

SLOVENIA

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Article 16 of Corporate Income Tax Act (Zakon o davku od dohodkov pravnih oseb, ZDDPO2; Official Gazette of the Republic of Slovenia, No 117/06, 56/08, 76/08, 5/09, 96/09, 110-09-ZDavP-2B, 43/10, 59/11, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16 and 69/17; CIT2) **describes the use of the ALP and provides for methods to** establish whether the conditions imposed in commercial or financial relations between related parties are consistent with the ALP (paragraphs 3, 4 and 5).

ALP concept is incorporated in CIT2 and also in:

- the Rules on Transfer Prices (RTP) – the RTP describes methods for determining transfer prices, determines the use of the most appropriate method and introduces the concept of comparability analysis;
- the Transfer Pricing Examination Manual (Prročnik za delo davčne inšpekcije na področju transfernih cen; Manual) and a variety of explanations of legislation from the Financial Administration of the Republic of Slovenia (FURS).

2. Reference to the OECD Transfer Pricing Guidelines

There is no direct reference to the OECD Transfer Pricing Guidelines (the OECD Transfer Pricing Guidelines is used as a practical tool); however the provisions of CIT2 and regulation for transfer prices follow the OECD Transfer Pricing Guidelines.

3. Definition of related parties

Article 16 of CIT2 provides the definition of related parties in cross-border dealings of MNE (paragraphs 1 and 2).

According to CIT2 Article 16 a taxpayer – resident or non-resident – and a foreign legal entity or a foreign person without legal entity who is not a taxpayer are considered associated enterprises, when:

- the taxpayer directly or indirectly holds at least 25 percent of the value or number of shares or equity holdings, shares in managing or control and/or voting rights of a foreign person, or controls the foreign person on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances; or
- the foreign person directly or indirectly holds at least 25 percent of the value or number of shares or equity holdings, shares in managing or control and/or voting rights of the taxpayer, or controls the taxpayer on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances; or
- the same person at the same time directly or indirectly holds at least 25 percent of the value or number of shares or equity holdings, shares in managing or control and/or voting rights of the taxpayer and foreign person or of two taxpayers, or controls this persons on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances; or
- the same individuals or their family members directly or indirectly hold at least 25 percent of the value or number of shares or equity holdings, shares in managing or control and/or voting rights of the taxpayer and foreign person or of two residents or control them on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances.

4. Transfer pricing methods

According to CIT2 Article 16 paragraph 5 the comparable market prices shall be fixed by using one of the following methods or any combination of the following methods:

1. Comparable uncontrolled price method
2. Resale price method
3. Cost plus method
4. Profit split method and/or
5. Transactional net margin method.

On the basis of paragraph 6 of Article 16 the Minister of Finance issued the RTP, which regulates the implementation of Article 16 of CIT2 in detail. In Chapter 1 of RTP transfer pricing methods are described in detail and use of the most appropriate method and hierarchy of transfer pricing methods is determined.

5. Transfer pricing documentation requirements

Article 18 of CIT2 provides:

An associated taxpayer under Article 16 of CIT2 shall ensure and keep the data related to the associated enterprises, and the scope and type of transactions conducted with them, as well as data on establishing comparable market prices, within a time limit and in a manner used in compliance with the Act regulating tax procedure (Article 382 of Tax Procedure Act – TPA2).

According to Article 382 of TPA2 any taxpayer from Article 18 of CIT2 is obliged to ensure and keep transfer pricing documentation comprising of a “master file” of standardised information and a “country-specific” version of standardised documentation for each state in which the taxpayer has transactions with associated enterprises. The taxpayer shall simultaneously collect documentation on transfer pricing for an individual transaction (contemporaneous documentation). Documentation shall be prepared (collected) at the latest till submission of the tax return for the tax year to the tax authority. Documentation is not submitted to the tax authority together with the tax return, but the taxpayer keeps it and submits it upon request of the tax authority at the initiation of the audit procedure. If transactions in essence do not differ, the taxpayer may provide documentation for two or more transactions, and make adjustments for any differences between these transactions if they exist. Taxpayer may keep documentation in electronic form.

