricing Methods	Any approved method that provides a reliable basis. Imports: CUP method; Resale Price method; Less Profit method; and TNMM. Exports: Export Sales Price methods; Wholesale Price in the Country of Destination Less Profit method; Retail Price in Country of Destination Less Profit Method; Acquisition or Production Cost Plus Taxes and Profit method; and TNMM.
Transfer Pricing Penalties	Yes. The new Master Tax Code approved between 300 to 500 tax units for failing to apply the methodologies established by the Income Tax Law. The 2001 unit is Bs 13.500/unit. On top of these penalties, there might be interest on the unpaid tax amount.
Documentation Requirements	No.
Return Disclosures/Related Party Disclosures	None.
APA Availability	The new Master Tax Code includes a chapter ruling on proposed APA program.





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Austria

Tax Law	Dept. of International Tax Law; Federal Tax Code Sections [BAO 22-23 (general anti-avoidance rules); KStG §8, EstG §6 Z 6].
Regulations and Rulings	No binding rules, follows OECD guidelines.
Priorities/Pricing Methods	No binding rules. As the Austrian Tax Authorities follow OECD guidelines, all methods are applicable.
Transfer Pricing Penalties	If no proper transfer pricing analyses are set up, the Authorities might estimate the taxable amount and double taxation may occur.
Documentation Requirements	Documentation should follow OECD guidelines; all figures should be adequately provable, otherwise recharacterization might occur.
Return Disclosures/ Related Party Disclosures	No specific disclosure.
APA Availability	No statutory basis, but unilateral APAs might be possible under general rules (BAO §48, “Treu und Glaube”).

Belgium

Tax Law	Administration of Direct Taxes; No specific transfer pricing legislation—the arm’s length principle is embodied in general tax law on the avoidance of profit: Income Tax Code, Articles 26, 49, 54, 79, 207, 344, & 345.
Regulations and Rulings	Administrative Guidelines on Transfer Pricing: Offensive Transfer Pricing aspects issued in 1999; Defensive Transfer Pricing aspects issued in 2000. Circular Letter on Distribution Centers (November 1994); and CL on Service Centers (July 1996); Royal Decree No. 187 (December 1982) and CL on Coordination Centers (November 1993); and Royal Decree of May 3, 1999 on APAs.
Priorities/Pricing Methods	Transaction-based methods are preferred over profit-based methods but taxpayers are in principle free to choose any OECD transfer pricing method as long as the method chosen results in an arm’s length pricing for the transaction. Taxpayers are not obliged to use more than one method, though they must provide reasons for the decision of the method selection.
Transfer Pricing Penalties	The general tax penalty framework applies. These penalties vary from 0 to 100% of the additional tax, the rate depending on the degree of intent to avoid tax or the degree of the company’s gross negligence. Further, interest for late payment is due on additional tax assessments (also if this results from a transfer pricing adjustment).
Documentation Requirements	No legislative guidance exists regarding what is proper documentation. The Circular Letter recommends that documentation include: Activities of the group (including competitive position, level of market, economic circumstances, business strategies, etc.); Identification and characterization of intercompany transactions and contractual relationships between affiliates; Functional analysis (including an overview of the functions, risks, and intangibles); and the transfer pricing methods used and an economic analysis. The documentation should demonstrate that the taxpayer’s pricing complies with the arm’s length principle in order to avoid an in-depth transfer pricing audit.
Return Disclosures/ Related Party Disclosures	No specific disclosure requirements when filing the tax return.
APA Availability	Formal unilateral APA available (Royal Decree of May 3, 1999 created Advance Decisions Office) in principle to be obtained prior to engaging in the transaction (expected to be changed on short notice). No formal bilateral procedure, although the tax authorities are open to consideration.

Czech Republic

Tax Law	Ministry of Finance; Income Tax Act, Section 23(7).
Regulations and Rulings	None specific to transfer pricing, but generally follows OECD Transfer Pricing Guidelines.
Priorities/Pricing Methods	No priority. Follows OECD Transfer Pricing Guidelines.
Transfer Pricing Penalties	No specific transfer pricing penalties. Generally, upon a successful challenge of transfer prices by tax authority: (1) a penalty up to 0.2% of the unpaid tax for each day outstanding after its due date. The penalty is assessed only up to a maximum of 500 days. Thereafter, interest is assessed at 140% of the discount rate of the Czech National Bank; or (2) a penalty of up to 2m crowns for every non-financial obligation the taxpayer failed to fulfill.
Documentation Requirements	No statutory requirements, no contemporaneous documents required, but taxpayers are encouraged to follow OECD guidelines.
Return Disclosures/ Related Party Disclosures	Since January 1, 2001, the executives of a controlled person are required to complete a memorandum with respect to relations and transactions with companies in the group. This does not apply should a controlling agreement be concluded. Please note that this is based on the commercial legislation rather than the tax legislation.
APA Availability	Not available.

