

HUNGARY

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Act LXXXI of 1996 on Corporate Tax and Dividend Tax - Section 18, paragraph 1:

„If in the agreements and contracts between affiliated companies a higher or lower consideration is applied (calculated exclusive of value added tax) than the consideration enforced or that would be enforced vis-à-vis independent parties under fair competition and comparable circumstances (hereinafter referred to as "arm's length price"), the taxpayer - irrespective of any other items that are to be added to or deducted from the pre-tax profit as prescribed in this Act - takes the difference between the arm's length price and the consideration applied and shall:

- a) deduct it from the pre-tax profit, provided that:
 - aa) the consideration applied renders the pre-tax profit greater than it would have been had the arm's length price been applied, and
 - ab) the affiliated company contracted is a resident taxpayer or a foreign person (other than a controlled nonresident company) who is subject to any tax that may be substituted for corporate tax according to the national law of the country where it is established, and
 - ac) it holds a document signed by both parties that contains the amount of the difference;
- b) add it to the pre-tax profit if the consideration applied renders the pre-tax profit lower than it would have been had the arm's length price been applied (with the exception of contracts concluded with private individuals, other than private entrepreneurs)."

2. Reference to the OECD Transfer Pricing Guidelines

Act LXXXI of 1996 on Corporate Tax and Dividend Tax - Section 31, paragraph 2:

„This Act contains regulations adopted with regard to the following documents in conformity with the Convention on the Organization for Economic Cooperation and Development (OECD) published by Act XV of 1998, including the related protocols and accession statements:

- a) Model tax convention on income and on capital;
- b) Transfer pricing guidelines for multinational enterprises and tax administrations."

3. Definition of related parties

Act LXXXI of 1996 on Corporate Tax and Dividend Tax - Section 4, paragraph Subsection 23:

„'affiliated company' shall mean:

- a) the taxpayer and the person in which the taxpayer has a majority control - whether directly or indirectly - according to the provisions of the Civil Code,
- b) the taxpayer and the person that has majority control in the taxpayer - whether directly or indirectly - according to the provisions of the Civil Code,
- c) the taxpayer and another person if a third party has majority control in both the taxpayer and such other person - whether directly or indirectly - according to the provisions of the Civil Code, where any close relative holding a majority control in the taxpayer and the other person shall be recognized as third parties;
- d) a nonresident entrepreneur and its domestic place of business and the business establishments of the nonresident entrepreneur, furthermore, the domestic place of business of a nonresident entrepreneur and the person who maintains the relationship defined under Paragraphs a)-c) with the nonresident entrepreneur;
- e) the taxpayer and its foreign branch, and the taxpayer's foreign branch and the person who maintains the relationship defined under Paragraphs a)-c) with the taxpayer;"

4. Transfer pricing methods

Act LXXXI of 1996 on Corporate Tax and Dividend Tax - Section 18, paragraph 2:

„The arm’s length price shall be determined by either of the following methods:

- a) comparable uncontrolled price method, where arm’s length price means the price used by independent parties in connection with the supply of comparable products or services in an economically comparable market;
- b) resale price method, in which the arm’s length price means the price used in connection with the supply of products or services in an unaltered form to an independent party, less the reseller’s costs and fair profit;
- c) cost and income method, in which the arm’s length price consists of the original costs of the products or services and the fair profit;
- d) transactional net margin method that examines a net profit relative to an appropriate base (costs, sales revenues, assets), that a taxpayer realizes from a transaction;
- e) transactional profit split method, where the combined profits from a transaction are split between associated parties on an economically valid basis that approximates the division of profits that would have been anticipated between independent parties;
- f) any other method if the arm’s length price cannot be determined by neither of the methods referred to in Paragraphs a)-e).”

5. Transfer pricing documentation requirements

Act LXXXI of 1996 on Corporate Tax and Dividend Tax - Section 18, paragraph 5, and the Decree 22/2009 of the Ministry of Finance on transfer pricing documentation requirements:

„Business associations, groupings, European public limited-liability companies, European cooperative societies, cooperative societies and nonresident entrepreneurs that are not considered small enterprises (with the exception of public-benefit nonprofit business associations, and the taxpayers in which the State has majority control - whether directly or indirectly -) shall fix, effective as of the last day of the tax year, the arm’s length price and the formula (including the data and the type of events on which the formula is based) they use for determining it in line with the instructions laid down in the ministerial decree issued on the basis of the authorization conferred in this Act.”

