PORTUGAL

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Paragraph 1 of article 63 of Corporate Income Tax Code states that "*as far as it concerns business transactions, including, namely, one or more transactions on goods, rights or services, as well as financial operations between a taxable person and any other entity, liable for Corporate Income Tax or not, with which there is a special relationship, there shall be agreed upon, accepted or used terms or conditions substantially similar to those which would usually be agreed upon, accepted or used, between independent entities in comparable transactions*"[1]. See also paragraph 1 of article 1 of Ministerial Order 1446-C/2001, of the 21st of December.

2. Reference to the OECD Transfer Pricing Guidelines

The OECD Transfer Pricing Guidelines are referred in the Portuguese legislation as a source of guidance in the application of the arm's length principle. The preamble of the Ministerial Order 1446-C/2001, of the 21st of December, refers that the OECD Transfer Pricing Guidelines should be followed in a supplementary way, particularly in what concerns complex technical issues or in case of omissions in the domestic transfer pricing regime.

3. Definition of related parties

According with paragraph 4 of article 63 of the Corporate Income Tax Code[1]:

"*4. There shall be deemed to be a special relationship between two entities where one of them has the power to exert, directly or indirectly, a significant impact on the management decisions of the other; this shall be deemed to occur, namely, between:*

a) An entity and the owners of its equity, or the spouses, ascendants or descendants thereof, holding, directly or indirectly, a participation not lower than 20 per cent of the equity or voting rights;

b) Entities in which the same equity owners, respective spouses, ascendants or descendants hold, directly or indirectly, a participation not lower than 20 per cent of the equity or voting rights;

c) An entity and the members of its corporate bodies, or any administration, direction, management or supervising boards, as well as their spouses, ascendants or descendants;

d) Entities the majority of whose members of the corporate boards or of the administration, direction, management or supervising boards are the same persons or, in case of different persons, are related with each other by marriage, common law marriage or direct parentage;

e) Entities related under a subordination agreement, a parity group or any other agreement of a similar nature;

f) Enterprises with a control or group relationship, as defined in article 486.º of the Commercial Companies Code;

[1] Unofficial translation.

g) Entities which legal relation allows, by its terms and conditions, that one entity conditions the management decisions of the other, due to facts or circumstances beyond or outside the commercial or professional relation;
h) A resident entity or a non-resident entity with a permanent establishment situated in the Portuguese territory and an entity subject to a more favourable tax regime, resident in a country, territory or region listed in the Ministerial Order approved by the Minister of State and Finance."

The arm's length principle is also applicable to any transaction between (Article 63, paragraph 9)[1]:
a) A Portuguese company and its permanent establishments abroad, or between these permanent establishments;
b) A non-resident entity and its permanent establishment in Portugal, or between these and other permanent establishments of that non-resident entity.

4. Transfer pricing methods

Paragraph 3 of article 63 of the Corporate Income Tax Code states that[1]:

"3. The methods to be used are as follows:

a) The Comparable Uncontrolled Price (CUP) method, the Resale Price method or the Cost Plus method;

b) Whenever those methods mentioned in the previous sub-paragraph cannot be applied or, otherwise they shall not allow for the most reliable measure of the terms and conditions which would usually be agreed upon, accepted or used by independent entities, there shall apply the Profit Split method, the Transactional Net Margin method or any other".

According to article 4 of Ministerial Order 1446-C/2001, of the 21st of December, the taxpayer shall adopt the most appropriate method, which is defined as the method which is likely to provide the highest degree of comparability.

5. Transfer pricing documentation requirements

The obligation to prepare the transfer pricing documentation is applied to any taxable person with net sales and other income in the previous fiscal year higher than 3 million euro.

The transfer pricing documentation file shall include, namely[1]:
- the description of the special relationship situation;
- the description of the economic activity exercised by the taxable person and by the related entities;
- detailed identification of the goods, rights and services which are the object of the controlled transactions as well as the terms and conditions settled;
- the description of the duties performed, assets used and risks assumed by the intervenient entities;
- technical studies focusing on the core business areas;
- the internal guidelines concerning the transfer pricing policy;
- the contracts and other legal acts settled with related and independent entities;
- the explanation of the adopted method or methods, as well as of the reasons that justifies the choice;
- information on the comparable data used and on the analysis carried out in order to evaluate the degree of comparability with the transactions carried out by independent entities;

- strategies and business policies, which may affect the transfer pricing determination or the imputation of transactions profits or losses;
- any other information, data or documents considered relevant for the determination of the arm's length price, for the comparability of transactions or for the adjustments carried out.

In what concerns Cost Contribution Arrangements and Intra-group Services, specific information and documentation are required, as established in articles 13 to 16 of Ministerial Order 1446-C/2001, of the 21st of December.

Although local file and master file are not expressly required by the legislation in force, the documentation required by the current domestic legislation covers the information to be included both in master file and local file. Moreover, since the approval of the Code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD), many companies opted for the organisation of their TP documentation divided in a Masterfile and a local file, which has been accepted by the Portuguese Tax Administration.

Portugal's legal framework adopted country-by-country reporting, in alignment with Directive 2016/881/UE, and BEPS action 13 Final Report, for all fiscal years starting after the 1st of January 2016. Each constituent entity of a MNE group must identify by filing the adequate form, the reporting entity of the MNE group, until the end of the 5th month after the end of the fiscal year the inherent CbCR refers to.

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

The failure to present the transfer pricing documentation or country-by-country reporting, is punished with a penalty of (euro) 500 to (euro) 10 000, with an additional of 5% for each day of delay.

The failure to present the transfer pricing return (which is part of the Simplified Business Information return) is punished with a penalty of (euro) 500 to (euro) 10 000.