Denmark

Tax Law	Ministry of Taxation; Tax Assessment Act Section 2; Tax Control Act Section 3B; and Tax Administrative Act Sections 34 (4) and 35 (1).
Regulations and Rulings	Guidelines for Tax Assessment, Section S.I. Guidelines for preparation of written documentation are expected by the close of 2001.
Priorities/Pricing Methods	Transaction-based preferred over profit-based. CUP, Resale Price, Cost Plus, Profit Split, TNMM.
Transfer Pricing Penalties	Yes, if incorrect transfer prices are due to tax evasion or grand negligence. A 10% non-deductible interest on late tax payments and a non-deductible 0.6% tax for each month since the time for the adjustment is added in case of a transfer pricing adjustment.
Documentation Requirements	Contemporaneous documentation required. The documentation must be available on request from the tax authorities.
Return Disclosures/ Related Party Disclosures	Form 05.021 disclosing information on all controlled transactions.
APA Availability	Danish Advanced Rulings Act provides unilateral only.



Finland

Tax Law	Ministry of Finance; Taxation Procedure Act Paragraph 31.
Regulations and Rulings	None specific to transfer pricing, but generally follows OECD guidelines.
Priorities/Pricing Methods	None.
Transfer Pricing Penalties	Up to 30% of adjusted income added and an 11% interest rate is charged if taxes are reassessed.
Documentation Requirements	No specific regulations, but the taxpayer has the burden of proof concerning the correctness of the transfer pricing.
Return Disclosures/ Related Party Disclosures	None.
APA Availability	Advance rulings are available.

France

Tax Law	French Tax Administration; General Tax Code Article 57 and Tax Procedure Book Article L13B and L188A.
Regulations and Rulings	Administrative Doctrine on Article 57 and on Article L13B.
Priorities/Pricing Methods	Priority given to transaction-based methods. CUP, Resale Price, Cost Plus, Profit Split, TNMM.
Transfer Pricing Penalties	Penalties for failure to produce requested documents. Late payment interest levied on assessments. Penalties of 40% for bad faith and 80% for fraud.
Documentation Requirements	Documentation effectively required for audit defense.
Return Disclosures/ Related Party Disclosures	No specific disclosure. Annual report required if filing an APA.
APA Availability	Available as of September 1999 on a bilateral basis with tax treaty countries that have a mutual agreement procedure article. Unilateral is not available formally per Instruction 4A-8-99 (September 7, 1999), but an informal process is developing.



Germany

Tax Law	Federal Ministry of Finance; Corporate Income Tax Act Section 8 para. 3, Income Tax Directive, Sec. 4 para. 1 and 5, para. 6, Foreign Transactions Tax Act Section 1.
Regulations and Rulings	<p>Administration Principles; Circular of the Federal Ministry of Finance, dated February 23, 1983 (Federal Gazette I 1983, p. 218)</p> <p>Principles for the Review of Income Determination through Cost Allocation Agreements among internationally Related Parties, Circular of the Federal Ministry of Finance, dated December 30, 1999 (“Cost Allocation Circular,” Federal Gazette I 1999, p. 1122).</p> <p>Administrative Principles relating to the Examination of Apportionment of Income in the Case of Permanent Establishments of internationally operating Enterprises dated December 24, 1999 (“Permanent Establishment Circular,” Federal Gazette I 1999, p. 1076).</p> <p>Corporate Income Tax Directive Section 36a.</p>
Priorities/Pricing Methods	<p>Transaction-based preferred over profit-based.</p> <p>CUP, Resale Price, Cost Plus.</p> <p>Profit Split as a method of last resort.</p>
Transfer Pricing Penalties	No.
Documentation Requirements	Specific transfer pricing documentation is not required, but taxpayer’s duty to co-operate is to be fulfilled, General Tax Act, Sec. 90. As a consequence, taxpayer is obliged to present documentation that a sound and prudent business manager would maintain. In some cases, ex ante agreements are required.
Return Disclosures/ Related Party Disclosures	No specific disclosure, but increasing scrutiny. Extended obligation to submit information on cross border transactions; General Tax Code (AO) para. 90 subsection 2. Disclosure of information is generally asked for during a tax audit; however, some documentation should be prepared ex ante before the transaction takes place.
APA Availability	Available, but reluctant to provide advance rulings, no formal procedures. Except for under §204 ff. AO and Rulings made in the so-called “Circular Regarding Auskunft mit Bindungswirkung nach Treu und Glauben” issued by the Federal Ministry of Finance dated June 24, 1987.

