



# INTERNATIONAL

# COMPARISON

## TRANSFER PRICING REGULATIONS AND OBLIGATIONS

UPDATED INFORMATION  
MARCH 2010

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|  <b>Austria</b> | <b>Transfer Pricing regulations and Obligations</b>   |
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| <b>Legislation</b>  | Orientation on OECD model convention Art. 9 (1)<br>Adjustments pursuant to § 6 Z 6 EStG   |
| <b>Transfer pricing methods</b>   | Orientation on the OECD model convention. Pricing has to be at arm's length basis. If not, adjustment pursuant to § 6 Z. 6 EStG.<br>Methods:<br><ul style="list-style-type: none"> <li>■ Comparable uncontrolled price method</li> <li>■ Resale price method</li> <li>■ Cost plus method</li> </ul> |
| <b>Transfer pricing documentation requirements</b><br><b>Thin capitalisation</b>                | To support the pricing method in case of a tax authority enquiry, it is recommended to produce documentation in advance. There is no specified format for documentation.  |
| <b>Advance Pricing Arrangement ("APA")</b>  | No legal foundation in Austria. Advanced ruling in preparation. Possible to put a question in advance to the EAS (Express-Answering Service), but only for general and not for individual cases.  |

|  <b>Serbia</b> | <b>Transfer Pricing regulations and Obligations</b>  |
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| <b>Legislation</b>   | Transfer pricing is regulated by the provisions of Corporate Income Tax Law (Official Gazette of RS no. 25/2001, 80/2002, 43/2003 and 84/2004)   |
| <b>Transfer pricing methods</b>  | To determine the price of the transaction between related parties the arm's length principle is used.  |
| <b>Thin-capitalisation</b>   | The amount of deductible interest is 110% of the National Bank of Serbia's official interest rate, or if the loan is of a currency other than the Serbian dinar, then 110% of the official interest rate of the National Bank whose currency was used must be applied on the debt equivalent to four times the company's '92s equity. When the loan concerns banks or insurance companies, the abovementioned rate is applied to ten times the company's equity. |

|  | <b>Cyprus</b>  | <b><i>Transfer Pricing regulations and Obligations</i></b> |
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| <b>Legislation</b>  | <p>Transfer pricing is regulated by the provisions of Cyprus Income Tax Law. Cyprus' accession to the EU necessitated the revision of the corporate income tax regime of Cyprus, which led to the introduction of a new, revised tax regime in 2003, rendering the Cypriot tax legislation in compliance with the EU standards and the OECD guidelines.</p> <p>Limited Transfer Pricing Rules have been introduced under the Cyprus Tax Laws. More specifically, the arm's length principle was codified in the revised tax law, having an application in certain transactions between related/associated parties.</p> <p>The Transfer Pricing Guidelines for multinational Companies and Tax Administrations approved by the Council of the Organization for Economic Cooperation and Development – OECD are applied.</p> |  |
| <b>Transfer pricing methods</b>   | Methods used in OECD guidelines are applicable.  |  |
| <b>Transfer pricing documentation requirements</b>                                | Currently, there is no formal requirement to maintain transfer pricing documentation in Cyprus.  |  |

|  | <b>Luxembourg</b>  | <b><i>Transfer Pricing regulations and Obligations</i></b> |
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| <b>Legislation</b>  | <p>Article 56 of the Luxembourg Income Tax Law (ITL) is the main provision regarding transfer pricing legislation, allowing, irrespective the result reported, a (senior) government official to may estimate/assess the benefit of a taxpayer when a transfer of profit is rendered possible by the fact that the entrepreneur has a special economic direct or indirect relationship with a non resident person or entity.</p> <p>Corrections can also be made in hidden distributions or hidden contribution situations where non arm's length advantages impacting the profits of taxpayers involved are granted between related parties. The criterion is that such advantages would not have been granted between unrelated parties.</p> |  |
| <b>Transfer pricing methods</b>   | The Luxembourg tax authorities refer to OECD Transfer Pricing Guidelines in determining the arm's length character of specific transactions. In this respect, transaction based methods (Comparable Uncontrolled Price, Resale Price Method, Cost Plus Method...) as well as profit based methods (Profit Split Method, Transactional Net Margin Method...) may be recognised.   |  |
| <b>Transfer pricing documentation requirements</b>                                | There is no specific transfer pricing documentation requirement. However, taxpayers involved in related party transactions should take care of maintaining proper documentation (relevant agreements, methodology used...) pursuant to general ITL provisions.   |  |
| <b>Thin capitalisation</b>  | There is no specific provision on thin capitalisation in the ITL. However, administrative practice requires adequate equity financing to be provided to Luxembourg companies, an excess indebtedness (by reference to relevant arm's length standards) towards related entities being considered as hidden capital distribution.   |  |
| <b>Advance Pricing Arrangement ("APA")</b>  | <p>As a matter of example, the administrative practice regarding financial companies requires that the acquisition of participations shall be at least 15% equity financed (15/85 ratio).</p> <p>There is no formal APA procedure. Taxpayers may, on a case-by-case basis, discuss with the Luxembourg tax authorities their transfer pricing methodology and obtain advance tax clearance in this respect.</p>  |  |

