

LATVIA

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

In accordance with Section 4 of the Enterprise Income Tax Law the base taxable with the enterprise income tax shall include distributed profits and conditionally distributed profits.

In accordance with Section 4, Paragraph two, Clause 2, Sub-clause "e" of the Enterprise Income Tax Law the conditionally distributed profits include the income which a taxpayer would have received or the expenditure which a taxpayer would have not incurred if commercial and financial relationships were created or established under valid conditions between two independent persons and if the value of the transactions made between the related persons (out of which one is the taxpayer) corresponded to the market price (value) which is calculated according to the methods determined by the Cabinet

2. Reference to the OECD Transfer Pricing Guidelines

According to the Regulations of the Cabinet of Ministers no. 677 of 14 November 2017 "Rules for the Application of the Norms of the Enterprise Income Tax Law" where it is not contrary to the law the OECD Transfer Pricing Guidelines may be used for the determination of the arm's length price.

3. Definition of related parties

The definition of the related parties is provided in Clause 18 of Section 1 of the Law "On Taxes and Duties": Related parties - two or more natural or legal persons or a group of persons related by a contract, or the representatives of such persons or groups if at least one of the following circumstances exists:

- a) they are parent and subsidiary commercial companies or co-operative societies;
- b) the share of holding of one commercial company or co-operative society in the other company is from 20 to 50 per cent, furthermore, this parent and subsidiary commercial company or co-operative society does not have a majority of votes. This clause is not applicable to conditionally distributed profits except in cases of transactions with foreign related parties;
- c) more than 50 per cent of the share capital or the value of the shares of the commercial company or co-operative society in each of these two or more commercial companies or co-operative societies is held or a decisive influence is ensured, by contract or otherwise, in these two or more commercial companies or co-operative societies (there is a majority of votes) by one and the same person and the kin of this person to the third degree or the spouse of this person, or the affine of this person to the second degree;
- d) more than 50 per cent of the share capital or the value of the shares of the commercial company or co-operative society in each of these two or more commercial companies or co-operative societies is held or a decisive influence is ensured, by contract or otherwise, in these two or more commercial companies or co-operative societies (there is a majority of votes) by several, however, not more than 10 one and the same persons;
- e) more than 50 per cent of the share capital or the value of the shares of the commercial company or co-operative society in each of these two or more commercial companies or co-operative societies is held or by contract or otherwise a decisive influence is in these two or more commercial companies or co-operative societies (there is a majority of votes) by a commercial company or co-operative society in which a natural person (or the kin of this person to the third degree or the spouse of this person, or the affine of this person to the second degree), hold more than 50 per cent of the share capital of these companies or value of shares;

f) one and the same person or one and the same persons have a majority of votes on the boards of directors (executive bodies) of these commercial companies or co-operative societies;

g) in addition to a contract for a specific transaction in any form, these persons have entered into an agreement (including an agreement which has not been made public) providing for any additional remuneration not laid down in the contract or such commercial companies or co-operative societies engage in other forms of coordinated activities with a view to reducing their taxes;

h) a natural person (or the person who is married to or is in relation or affinity to the second degree with it) owns directly or indirectly more than 50 percent of a commercial company or a decisive influence is ensured by contract or in other way.

4. Transfer pricing methods

Pursuant to points 13-17 of the Regulations of the Cabinet of Ministers Nr 677 of 14 November 2017 "Rules for the Application of the Norms of the Enterprise Income Tax Law" in order to determine arm's length price, the following methods shall be used:

- comparable uncontrolled price method;
- resale price method;
- cost-plus method;
- profit split method; and
- transactional net margin method.

The most appropriate transfer pricing method for a particular case should be selected.

5. Transfer pricing documentation requirements

There are a three tiered approach to transfer pricing documentation in Latvia. The transfer pricing documentation consists of:

1. Country-by-Country Report;
2. Master File;
3. Local File.

For Low value-adding services (Chapter VII of the OECD Transfer pricing guidelines) it is possible to prepare simplified transfer pricing documentation.

The taxpayer has to report to the State Revenue Service annually:

- Master File, if the amount of controlled transactions exceeds the threshold of 15 million euro during a year, or the amount of controlled transactions exceeds 5 million euro during a year and the turnover of a company exceeds 50 million euro;
- Local File, if the amount of controlled transactions exceeds the threshold of 5 million euro during a year.

The taxpayer has to prepare and send to the State Revenue Service upon a request:

- Master File, if the amount of controlled transactions exceeds the threshold of 5 million euro during a year (in case when the Master File is not to be sent to the State Revenue Service automatically);
- Local File, if the amount of controlled transactions exceeds the threshold of 250 000 euro during a year (in case when the Local File is not to be sent to the State Revenue Service automatically);

The following law stipulates rules on the transfer pricing documentation in Latvia:

- Section 15.² of the Law On Taxes and Duties;
- 18 December 2018 Regulations of the Cabinet of Ministers no 802 "Transfer Pricing Documentation and Advance Pricing Agreements";

- 7 July 2017 Regulations of the Cabinet of Ministers no 397 "Regulations Regarding Country-by-Country Report of Multinational Enterprise Group".

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

According to paragraph (1¹) of section 23 of the law "On Taxes and Duties" in verifying the transfer price for the compliance with the arm's length principle, the tax administration shall, within the scope of a tax review (audit), assess or adjust the amounts to be indicated in the relevant captions of tax and informative declarations, taxable income (tax losses), tax (duty) assessments pursuant to the provisions of the regulatory acts governing taxes, impose penalties within five years of the statutory payment term laid down in the regulatory enactments except for the case mentioned in paragraph two of section 16.¹ of this Law.

According to paragraph 2 of section 16.¹ of the law "On Taxes and Duties" if a taxpayer has acted in accordance with the provisions of the concluded advance pricing agreement and no changes have occurred in its business to conflict with the mentioned advance pricing agreement, the tax authorities, during a tax review (audit), shall not be entitled to adjust the arm's length price (value) determined for the particular transaction or type of transactions.

In case of not providing transfer pricing documentation penalty can be applied.

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-lv.pdf

8. Information on dispute resolution

Dispute resolution under the Arbitration Convention.

Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union to be implemented in the Law On Taxes and Fees.

9. Relevant regulations on Advance Pricing Arrangements

In accordance with 18 December 2018 Regulations of the Cabinet of Ministers no 802 "Transfer Pricing Documentation and Advance Pricing Agreements"

10. Links to relevant government websites

<https://likumi.lv/ta/en/en/id/33946-on-taxes-and-duties> - Law on Taxes and Duties

<https://likumi.lv/ta/en/en/id/292700-enterprise-income-tax-law> - Law on Enterprise Income Tax

<https://likumi.lv/ta/en/en/id/292196-regulations-regarding-country-by-country-report-of-multinational-enterprise-group> - Regulations Regarding Country-by-Country Report of Multinational Enterprise Group

11. Other relevant information