Hungary

Tax Law	Paragraph 18 of the Corporate Income Tax and Dividend Tax Act, number LXXXI of 1996.
Regulations and Rulings	Paragraph 15 of the Act on Taxation Procedure, number XCI of 1990 regulates the reporting of liability of the existence of related parties.
Priorities/Pricing Methods	No priority in pricing methods; follows OECD guidelines.
Transfer Pricing Penalties	General rules are applicable, but no special penalty for transfer pricing; a 50% of unpaid tax penalty and a late payment interest charge.
Documentation Requirements	No specific requirements for documentation.
Return Disclosures/ Related Party Disclosures	CPA certification required. Existence of related party should be reported to the Tax Authority. In the CIT tax return, the tax base should be adjusted if the price used in the related party transaction differs from the real market price. In case of tax base increase, no special requirement regarding the documentation, but in case of tax base decrease, a certificate in respect of the amount of the difference signed by the other party is required.
APA Availability	Possible, but for a specific contract.



Ireland

Tax Law

Section 453 Taxes Consolidation Act 1997.
Section 234 Taxes Consolidation Act, 1997.
Section 547 Taxes Consolidation Act, 1997.

Regulations and Rulings

Only applies to companies that qualify for 10% tax rate.

Priorities/Pricing Methods

No specific methods available.
Applies arm's length requirements to certain patent royalty income flows in order to benefit from the tax exemption available to income from certain patents.
Applies market value to certain transactions for Capital Gains Tax purposes. The principal categories are where assets are transferred between connected parties, or by way of gift.

Transfer Pricing Penalties

No specific penalties.

Documentation Requirements

No specific documentation requirements.

Return Disclosures/ Related Party Disclosures

No specific disclosure requirements.

APA Availability

Informal rulings may be available.

Italy

Tax Law	Ministry of Finance; Presidential Decree n. 917 Article 76(5) and Article 9 (3) (4); Article 32 of Presidential Decree n. 660, Article 1 of Legislative Decree n. 471.
Regulations and Rulings	Circular Letter 32/9/2267 of September 22, 1980 and CL 42/12/1587 of December 12, 1981.
Priorities/Pricing Methods	Transaction-based preferred over profit-based. CUP, Resale Price, Cost Plus, Profit Split, Profit Comparison, Economic Sector Gross Margin, Invested Capital Profitability.
Transfer Pricing Penalties	General penalties for underpayment apply. New tax criminal law (Lgs. Decree 74/2000) includes valuations for possible tax frauds.
Documentation Requirements	Documentation should adhere to OECD guidelines; all income and deduction items must be adequately substantiated.
Return Disclosures/ Related Party Disclosures	Detailed statement concerning related parties.
APA Availability	Not available.



Netherlands

Tax Law Income Tax Act until 2000: Article 7 and 9; and Article 8 Corporate Income Tax Act. Income Tax Act from 2001 and onwards: Article 3.8 and 3.25; and Article 8 Corporate Income Tax Act.

Regulations and Rulings Decree IFZ2001/292M, IFZ2001/295M of March 30, 2001.

Priorities/Pricing Methods Taxpayers are in principle free to choose any OECD transfer pricing method as long as the method chosen results in an arm's length pricing for the transaction. Taxpayers are not obliged to use more than one method, though they must provide reasons for the decision. Transaction-based methods are preferred over profit-based methods; CUP, Resale Price, Cost Plus, Profit Split, TNMM.

Transfer Pricing Penalties The tax may be increased with a 100% penalty if the additional assessment is caused by fraud or gross negligence on the part of the taxpayer. The lack of transfer pricing documentation has a negative impact on taxpayer's burden of proof position.

Documentation Requirements Taxpayers should be able to reasonably demonstrate that their pricing complies with the arm's length principle. There is no legislative guidance to what will meet the documentation requirements. However, the list of recommended documentation includes: description of the transactions and products, the entities and states involved, the (worldwide) organizational structure, the transfer pricing methodology including comparables, financial information and the general market conditions. Not preparing documentation can result in the shift of the burden of proof.

