

## BULGARIA

### TRANSFER PRICING PROFILE

#### 1. Reference to the Arm's Length Principle

Chapter IV, Article 15 of the Corporate Income Tax Act (Transactions Involving Related Persons) provides that where related persons carry out their commercial and financial relations under conditions, which affect the amount of taxable profits, differing from those between unrelated persons, the taxable profits shall be determined and subject to tax under those conditions which would have been made between unrelated persons.

The above provision also applies to transfers between a permanent establishment of a foreign enterprise and the other parts of the same enterprise, which are situated outside the territory of the country, in accordance with the specificity of the business activity of the permanent establishment (Art. 17 of the Corporate Income Tax Act).

The arm's length principle equally applies to domestic and cross-border transactions.

Paragraph 1, subparagraph 8 of the Supplementary Provisions of the Tax and Social Insurance Procedure Code stipulates that "Market Price" shall be the amount, without the value added tax and the excise duties, which shall be paid under the same conditions for an identical or similar goods or service in a transaction between persons which are not related.

Paragraph 1, subparagraph 9 of the Supplementary Provisions of the Tax and Social Insurance Procedure Code stipulates that "Transfer Prices" shall be in place, when in the commercial or financial relations between related persons conditions have been made or imposed, which different from those, which would have been made between independent persons, and which affect the amount of their profits or income.

#### 2. Reference to the OECD Transfer Pricing Guidelines

The Bulgarian tax legislation does not refer to the OECD Guidelines. However, as pointed out in the Transfer Pricing Guidance (2008) issued by the National Revenue Agency, the OECD Transfer Pricing Guidelines are accepted as internationally recognized standards setting out the concepts and principles to be used in the valuation for tax purposes of transactions between related parties. The principles and recommendations contained in the OECD Transfer Pricing Guidelines lay down the basis for the Bulgarian Regulation on the determination of the arm's length prices (Regulation H-9 of 14/08/2006).

#### 3. Definition of related parties

According to Paragraph 1, subparagraph 3 of the Supplementary Provisions of the Tax and Social Insurance Procedure Code the term "Related Persons" means:

- a) spouses, lineal relatives, collateral relatives up to the third degree of consanguinity, and affines up to the second degree of affinity and, for the purposes of Item 2 of Article 123 (1) of TSSPC, when living in a common household;
- b) employer and employee;
- c) partners;
- d) any two persons, one of whom participates in the management of the other or of a subsidiary thereof;
- e) any persons in whose management or supervisory body participates one and the same natural or legal person, including where the said natural person represents another person;
- f) a corporation and a person who holds more than 5 per cent of the issued voting participating interests or shares in the corporation;
- g) any two persons, one of whom exercises control over the other;
- h) any persons whose activity is controlled by a third party or by a subsidiary thereof;
- i) any persons who jointly control a third party or a subsidiary thereof;

- j) any two persons one of whom is a commercial representative of the other;
- k) any two persons one of whom has made a donation to the other;
- l) any persons who participate, whether directly or indirectly, in the management, control or capital of another person or persons and, therefore, they can agree on conditions other than the customary conditions;
- m) resident or non-resident persons with whom the resident person has concluded a transaction, if:
  - (aa) the non-resident person is registered in a country which is not a EU Member State and in which the payable income tax or corporate tax in respect of revenue that the non-resident person has generated or will generate from transactions is lower than the income tax or corporate tax in Bulgaria by 60 per cent or more, unless the resident person submits evidence that the non-resident person is liable to tax which is not subject to a preferential regime or that the non-resident person has marketed the goods or delivered the services on the local market, and
  - (bb) the country in which the non-resident person is registered refuses to, or is not able to, exchange information about the consummated transactions or relations in the event of an international tax convention which has been concluded and entered into force. For the purposes of this provision, a non-resident person shall also be any legal person regardless of whether it is resident in the Republic of Bulgaria or not controlled by a person meeting the conditions referred to in clauses (aa) and (bb).