Any inaccuracies in the information provided in the TP documentation, in the TP returns or in country-by-country reporting are punished with a penalty of (euro) 375 to (euro) 22 500.

Companies are selected for transfer pricing audits based on a targeted risk-based analyses. Non compliances with the arm's length principle diagnosed in the course of tax audits are subject to the payment of penalties and compensatory interest.

7. Information for Small and Medium Enterprises on TP

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-pt.pdf

8. Information on dispute resolution

Competent Authority	Rui Miguel Candeias Canha Director Address: Avª Engº Duarte Pacheco, 28 – 4º 1099-013 Lisboa Tel: 00 351 21 383 43 84

	Fax: 00 351 21 383 44 14 Email: dsri@at.gov.pt
Organization	DSRI - Direcção de Serviços de Relações Internacionais Autoridade Tributária e Aduaneira Address: Avª Engº Duarte Pacheco, 28 - 4º 1099-013 Lisboa Tel: 00 351 213 834 384 Fax: 00 351 213 834 414 Email: dsri@at.gov.pt
Scope of MAP & MAP APA	- MAP can be requested where a person covered by a DTC considers that the actions of Portugal and / or of the other State result or will result for him in taxation not in accordance with the provisions of such DTC. - As the general rule, MAP is used to discuss interpretation or application of tax treaties.
Domestic guidelines & administrative arrangements	AT has published guidelines on the MAP, that can be found at: http://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/Documents/Mutual_Agreement_Procedure.pdf As regards MAP for handling transfer pricing cases, Ministerial Order 1446-C/2001 of the 21st December applies, according to paragraph 2 of its article 17. The Code of Conduct on EC Arbitration Convention is also applicable.
Time for filing	In general, within 3 years from the notification of the actions giving rise to taxation not in accordance with DTC but can vary depending on time limits set out in specific DTCs (e.g. EU Arbitration Convention).
Form of request	Requests to initiate a MAP should be submitted, in writing and in paper format, to the Portuguese competent authority The request to initiate a MAP is not subject to essential formalities (i.e., no form or draft has been defined). MAP for handling transfer pricing cases requires request in writing or electronically providing information specified in the Code of Conduct on EC Arbitration Convention or in the article 18 of the Ministerial Order 1446-C/2001 of the 21st December, namely identification of the relevant parties, description of the facts and circumstances of the case, explanation by the enterprise about the alleged double taxation, a proposal concerning one or more solutions for the purpose of solving the case.
Documentation requirements	The request must include some specific information and documentation, as explained in the published guidelines. Concerning MAP for handling transfer pricing cases requirements, see above.
User fees	No fees for MAP.
Tax collection / penalty / interest	The Mutual Agreement Procedure does not cover interest and other penalties (namely deriving from adjustments that have resulted in double taxation).

	Interest is due in case of delay in payment of tax. There is no suspension of payment except if the taxpayer presents a guarantee.
Other dispute resolution mechanisms	The EU Arbitration Convention for transfer pricing cases.
Government Website	In Portuguese: https://www.portaldasfinancas.gov.pt/pt/home.action In English: http://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/NEWS_Portuguese_Tax_System.htm

Portugal also has published a MAP Profile in the OECD website, which can be found at: http://www.oecd.org/tax/dispute/Portugal-Dispute-Resolution-Profile.pdf.

Dispute resolution under the Arbitration Convention is not initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Unilateral Declaration of Portugal on Article 8 of the Arbitration Convention (*Official Journal C 160, 30/06/2005 P. 0011 – 0022*)

"The term "serious penalties" includes criminal penalties as well as administrative penalties applicable to tax infringements defined by law as serious or committed with intent to defraud."

9. Relevant regulations on Advance Pricing Arrangements

Article 138 of the Corporate Income Tax Code and the Ministerial Order 620-A/2008, of the 16th of July set the legal framework of Advance Pricing Agreements.

Guidelines on the APA procedures, can be found at:
http://info.portaldasfinancas.gov.pt/pt/Grandes_Contribuintes/Precos_de_Transferencia/Pages/precos-de-transferencia.aspx

10. Links to relevant government websites

www.min-financas.pt
www.portaldasfinancas.gov.pt
www.e-financas.gov.pt

11. Other relevant information

Legal provisions allowing the presence in administrative offices and enquiries:

The presence of foreign officials in administrative offices and enquiries is allowed, and it requires a prior agreement between the involved competent authorities. The involved foreign officials need to be personally authorized by the Director General of the Portuguese Tax and Customs Authority.

(Article 19 (2) of the Regime for Tax Inspection Procedure, and Article 8 (1) (a) and (b) of Decree-Law 61/2013)

Legal provisions allowing the interview of individuals

The interview of individuals by foreign officials is allowed, and it requires a prior agreement between the involved competent authorities. The involved foreign officials need to be personally authorized by the Director General of the Portuguese Tax and Customs Authority.

(Article 19 (2) of the Regime for Tax Inspection Procedure and Article 8 (4) of Decree-Law 61/2013)

Legal provisions allowing the examination of records

The examination of records by foreign officials is allowed, and it requires a prior agreement between the involved competent authorities. The involved foreign officials need to be personally authorized by the Director General of the Portuguese Tax and Customs Authority.

(Article 19 (2) of the Regime for Tax Inspection Procedure and Article 8 (4) of Decree-Law 61/2013)

Legal provisions allowing to perform downward adjustments as a result of a coordinated transfer pricing control

Downward adjustments as a result of a coordinated transfer pricing control are possible.

(Article 3 and 17 of Ministerial Order 1446-C/2001)