Return Disclosures/ Related Party Disclosures No specific disclosure requirements when filing the tax return.

APA Availability Unilateral and Bilateral under Decree IFZ2001/295M (March 30, 2001).

Poland

Tax Law Inland Revenue; Corporate Profits Tax Law, Article 11; Personal Income Tax Law, Article 25; Ministry of Finance Decree of October 10, 1997 on the Method and Procedure for Assessing Taxpayers' Income by Estimating the Prices in Transactions Conducted by These Taxpayers; reporting requirements specified in the Ministry of Finance Decree of December 31, 1997 (amended June 8, 1998).

Regulations and Rulings Dz.U. 128 dated October 22, 1997, Item 833.

Priorities/Pricing Methods Priority given to transaction-based methods over profit-based methods. CUP, Resale Price, Cost Plus, Resale Price Plus Cost, Profit Split, TNMM.

Transfer Pricing Penalties Yes, up to 50% taxes and fines.

Documentation Requirements Yes, must be produced within a week of request: functions fulfilled by affiliates participating in related-party transactions; assets employed by affiliates in related-party transactions; risks assumed by affiliates; all anticipated costs and expenses related to the transactions, including form and date of payments; method used for calculating the profits and for determining the price of the products involved in the transactions; business strategies relating to the transactions as well as other activities connected with the business strategy; factors considered during the determination of the value of the subject of transactions; and, in the case of intangibles, including services, benefits related to the transactions that are expected by the taxpayer obligated to prepare the documentation. Documentation regarding the taxpayer's transfer pricing and business planning. The document requirements generally apply if: the value of transactions exceed 100,000 euros; services, sales, or the use of intangibles applied to the transaction or package of transactions exceeds 30,000 euros; services, sales, or the use of intangibles in general exceeds 30,000 euros.

Return Disclosures/ Related Party Disclosures Annual report required filed together with annual corporate profits tax return.

APA Availability Not available.



Russia

Tax Law	Article 40 of Part One of the Russian Tax Code and Article 20 (defining interdependent persons). Note: The Duma (Parliament) is expected shortly to consider significant amendments to these Articles, the main effect of which, if enacted, would be to expand the range of transactions whose price can be controlled.
Regulations and Rulings	Effective January 1, 1999 abolishing sales below cost rules.
Priorities/Pricing Methods	CUP method prioritized, Resale Minus method, and Cost Plus method.
Transfer Pricing Penalties	No specific penalty, but general penalty for underpayment of taxes.
Documentation Requirements	No specific documentation required. Note: This rule may change radically. If the current proposals are enacted by the Duma as they stand, an onerous documentation obligation would be placed on taxpayers.
Return Disclosures/ Related Party Disclosures	No specific disclosures required.
APA Availability	Not available.

Spain

Tax Law	Spanish Tax Administration; Spanish Corporate Income Tax Act 43/1995.
Regulations and Rulings	Royal Decree 537/1997.
Priorities/Pricing Methods	CUP has priority over Resale Price and Cost Plus methods. Profit split method is considered as residual and is only applicable when the other three are not feasible.
Transfer Pricing Penalties	No specific provisions yet. Tax adjustments may be carried out only by the STA under lower taxation or deferral, derived from the use of non-market values. Therefore, penalties are unlikely, as the taxpayer is not obliged to adjust the taxable base. However, it is expected that tax penalties will be imposed only when it has been proven that the taxpayer's purpose is to avoid taxes or commit fraud. Another way to avoid transfer pricing problems with the STA is by seeking an Advance Pricing Agreement with the STA.
Documentation Requirements	No statutory requirements, no contemporaneous documentation required; follow OECD guidelines. Under cost sharing arrangements for management services and research & development services, certain documentation requirements are imposed (i.e. prior written contract).
Return Disclosures/ Related Party Disclosures	No disclosure documentation is to be filed together with corporate tax return.
APA Availability	Unilateral and Bilateral available under Corporate Income Tax Act 43/1995 and Royal Decree No. 536/1997.



Sweden

Tax Law	National Tax Board; Section 14:19 of the Income Tax Act.
Regulations and Rulings	None.
Priorities/Pricing Methods	Follows OECD Guidelines. Transaction-based preferred over profit-based.
Transfer Pricing Penalties	No special penalty for Transfer Pricing, but general penalty rules are applicable.
Documentation Requirements	None. Documentation is important to audit defense. Documentation requirements are expected in the future.
Return Disclosures/ Related Party Disclosures	None.
APA Availability	Formal APA procedures do not exist. However, several informal APAs have been agreed with the Swedish authorities.


