

Spain

TRANSFER PRICING COUNTRY PROFILE

1. Reference to the Arm's Length Principle

Art.18.1 (CITLaw): The transactions between associated persons or entities should be assessed at their arm's length price, being this understood as the price which would have been agreed between unrelated parties in free market conditions.

To the effects of the Spanish Law, any mention made to "entity" shall be understood as entities liable to the Spanish corporation tax.

2. Reference to the OECD Transfer Pricing Guidelines

Preamble of the CITLaw (Law 27/2014 of 27 November). It mentions that the law should be interpreted according to the OECD Guidelines.

3. Definition of related parties

Art. 18.2 (CITLaw). It is deemed to be associated:

- a) An entity and the owners of its equity (at least the 25%), or the spouse, ascendants or descendants.
- b) An entity and the member of its board of directors or their administrators (includes the fact administrators), except for the payment for their functions, or the spouse, ascendants or descendants.
- c) Two entities of the same group.
- d) An entity and the members of the board of directors of an entity of the same group or their administrators.
- e) Two entities where the second entity owns, indirectly, at least, 25% of the capital of the first one.
- f) Two entities when the same person (or the spouse, ascendants or descendants) or entity own, directly or indirectly, 25% of the equity.
- g) An entity resident in Spain and their permanent establishment situated in other country.
- h) A PE situated in Spain and its head office, other PE of its head office or other associated persons or entities to its head office or its PE situated in Spain or in other country.

4. Transfer pricing methods

Art.18.4 CITLaw states that to determine the AL price the following methods should be used:

- a) the comparable uncontrolled price (CUP) method;
- b) the cost plus method;
- c) the resale price method;
- d) the profit split method, or
- e) the transactional net margin method.

The selection of a transfer pricing method shall take into account, among other circumstances, the nature of the controlled transaction, the availability of reliable information and the degree of comparability between controlled and uncontrolled transactions.

In situations where it is not possible to apply the above mentioned methods, any other generally accepted method and valuation techniques which respect the arm's length principle shall be applicable.

5. Transfer pricing documentation requirements

Art. 18.3 CIT Law states that associated persons or entities should keep some documentation; the specific documents are specified in Corporate Income Tax Regulations (as drafted in Royal Decree 634/2015, of 10 July).

Spanish Corporate Income taxpayers have the obligation to submit the master file and local file when requested. MNE Groups having total consolidated turnover of less than 45 million Euros are not obliged to provide the master file. Regarding the local file, in general terms, its content will be simplified for taxpayers having a turnover of less than 45 million Euro.

Also, the following entities shall file a Country-by-Country report:

- Spanish Ultimate parent entities of a MNE Group, or
- Any other Spanish subsidiary dependent, directly or indirectly, of an entity of a MNE Group resident in a country other than Spain, which is not dependent of any other entity or PE resident in other country, if one of the following conditions applies:
 - o it has been designated by the ultimate parent entity to file the C-b-C report,
 - o the ultimate parent entity is not obligated to file a C-b-C report in its jurisdiction of tax residence,
 - o the jurisdiction in which the Ultimate Parent Entity is resident does not have an automatic exchange of information agreement with Spain, regarding that information,
 - o the jurisdiction in which the Ultimate Parent Entity is resident has an automatic exchange of information agreement with Spain, regarding that information, but there has been a reported systemic failure of the above mentioned agreement,

when the total consolidated turnover of the MNE Group is at least 750 million Euros during the 12 months immediately preceding the beginning of the fiscal year.

Notwithstanding the foregoing, there shall be no obligation to provide the information by the aforementioned subsidiaries or permanent establishments in Spanish territory when the multinational group has designated to present said information to a constituent dependent entity of the group that is resident in a Member State of the European Union, or when the information has already been presented in its territory of fiscal residence by another non-resident entity named by the group as surrogate of the parent entity for the purposes of said presentation. In the event that it is a surrogate entity with fiscal residence in a territory outside the European Union, it must comply with the conditions set out in section 2 of section II of annex III of Council Directive 2011/16 / EU, of 15 February 2011, on administrative cooperation in the field of taxation and repealing Directive 77/799 / EEC

The C-b-C report shall be filed no later than 12 months after the last day of the fiscal year.

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

Art. 18.12 CIT Law states the basic principles of a specific transfer pricing audit procedure to be developed on further regulations.