|  | <b>Germany</b>  | <b><i>Transfer Pricing regulations and Obligations</i></b> |
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| <b>Legislation</b>   | <ul style="list-style-type: none"> <li>■ Basic principle: cross-border business relations with a related person; the transfer price replaces the fair market value.</li> <li>■ Arm's Length Principle (corresponding provision to Art. 9 OECD-MTC) for transfer pricing adjustments in cross-border business relations between related persons</li> <li>■ The Corporation Tax Act says that hidden profit distributions must not reduce or increase the taxable profit.</li> </ul>  |  |
| <b>Exemption from the legislation</b>  | Facilitation of transfer pricing documentation requirements for small-sized enterprises.  |  |
| <b>Transfer pricing methods</b>  | <ul style="list-style-type: none"> <li>■ Traditional transaction methods allowed: comparable uncontrolled price method, resale price method and cost plus method.</li> <li>■ Transactional profit methods only allowed under certain circumstances (i. e. if traditional transaction methods can not be applied reliably).</li> </ul>   |  |
| <b>Transfer pricing documentation requirements</b>                               | <p>The German Fiscal Code contains specific transfer pricing documentation requirements: Documentation of....</p> <ol style="list-style-type: none"> <li>1. kind and contents of the business relation between related persons</li> <li>2. economic and legal fundamentals of the convention of prices</li> <li>3. adequacy-documentation: principle of benchmark with external persons</li> </ol> <ul style="list-style-type: none"> <li>■ Supplement to the Fiscal Code: regulation on documentation of profit allocation.</li> <li>■ Documentation should be in written or electronic form.</li> </ul>   |  |
| <b>Thin capitalisation</b>   | <ul style="list-style-type: none"> <li>■ Cross-border granting of loan between related persons could be a problem, because the granting should bear up under the arm's length principle. If loans are not common, the debtor can not treat the interest as operating expenses.</li> <li>■ There exists a "safe haven" of 1,5-times of the proportionate equity capital from the shareholder. If liabilities do not exceed this limit, the arm's length principle has not to be adopted.</li> <li>■ If the limit is exceeded, the debtor has to render special documentations to demonstrate that a third party might have given these conditions under these distinct circumstances.</li> </ul> |  |
| <b>Advance Pricing Arrangement ("APA")</b>                                       | <ul style="list-style-type: none"> <li>■ No specific statutory rule for Advance Pricing Agreements, because these are bilateral and based on Double Tax Treaties.</li> <li>■ There exists some information from the Federal Ministry of Finance (BMF) explaining the APA procedure in detail. ("Information on bi- or multilateral procedure under Double Taxation Conventions for reaching APA aimed at granting binding advance approvals for transfer prices agreed between international associated enterprises").</li> <li>■ By APA's the parties could get an arrangement about the allowable transfer pricing method, but not about the correct transfer price.</li> </ul>               |  |
| <b>Other relevant information</b>  | <p>Penalties in form of estimation or penalty loading if enterprises do not adhere to the transfer pricing documentation requirements.</p>   |  |