Switzerland

Tax Law	No specific reference to transfer pricing is made in the Swiss tax law. However, there is derived legal support for adjusting profits of a taxpayer based on the arm's length principle in Art. 58 of the Federal Direct Tax Act.
Regulations and Rulings	No specific transfer pricing regulations. The Federal Tax Administration instructed the cantonal tax administrations to adhere to the OECD Guidelines for transfer pricing. With regard to services, two circular letters issued by the Federal Tax Administration deal with the requirements for foreign controlled Swiss subsidiaries carrying on commercial activities mainly abroad and permanent establishments of foreign companies carrying on business in Switzerland.
Priorities/Pricing Methods	The Swiss tax administration adheres to the OECD Guidelines for transfer pricing. Transactional methods are preferred to profit based methods. The circular letters mention the cost plus method as the most appropriate method for service companies to price their services. However, where facts and circumstances indicate, other methods of arriving at a profit on the services might be used, such as a minimum return on the funds invested in the operation.
Transfer Pricing Penalties	No specific transfer pricing penalties, general penalty rules apply. However, penalties are only imposed in case of fraud or negligence. Interest charges for late payment are due in case of adjustments.
Documentation Requirements	No specific documentation requirements. If challenged by the tax authority, the taxpayer has to demonstrate that the transfer prices applied were based on sound economic and commercial reasoning (arm's length basis).
Return Disclosures/ Related Party Disclosures	No formal related party disclosure requirements. However, in the case of an audit or request from the competent authorities, the taxpayer has to provide the requested information to a reasonable extent.
APA Availability	Formal APA procedures do not exist. However, the Federal Tax Administration participates in multilateral APA's.



United Kingdom

Tax Law	Inland Revenue; Schedule 28AA, Income and Corporation Taxes Act of 1988 and Section 12B Taxes Management Act 1970.
Regulations and Rulings	“Guidance Notes” in Inland Revenue Tax Bulletins 37 and 38.
Priorities/Pricing Methods	Most reasonable method. Transaction-based preferred over profit-based. CUP, Resale Price, Cost Plus, Profit Split, TNMM.
Transfer Pricing Penalties	Yes, up to 100% of any additional tax due as a result of a transfer pricing adjustment (where the taxpayer was negligent in complying with the transfer pricing legislation).
Documentation Requirements	Yes, contemporaneous documentation expected; documentation is important to audit defense.
Return Disclosures/ Related Party Disclosures	None, other than annual reports demonstrating compliance with any APAs that have been agreed.
APA Availability	New enabling legislation and a Statement of Practice were introduced in 1999. Bilateral APAs are preferred, but unilateral also possible.



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Australia

Tax Law	Australian Taxation Office; Division 13 of Part III of Income Tax Assessment Act.
Regulations and Rulings	TR92/11, TR94/14, TR95/23, TR97/20, TR98/11, TR98/16, TR1999/1, TR1999/8; TR99/D16-95; TR2000/16; TR2000/D15; and TR2001/D6.
Priorities/Pricing Methods	Most appropriate method. CUP, Resale Price, Cost Plus, Profit Split, TNMM.
Transfer Pricing Penalties	Yes.
Documentation Requirements	Extensive documentation required, contemporaneous documentation preferred.
Return Disclosures/Related Party Disclosures	Transaction types, amounts, countries, documentation maintained and methodologies used is required by Schedule 25A.
APA Availability	Unilateral and bilateral under TR95/23.

China (PRC)

Tax Law	State Administration of Taxation; PRC Income Tax Law for Foreign-Invested Enterprises, Article 13; and Foreign Enterprises, Articles 52-58.
Regulations and Rulings	Taxation Administration Rules for Business Transactions Between Associated Enterprises (Guo Shui Fa No. 59 (1998)).
Priorities/Pricing Methods	Reasonable method. CUP, Resale Price, Cost Plus; other methods also considered.
Transfer Pricing Penalties	Penalty for late filing of related party transactions declaration form: 2,000 and 10,000 Chinese yuan.
Documentation Requirements	Documentation required; contemporaneous documentation preferred.
Return Disclosures/ Related Party Disclosures	Form A or Form B: annual declaration disclosing transaction with related enterprises.
APA Availability	No formal APA procedure but informal APAs are available. Formal APA rules are expected in the near future.