According to the main rule transfer pricing documentation has to be prepared for each separate contract by the time the corporate tax return is due. Consolidated documentation may be prepared in the case of group of identical or closely related transactions.

According to the harmonization clause of the Decree 22/2009 of the Ministry of Finance on transfer pricing documentation requirements, Section 11 says that the decree contains regulation made having taken into account - among others - the Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 27 June 2006 on a Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD) 2006/C 176/01.

Specific - simplified - regulation regarding the documentation of low value adding intra-group services might be applied. Low value adding intra-group services are routine services between related companies if the value of the services based on the agreements does not exceed HUF 150 million at arm’s length price. This simplification measure might be used if the taxpayer accepts application of cost plus method. If the application of cost plus method would lead to another result than the arm’s length price then this simplification measure might not be used.

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:

http://ec.europa.eu/taxation_customs/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

Act XCII of 2003 on the Rules of Taxation - Section 172 paragraph 16

If a taxpayer fails to comply with the transfer pricing documentation requirements, it is subject to a fine up to HUF 2 million. In case of repeated violation, it may be fined up to HUF 4 million per documentation. In case of repeated failure of meeting the same documentation requirement the taxpayer may be fined up to a penalty four times higher than in the previous case.

7. Information for Small and Medium Enterprises on TP

Act LXXXI of 1996 on Corporate Tax and Dividend Tax - Section 18, paragraph 3:

„The provisions of Subsections (1), (2) and (4) shall not apply to taxpayers qualified as small or medium-sized enterprises on the last day of the tax year with regard to their long-term contracts concluded with affiliated companies in the interest of joint purchases and sales to overcome competitive disadvantage, if the voting rights of the small and medium-sized enterprises in question held in the affiliated company exceeds 50 per cent on the aggregate.”

8. Information on dispute resolution

Competent Authority	Ministry for National Economy József nádor tér 2-4 / 1051 Budapest, Hungary
Organization	The Tax Administration is responsible for the procedure of exchange of information, MAPs, APAs, and the Ministry for National Economy deals with legislation.
Scope of MAP & MAP APA	- Resolving particular double taxation. - Interpretation of the convention to resolve specific cases.
Domestic guidelines & administrative arrangements	- Act XXVI of 2006 on the proclamation of the Convention on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises - Act CXL of 2004 on the General Rules of Administrative Proceedings and Services - Act XCII of 2003 on the Rules of Taxation
Time for filing	N/A
Form of request	N/A
Documentation requirement	Documentation can be prepared not only in Hungarian language, however, the taxpayer has to make it available also in Hungarian for the appeal of the tax authority.
User fees	None
Tax collection / penalty / interest	Hungary has the provision of the deferment of tax collection and the deferment of disposition for taxes in arrears while a specific taxation case is under the Mutual Agreement Procedure between competent authorities.
Other dispute resolution mechanisms	Dispute resolution under the Arbitration Convention
Government Website	http://www.kormany.hu/en http://en.nav.gov.hu

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

"The term "serious penalty" means criminal penalties established in relation to criminal tax offences, or tax penalties in relation to tax defaults in excess of HUF 50 million."

9. Relevant regulations on Advance Pricing Arrangements

Act XCII of 2003 on the Rules of Taxation - Section 132/B:

The APA requests must be submitted to the state tax authority, which will evaluate the bilateral and multilateral requests (if necessary the unilateral requests) in cooperation with the competent foreign authorities.

"The proceedings for establishing arm's length value shall be subject to a fee of:

- a) minimum five hundred thousand and maximum five million forints for unilateral proceedings, where arm's length value is established by the method of comparative prices, by the method of resale prices or by the cost and income method;
- b) minimum two and maximum seven million forints for unilateral proceedings, where arm's length value is established by any method other than what is contained in Paragraph a);
- c) minimum three and maximum eight million forints for bilateral proceedings;
- d) minimum five and maximum ten million forints for multilateral proceedings.

If arm's length price (price range) cannot be determined as a specific sum, the fee shall equal the fee minimum, depending on the type of proceedings."

10. Links to relevant government websites

<http://www.kormany.hu/hu/nemzetgazdasagi-miniszterium>

11. Other relevant information

[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](#)