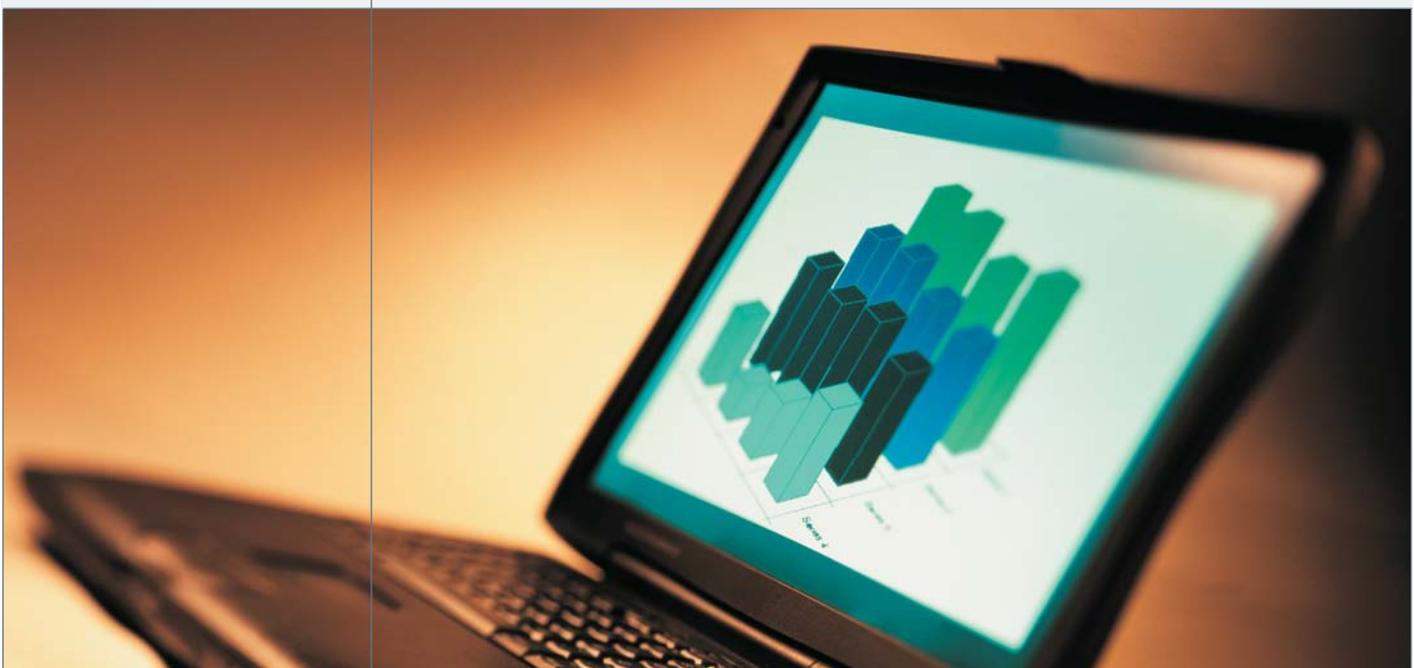
|  <b>Italy</b> | <b>Transfer Pricing regulations and Obligations</b>  |
|---|--|
| <b>Legislation</b>  | <p>As already reported, Italian legislation does not require any legal information concerning transactions between companies under common control and based in different countries.</p> <p>However, it is realistic to say that an indirect obligation arising from the need to prove any eventual “anti-economic” transaction does exist, in the event of an inspection by the Tax Authorities or Revenue Agency.</p> |
| <b>Documentation indirectly required</b>  | <ul style="list-style-type: none"> <li>■ Group Manual (Master file + Country Specific);</li> <li>■ The manual should be written in English;</li> <li>■ The manual should be shared with all the companies in the Group;</li> <li>■ Annual update of the document.</li> </ul>   |
| <b>Structure of the manual</b>  | <ul style="list-style-type: none"> <li>■ Description of the Group (organizational chart, business activity, etc);</li> <li>■ Map of intercompany transactions (all kind of transaction such as products, services, royalties, intercompany financing, etc.);</li> <li>■ Risks and functions overview;</li> <li>■ Country specific for each company in the Group;</li> <li>■ “Transfer Pricing Table”.</li> </ul>       |
| <b>Transfer pricing methods</b>   | <ul style="list-style-type: none"> <li>■ Comparable Uncontrolled Price;</li> <li>■ Cost Plus (Full Cost);</li> <li>■ Resale Margin;</li> <li>■ Transactional Net Margin.</li> </ul>  |