India

Tax Law	Central Board of Direct Taxes; Sections 40A(2), Section 92, and Section 93 of the Income Tax Act.
Regulations and Rulings	Rules 10 and 11 of the Income Tax Rules; 245Q(1) of the Income Tax Act. New transfer pricing regulations introduced April 2001 for sections 92 to 92F of the Income Tax Act of 1961.
Priorities/Pricing Methods	Most appropriate method, does not favor transaction over profit-based methods; CUP, Resale Price, Cost Plus, Profit Split, TNMM.
Transfer Pricing Penalties	Yes, 2% of value of international transaction for inadequate documentation; 2% of transaction value for not furnishing information/documents as required by tax officer; 100 to 300% of tax on transfer pricing adjustment made by tax officer if no due diligent effort by the taxpayer to determine arm's length price and motive of tax evasion is established by the tax authorities. Ts 100,000 for not furnishing CA Transfer Pricing Report along with return.
Documentation Requirements	Detailed list of "mandatory" documents prescribed in the Rules. Some of the documents are: Description of the group (ownership structure and description of business and industry etc.); description of the international transactions; transfer pricing study, including functional analysis, assessment of comparables, and selection and application of methods; business plans, sales plans, forecasts, budgets, etc. List of "optional" documents is also set forth.
Return Disclosures/Related Party Disclosures	Under Section 92E, an accountant's report is required. Accountant certifies whether proper documentation is maintained by the taxpayer.
APA Availability	Not available yet, but may become available as India increases its third-party comparables databank and gains more experience in cross-border transfer pricing issues.

Indonesia

Tax Law	Indonesian Income Tax Law, Article 18.
Regulations and Rulings	New Income Tax Law implemented on January 1, 2001 contains transfer pricing provisions in Article 18 but implementing regulations not yet issued to date. The only regulations issued to date (Director General of Tax Circular Letter No. SE-04/PJ.7/1993) are old and predate the new Income Tax Law. Indonesia's transfer pricing rules apply to both domestic and cross border transactions between parties that have a special relationship. Domestic transfer pricing applies because there is no grouping of tax losses in Indonesia.
Priorities/Pricing Methods	CUP favored, other acceptable methods include Cost Plus Method, Sales Minus Resale Price Method and other methods accepted by the OECD (usually profit based methods).
Transfer Pricing Penalties	There is a penalty of 2% per month up to a maximum of 48% on any tax underpayment discovered during a transfer pricing audit.
Documentation Requirements	No formal documentation requirements at this stage but the tax office normally requires production of invoices and agreements as the minimum requirement.
Return Disclosures/ Related Party Disclosures	No disclosure of related party transactions in tax return is required at this stage. However, a disclosure statement is expected soon, maybe as early as the current 2001 tax year.
APA Availability	New Tax Law has an APA mechanism—both unilateral and bilateral. The Income Tax Laws suggest that APA is only for cross border transactions, but conflicting statements have been made by senior tax official that APA may also apply to domestic transactions.



Japan

Tax Law	National Tax Administration; Special Taxation Measures Law Article 66-4.
Regulations and Rulings	STML-Enforcement Order 39-12, STML-Circular 66-4-(1)-1 to 66-4-(7) 2. Administrative Guideline issued on June 1, 2001.
Priorities/Pricing Methods	Transaction-based preferred over profit-based. CUP, Resale Price, Cost Plus, other methods (Profit Split method).
Transfer Pricing Penalties	Yes. (General tax penalty provisions apply, but no specific transfer pricing penalty provision.)
Documentation Requirements	Not required by statute (no additional penalty). List of documentation that will be examined during the transfer pricing audit is disclosed in the Administrative Guideline issued on June 1, 2001.
Return Disclosures/ Related Party Disclosures	Schedule 16-4: Detailed Statement Concerning Foreign Affiliated Persons and related party transactions.
APA Availability	Unilateral and bilateral available. NTA prefers bilateral. APA Guideline is included in the Administrative Guideline issued on June 1, 2001.