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf

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

Tax examination in Slovenia is performed according to the provisions of the Tax Procedure Act (TPA2). There is no significant difference between provisions for ‘normal’ tax examinations and transfer pricing examinations. There are some special provisions regarding the preparation, submission of transfer pricing documentation.

The first paragraph of Article 397 of TPA2 provides that a fine of between EUR 1,200 and 15,000 for a legal entity is imposed, or a fine of between EUR 3,200 and 30,000 is imposed on a medium sized or large legal entity:

- who in contravention of the law does not make available to the tax authority data from records, databases, registers or other records that such person keeps, or does not enable the tax authority to view his own documentation or the documentation held by an associated enterprise (Article 40 of TPA2);

- who does not submit or does not submit in the prescribed manner or by the prescribed deadline the documentation on associated enterprises, the volume and type of business and on the formulation of transfer pricing (Article 382 of TPA2).

A fine of EUR 600 to 4,000 shall be imposed on the responsible person of a legal person for offenses referred to in the first paragraph of Article 397 of the TPA2. If a legal entity is considered a medium sized or large company, the responsible person of the legal person shall be fined between EUR 800 and 4,000.

7. Information for Small and Medium Enterprises on TP

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at: https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-si.pdf

8. Information on dispute resolution

Competent Authority	<p>Ministry of Finance of the Republic of Slovenia Directorate for the System of Tax, Customs and Other Public Finance Revenues Department for the System of Income and Property Taxation Župančičeva 3 1000 LJUBLJANA SLOVENIA</p> <p>tel.: 00 386 1 369 6710 fax: 00386 1 369 6719 e-mail: gp.mf@gov.si</p>
Organization	<p>Ministry of Finance, Directorate for the System of Tax, Customs and Other Public Finance Revenues, Department for the System of Income and Property Taxation, is the competent authority according to tax treaties.</p>
Scope of MAP & MAP APA	<ul style="list-style-type: none"> • interpretation and application of tax treaties • relief of double taxation
Domestic guidelines & administrative arrangements	<p>Guidance on the governance and administration of the mutual agreement procedure ("MAP Guidance") is available at: MAP Guidance (in Slovene language)</p>
Time for filing	<p>No time limits in domestic legislation, tax treaty applies.</p>
Form of request	<p>No particular form required.</p>
Documentation requirement	<p>No special requirements.</p>
User fees	<p>None</p>
Tax collection / penalty / interest	<p>No specific provisions. General rules apply.</p>
Other dispute resolution mechanisms	<p>The EU Arbitration convention for the transfer pricing cases.</p>
Government Website	<p>http://www.vlada.si/en/ (Government of Slovenia) http://www.mf.gov.si/en/ (Ministry of Finance)</p>

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).

Declaration by the Republic of Slovenia (*Official Journal C 160, 30/06/2005 P. 0011 – 0022*)

"The concept of "serious penalty" means a penalty for any infringement of tax law."

9. Relevant regulations on Advance Pricing Arrangements

In Slovenia APA programme is made available from 1. January 2017. The relevant law is implemented in the Tax Procedure Act (Articles 14.a to 14.g) and further explained in The Rules on the Implementation of the Tax Procedure Act. Unilateral, bilateral or multilateral APA is available.

The APA programme is managed by the Slovenian Financial Administration (FURS), additional information can be found on the following website [APA information&application](#) or directly contacting FURS: gfu.fu@gov.si.

10. Links to relevant government websites

<http://www.mf.gov.si/en/>
<http://www.durs.gov.si/en/>

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](#)

The national law in Slovenia currently allows for the passive presence of visiting foreign officials based on the Article 223.b of the Tax Procedure Act and Article 44 of the Financial Administration Act.