Art. 18.13 CIT Law states a new penalty regime based on two pillars:

- a) It will constitute serious tax penalty the failure to provide transfer pricing documentation or provide it in a severe incomplete manner and if the arm's length price states in the CIT assessment differs from that derived from the documentation;
- b) No penalty will be levied in the case the taxpayer has complied with the documentation requirements and has properly applied the criteria in the tax assessment even if there is an adjustment.

7. Information for Small and Medium Enterprises on TP

https://ec.europa.eu/taxation_customs/sites/taxation/files/spainmeprofile2017.pdf

8. Information on dispute resolution

Competent Authority	<p>APA and TP MAP Mr. Nestor Carmona Head of the International Taxation Office Spanish Tax Agency (AEAT) Telephone: + 34 91 7498666/Fax: + 34 91 7498685 Email: General: onfi@correo.aeat.es For MAPs: onfi.map@correo.aeat.es Address: Paseo de la Castellana 147, Planta 4. 28046 Madrid</p> <p>Any other MAP Ms. Elena de las Morenas Ferrándiz Deputy Director General for International Taxation General Directorate for Taxation Ministry of Finance and Public Administration Telephone: +34 91 595 80 85 / Fax: +34 91 595 80 03 Email: fiscalidad.internacional@tributos.hacienda.gob.es Address: C/ Alcalá 5 CP:28014 MADRID</p>
Organization	<ul style="list-style-type: none"> - TP MAP: International Taxation Office - Any other MAP: General Directorate for Taxation with the cooperation from the Tax Office during the process. - Bilateral MAP APA: International Taxation Office - Unilateral APA: International Taxation Office
Scope of MAP & MAP APA	<p>To solve double taxation of a particular taxpayer. To discuss the interpretation or application of the convention.</p>
Domestic guidelines & administrative arrangements	<p>MAP: Royal Decree 1794/2008, 3rd November, regulating the MAP on direct tax matters (Spanish Official Gazette 18th November 2008).</p> <p>APA: Article 18.9 of the Corporate Tax Law and Chapter VII of Corporate Income Tax Regulations, as drafted by Royal Decree 634/2015, of 10 July</p>
Time for filing	N/A
Form of request	N/A
Documentation requirement	No special requirement.
User fees	None
Tax collection / penalty / interest	<p>Under certain circumstances, collection of taxes might be suspended during MAP. No interests are accrued during MAP</p>
Other dispute resolution	The EU Arbitration convention for transfer pricing cases.

mechanisms

Government Website <http://www.aeat.es>
www.hacienda.gob.es

Dispute resolution under the Arbitration Convention does not need to be 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 Spain on Article 8 of the Arbitration Convention (*Official Journal L 174, 03/07/2008 P. 0001 – 0005*)

"Serious penalties" shall include administrative penalties for serious and very serious tax infringements, as well as sentences for offences affecting public finances."

9. Relevant regulations on Advance Pricing Arrangements

Art. 18.9 CIT Law. The period of coverage is a maximum of four years following the period which the APA is signed plus the years immediately preceding if the domestic time limit (4 years) has not expire and there has not been a firm tax assessment related to these years. Bilateral APAs are enhanced although unilateral APAs are admitted. Regulations will follow to develop basically the internal procedure.

10. Links to relevant government websites

Competent Authority for Advanced Pricing Agreements and TP MAP
Nestor Carmona
Head of the International Taxation Office
Spanish Tax Agency (AEAT)
Telephone: + 34 91 7498666/Fax: + 34 91 7498685
Email: onfi@correo.aeat.es or onfi.map@correo.aeat.es
Address: Paseo de la Castellana 147, Planta 4. 28046 Madrid
www.agenciatributaria.es

Competent authority for any other Mutual Agreement Procedures
Elena de las Morenas Ferrándiz
Deputy General Director for International Taxation
General Directorate for Taxation
C/ Alcalá 5 1ª Planta
28014 Madrid
Tel: + 34 91 595 80 85
Fax + 34 91 595 80 03
fiscalidad.internacional@tributos.hacienda.gob.es
www.hacienda.gob.es

11. Other relevant information

Secondary and compensating year-end adjustments may result in double taxation. Two questionnaires launched by the EU Joint Transfer Pricing Forum (JTPF) in 2011 took stock of the situation prevailing in each EU Member State with respect to secondary and compensating year-end adjustments as on 1 July 2011.

[Secondary Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

[Compensating/year-end Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