Kazakhstan

Tax Law	President of the Republic of Kazakhstan; Law # 136-2 “On State Control of the Application of Transfer Prices,” dated January 5, 2001.
Regulations and Rulings	<ol style="list-style-type: none">1) Ministry of State Revenue: Instruction # 1528 “On Procedures for Implementing State Control of Transfer Prices in International Business Transactions” of June 4, 2001.2) Ministry of State Revenue: Order # 206 “On Approval of the List of Goods (Works, Services), Transactions with which are Subject to Monitoring” of February 22, 2001.3) Government of Kazakhstan Resolution # 788 “On Approval of the List of Official Sources of Information on Market Prices for Goods Subject to Transfer Pricing Monitoring” of June 9, 2001.
Priorities/Pricing Methods	Comparable Uncontrolled Price, Cost Plus, and Resale Price.
Transfer Pricing Penalties	Interest (accrued for each day of delay): 1.5 times National Bank refinancing rate on the day of payment of additionally accrued taxes. Fine for understatement of tax payments: 50% of unpaid tax amount.
Documentation Requirements	While conducting a review of pricing, the Ministry of State Revenue may request the following documents: contracts, payment documents for settlements with third parties, foundation documents of the parties, invoices for intermediary and brokerage services, accounting documents, bills of lading and other related documents.
Return Disclosures/Related Party Disclosures	No related party disclosure is required currently on tax declarations, though Kazakh Accounting Standards require such disclosures in financial statements (which must be submitted with tax declarations of Kazakh Legal Entities).
APA Availability	The parties to transactions subject to transfer pricing legislation are entitled to submit substantiation of the price applied and relevant supporting documentation to the tax authorities in advance. However, no advance approval is guaranteed.



Malaysia

Tax Law	Inland Revenue Dept.; Transactions by Non-Residents (Section 141, Malaysian Income Tax Act); General Anti-Avoidance Provision (Section 140 Malaysian Income Tax Act); Self Assessment (Income Tax Amendment (No.2) Act 1999).
Regulations and Rulings	No specific legislation/regulations. Inland Revenue guidelines anticipated to be issued in the imminent future.
Priorities/Pricing Methods	CUP, Resale Price, Cost Plus.
Transfer Pricing Penalties	No specific penalties for transfer pricing. Existing legislation and penalty structure is applicable and can be in the region of 100% - 300% of the tax undercharged.
Documentation Requirements	None specifically for transfer pricing.
Return Disclosures/ Related Party Disclosures	Yes, disclose on tax return: <ul style="list-style-type: none"> ■ Sales to and from related parties; ■ Purchases to and from related parties; ■ Other payments to related parties; and ■ Borrowings to and from related parties.
APA Availability	None available.

New Zealand

Tax Law	Inland Revenue Department; Income Tax Act of 1994 Sections FB 2, GC 1, GD 13, and New Zealand's Double Tax Agreements.
Regulations and Rulings	Transfer Pricing Guidelines. Final version issued in October 2000.
Priorities/Pricing Methods	Most reliable method. CUP, Resale Price, Cost Plus, Profit Split, CPM/TNMM.
Transfer Pricing Penalties	Penalties are imposed under sections 141A-F of the Tax Administration Act of 1994 for: <ul style="list-style-type: none">■ not exercising reasonable care (20% penalty);■ unacceptable interpretation (20% penalty);■ gross carelessness (40% penalty);■ abusive tax position (100% penalty); and■ evasion or similar act (150% penalty) in its determination of an arm's length amount under section GD 13.
Documentation Requirements	No explicit statutory requirement to prepare and maintain transfer pricing documentation. However, section GD 13 requires the provision of the selection and application of the appropriate transfer pricing method for tax return purposes. Inadequate documentation is more likely to be examined and make it difficult for taxpayer to rebut an alternative arm's length transfer price proposed by Inland Revenue.
Return Disclosures/ Related Party Disclosures	Income tax return requires disclosure whether: <ul style="list-style-type: none">■ Payments such as dividends, interest, management fees, "know-how" payments, royalties, or contract payments were made to non-residents;■ The company is controlled or owned by non-residents; and■ The company holds an interest in a controlled foreign company.
APA Availability	No formal APA Guidelines. Unilateral APAs are available under Section 91E of the Tax Administration Act of 1994. Bilateral and multilateral APAs are available under mutual agreement procedure.



Singapore

Tax Law	Inland Revenue Authority of Singapore; Sections 53 and 33 of Income Tax Act; general anti-avoidance provisions.
Regulations and Rulings	No specific regulations or rulings prescribed. Arm's length dealing required as a matter of basic tax principle implied in the Income Tax Act.
Priorities/Pricing Methods	CUP, Resale Price, Cost Plus.
Transfer Pricing Penalties	No specific penalty directed at transfer pricing. Governed by general provisions, especially if construed as attempt to understate income. Penalty ranges from 200% to 300% of tax underpaid.
Documentation Requirements	None specific but contemporaneous documentation is often requested.
Return Disclosures/Related Party Disclosures	Form C, Singapore Income Tax Return.
APA Availability	No formal APA rules, but authority is open to the taxing authorities.