For the purposes of this provision, a resident person shall also be any non-resident legal person operating in Bulgaria through a permanent establishment and any non-resident natural person generating revenue originating in Bulgaria through a fixed base for transactions executed through the permanent establishment or the fixed base;

o) the owners of the resident legal person and the non-resident person in the cases referred to in clause (n).

Within the meaning of Paragraph 1, subparagraph 4 of the Supplementary Provisions of the Tax and Social Insurance Procedure Code "Control" shall be in place when the controlling body:

- a) owns directly or indirectly or under an agreement with another person more than the half of the votes in the general meeting of another person, or
- b) has the possibility to appoint directly or indirectly more than the half of the members of the managing or the controlling body of another person, or
- c) has the possibility to manage, including through or together with a subsidiary company, by the virtue of a statute or a contract, the activity of another person, or
- d) as a shareholder or a partner in one company controls independently, by the virtue of an arrangement with other partners or shareholders in the same company, more than the half of the votes in the general meeting of the company, or
- e) may, in another way, exercise a decisive influence on the taking of decisions in connection with the activity of the company

#### 4. Transfer pricing methods

The transfer pricing methods applied under the Bulgarian tax legislation are in line with the TP methods set out in the OECD Transfer Pricing Guidelines. Under Paragraph 1, subpara. 10 of the Supplementary Provisions of the Tax and Social Insurance Procedure Code the TP methods are:

- a) the method of the comparable uncontrolled prices between independent traders (identical to the comparable uncontrolled price method);
- b) the method of the market prices, when the usual market price is the price, used in the process of sale of commodities and services in unchanged form to an independent partner, reduced by the expenses of the trader and the customary profit (corresponding to the resale price method);
- c) the method of the increased cost, by which the market price shall be determined, increasing the cost of production with the customary profit mark-up (corresponding to the cost plus method);
- d) the transactional net profit method;
- e) the profit split method.

Regulation H-9 stipulates the methods to be used, the manner in which each method should be applied, as well as the approach of the tax authorities in case the taxpayer has transfer pricing documentation in place.

Regulation N° H-9 introduces the principle of hierarchy of methods. According to the Regulation the traditional transactional methods – comparable uncontrolled price method, resale price method and cost plus method, have priority over the non-traditional (transactional profit) methods – profit split method and transactional net margin method (Art. 7 and 9 of the Regulation N° H-9).

## 5. Transfer pricing documentation requirements

Bulgarian tax legislation does not prescribe comprehensive documentation requirements in cases of related parties' transactions. Art. 116, paragraph 2 of the Tax and Social Insurance Procedure Code contains a general requirement that obliges the taxable entities to demonstrate the arm's length character of the prices charged in transactions with related parties, including through submitting all relevant evidence kept abroad. Section 2 "Obligations for Documentation and Filing" of the Transfer Pricing Guidelines (revision 2010) of the National Revenue Agency gives more detailed overview of the content and structure of the TP documentation, as well as the principles to be followed by the taxpayers when preparing a TP documentation file.

Although the guidelines do not introduce obligatory transfer pricing documentation requirements for taxpayers, they do specify the approach the revenue authorities should follow when examining intragroup transactions. The recommendations on the content of a typical transfer pricing documentation file are in line with the EU TPD.

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](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

Transfer pricing may be examined during a regular tax audit. However there are not any audit techniques or procedures specifically developed in the field of transfer pricing. In the course of a tax audit the revenue authority may request all relevant information necessary to demonstrate the arm's length character of the prices charged between related parties. The deadline for provision of such information is determined by the tax authority but it may not be less than 7 days. Upon a request by the taxpayer the term determined by the revenue authority may be extended or the procedure may be suspended for up to three months.

According to §1, subparagraph 5 and 4 of the Supplementary Provisions of the Corporate Income Tax Act, any amount exceeding the arm's length prices, accounted, paid or distributed in any form in favour of shareholders, or parties related thereto, shall be regarded as hidden distribution of profits and taxed at source with a 5% tax rate as constructive dividend. According to Art. 267, para.1 of the Corporate Income Tax Act a taxable person who is involved in a hidden distribution of profit shall be subject to a penalty of 20 percent of the amount constituting hidden distribution of profit. However if the taxable person, who has been involved in a hidden distribution of profit, reports this circumstance in its annual tax return, sanction envisaged in para 1 shall not be applied.

Finally, Bulgaria does not apply specific documentation related penalties.

## 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-bg.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-bg.pdf)

## 8. Information on dispute resolution

The Competent Authority responsible for dispute resolution is:

Director, Tax Treaties Directorate  
Headquarters of National Revenue Agency  
52 Dondukov Blvd.  
Sofia 1000  
tel. + 359 2 9859 3060.

The Tax Treaties Directorate within the National Revenue Agency is responsible for all MAP cases irrespective of their scope, nature and complexity. The scope of MAPs extends to cases of taxation levied not in accordance with a specific Double Tax Convention, relief of double taxation (including economic double taxation in transfer pricing cases) and issues of interpretation of tax treaties. Brief overview of the legal instruments and procedures on dispute resolution in relation to tax issues is presented in Section 14 of the Transfer Pricing Guidelines (revision 2010) issued by the National Revenue Agency. Requests for dispute resolution should comply with the specific time limits for submission of MAP applications under the relevant Double Tax Convention (usually 3 years as the vast majority of Bulgarian double taxation conventions contain the OECD Model Article 25 as it read before the last update of 21 November 2017). The requests should be in writing filed with the Head Office of the National Revenue Agency. Supporting documentation required includes, in particular, detailed presentation of the facts and circumstances of the case, copies of the relevant tax assessment notices, as well as documents used by the local revenue authority as a basis for the proposed tax adjustment. No user fees are allowed for under Bulgarian domestic legislation. Tax collection and interest charges are not suspended during the dispute resolution phase. Taxpayers may also take advantage of the dispute resolution mechanism provided for in the EU Arbitration Convention. Relevant information may be found at [www.nra.bg](http://www.nra.bg).

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 Bulgaria (*Official Journal L 174, 03/07/2008 P. 0001 – 0005*)

"The term "serious penalties" means penalties of every kind, imposed for actions constituting administrative or tax infringements, including infringements of procedural law concerning tax assessment and tax collection, as well as for crimes against the tax system. "Serious penalties" imposed on the enterprise are also deemed to exist when penalties are imposed for offences committed against the tax system on an individual from that enterprise whose actions have influenced the amount of tax liabilities of the enterprise or the collection thereof."

## 9. Relevant regulations on Advance Pricing Arrangements

APAs are not provided for under Bulgarian legislation. However it is possible to obtain an opinion from the revenue authorities on a case-by-case basis which is not binding but may protect the taxpayer involved from being subject to payment of interest for late payments and/or penalties.

## 10. Links to relevant government websites

National Revenue Agency: [www.nra.bg](http://www.nra.bg)

## 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](#)

Bulgarian domestic legislation contains legal provisions that can support administrative cooperation on a bilateral or multilateral basis. These provisions provide for both active and passive presence of visiting foreign officials within the scope of Directive 2011/16/EU as follows:

- presence in administrative offices (Art. 143j, para. 1 of the Tax and Social Security Procedure Code);
- presence in administrative enquiries (Art. 143j, para. 1 of the Tax and Social Security Procedure Code);
- interview of individuals (Art. 143j, para. 2 of the Tax and Social Security Procedure Code), and
- examination of records (Art. 143j, para. 2 of the Tax and Social Security Procedure Code).

The texts of the Corporate Income Tax and Tax and Social Security Procedure Code in English are available at: <http://www.nap.bg/en/page?id=522>.