South Africa

Tax Law	Inland Revenue; Income Tax Act of 1962, Section 31.
Regulations and Rulings	Transfer Pricing Practice Note No. 7, issued August 6, 1999.
Priorities/Pricing Methods	No hierarchy, but most reliable method is sought. Transaction-based preferred over profit-based. CUP, Resale Price, Cost Plus, TNMM, Profit Split.
Transfer Pricing Penalties	No special penalty for transfer pricing, but general penalty rules are applicable.
Documentation Requirements	No specific documentation required, but contemporaneous documentation is useful particularly if under investigation and lack of documentation can lead to adjustments. PN7 contains a list of documents, which serves as a guideline. Documentation to be submitted to Revenue Authorities within 30 days of request.
Return Disclosures/Related Party Disclosures	Part 13 of the Tax Return requires the submission of certain information such as: <ul style="list-style-type: none">■ Names and relationships of contracting parties;■ Details of basis of determining prices used;■ Details of arm's length prices; and■ Copies of agreements between connected parties. The SARS occasionally sends out generic questionnaires to groups of taxpayers on Transfer Pricing matters to identify possible audit targets.
APA Availability	Not available.



South Korea

Tax Law	National Tax Service; Law for Coordination of International Tax Affairs; Articles 4 to 13.
Regulations and Rulings	Presidential Enforcement Decree, Ministerial Enforcement Ordinance, Notice 98-12 - LCITA.
Priorities/Pricing Methods	Most reasonable method. Transaction-based preferred over profit-based. CUP, Resale Price, Cost Plus, Profit Split, TNMM.
Transfer Pricing Penalties	10%-30% penalty for underreported taxable income. Underpaid tax multiplied by 0.05% days of underpaid periods. 30,000,000 Won penalty for failure to submit requested documentation within 60 days.
Documentation Requirements	Documentation required; contemporaneous documentation preferred.
Return Disclosures/ Related Party Disclosures	Identify transfer pricing method and reason for its selection; schedule of taxpayer's international transaction with related parties; income statements for foreign related parties.
APA Availability	Unilateral and bilateral available by Presidential Enforcement Decree Articles 9 to 14. New APA program introduced January 1, 2001, better complies with international standards.

Taiwan

Tax Law National Tax Administration, ROC Income Tax Law Article 43-1 and Article 66-8.

Regulations and Rulings Some interpretations and ruling available in this area.

Priorities/Pricing Methods Fair Market Value.

Transfer Pricing Penalties None. However, the entity's income will be subject to adjustment based on the regular business practice.

Documentation Requirements A sufficient reason and/or supporting documents accepted by the tax authority will be required.

Return Disclosures/ Related Party Disclosures No specific requirement.

APA Availability Not currently available.



Thailand

Tax Law	Thai Revenue Dept.; Thai Revenue Code Section 65 bis(4), Section 70 ter, Section 65 bis(7) and Section 79/3.
Regulations and Rulings	Currently there is no regulation but in the future the Revenue Department expects to launch transfer pricing guidelines in Thailand, expected by 2001. Arm's length standard only applies to certain transactions, mostly relating to goods, services and interest, under the Revenue Code.
Priorities/Pricing Methods	Market Fair Value Method. There is potential to use the guideline in the near future including various methods such as OECD's CUP, Resale Price and Cost Plus.
Transfer Pricing Penalties	Currently there is no explicit penalty regulation for transfer pricing but if the company is assessed by the authorities, 1.5% per month of surcharge could be imposed. Authorities are reviewing transfer pricing regulations and penalties.
Documentation Requirements	No specific documentation required, but sufficient supporting evidence and documents to substantiate transfer pricing is useful, particularly if under investigation. Lack of documentation can lead to adjustments.
Return Disclosures/ Related Party Disclosures	CPA report on transfer of assets.
APA Availability	Not available.

The Ernst & Young Global Transfer Pricing Practice

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

Ernst & Young built its leading global transfer pricing practice to serve multi-national clients around the world. Over 400 highly respected professionals apply their experience in tax, economics, research, government, accounting, and international business to develop creative and practical solutions for your transfer pricing needs. The size of our practice and our global reach allow us to continually invest in the development of value-adding transfer pricing resources that are simply not available in other firms.

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