|   |   |                |  |                               |                      |
|---|---|----------------|--|-------------------------------|----------------------|
| <b>Functions and risks analysis</b>         | <b>Functions Analysis</b>   |                | <b>Risks Analysis</b>  |                               |                      |
|   | <ul style="list-style-type: none"> <li>■ Meetings with management;</li> <li>■ Identification of standard subjects (manufacturers, sales agents, agents, etc.);</li> <li>■ Function overview based on the intercompany annual report (“who does what”).</li> </ul> |                | <ul style="list-style-type: none"> <li>■ Currency risk Analysis;</li> <li>■ Credit Risk Analysis;</li> <li>■ Inventory risk (obsolescence);</li> <li>■ Market Risk</li> <li>...</li> </ul> |                               |                      |
| <b>Example of “Transfer Pricing Table”.</b> | <b>Seller</b>   | <b>Buyer</b>   | <b>Product</b>   | <b>T. P. Method</b>           | <b>Comparable</b>    |
|   | Parent Company  | FRANCE         | ALL  | Comparable Uncontrolled Price | Russian Client       |
|   | Parent Company  | GERMANY        | Products “A, B”  | Cost Plus                     | German Client        |
|   | Romania   | Parent Company | Product “A”  | Resale Price                  | Italian Distributors |
|   | India   | Parent Company | ALL  | Transactional Net Margin      | Producer Far East    |
| <b>Italian law sources</b>                  | <ul style="list-style-type: none"> <li>■ Art. 110 comma 7 TUIR;</li> <li>■ Art. 9 comma 3 TUIR;</li> <li>■ Circolare nr. 32, 22.09.1980;</li> <li>■ Circolare nr. 42, 12.12.1981;</li> <li>■ Circolare nr. 1/2008 Tax Authorities, Volume III, part VI</li> </ul> |                |  |                               |                      |
| <b>International law sources</b>            | <ul style="list-style-type: none"> <li>■ EU Joint Transfer Pricing Forum</li> <li>■ OECD Guidelines;</li> <li>■ OECD “Double Taxation Convention Model”</li> </ul>  |                |  |                               |                      |

|  <b>Spain</b> | <b>Transfer Pricing regulations and Obligations</b>   |
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| <b>Legislation</b>  | <p>In Spain, Transfer Pricing regulation is covered under the following legal:</p> <ul style="list-style-type: none"> <li>■ Art. 16 Corporate Income Tax, reference RDL 4/2004.</li> <li>■ Anti-Avoidance Law 36/ 2006, approved 29 November 2006</li> </ul> <p>As of December 1, 2006, taxpayers have to respect the transfer pricing policy of related entities and the arm's length principle.</p>   |
| <b>Exemption from legislation</b>   | <p>Transfer pricing policies are compulsory for all taxpayers who engage in commercial relations with associated companies or entities.</p> <p>There are some exemptions, limited to the requirement for documenting the kind of relationship involved. Transfer pricing policies are always compulsory.</p>  |
| <b>Transfer pricing methods</b>   | <p>The Law established that in order to determine market value, there are three methods to be used, listed here in order of preference: Comparability Method, Method of Cost Plus, and Method of Resale Minus.</p> <p>Only in the event that these methods cannot be applied, alternative methods contemplated are: the Profit Split and the Gross Profit Margin.</p>   |
| <b>Transfer pricing documentation requirements</b>  | <p>Taxpayers must provide necessary documentation supporting the transfer pricing policy.</p> <p>When required to do so by tax authorities, taxpayers must present two separate document groups: one document for the entire group (master file) and one document for each separate entity within the group (local or county file).</p> <p>Documentation must cover domestic and international transactions.</p> <p>Tax authorities will impose sanctions in the event that documentation is incomplete, inaccurate or contains false or misleading information. The fines involved for non-compliance with transfer pricing documentation are substantial (from EUR 1,500 for each piece of information lacking or EUR 15,000 when a combination of data is omitted, inaccurate, false or misleading).</p> |
| <b>Thin-capitalisation</b>  | <p>Spanish legislation stipulates a limit for corporate debt levels. Therefore, debt limit for debts originating in a non-resident associated entity is currently fixed at capital tax of the company multiplied by 3.</p> <p>When debts exceed this amount, the interest paid is considered dividends.</p> <p>Companies can pre-negotiate agreements with the Tax Authorities about the thin-capitalisation limit.</p>   |
| <b>Advance Pricing Arrangement ("APA")</b>  | <p>Tax legislation includes the possibility for arranging an Advance Pricing Arrangement (APA) with Spanish tax authorities.</p> <p>In such cases, the Tax Authorities authorize the transfer prices for a pre-determined period of time.</p>   |

|  <b>Portugal</b> | <b>Transfer Pricing regulations and Obligations (1/2)</b>  |
|---|--|
| <b>Legislation</b>  | <p>Since 1 January 2001 Portuguese legislation requires that all transactions between companies with “special relations” have to be made on an arm’s length basis. It means that every transaction related to goods, rights, services or financial arrangements must be conducted as if the companies were independent, carrying out comparable transactions.</p> <p>Where transactions are not on an arm’s length basis, tax returns have to be adjusted to give the right level of Portuguese tax. However the adjustment permitted is only to increase taxable income.</p> <p>This applies to transactions between Portuguese companies as well as transactions between Portuguese and non Portuguese companies. Where transactions are between Portuguese companies, if an adjustment has to be made in one company, an adjustment will almost always automatically be made in the other to compensate.</p>  |
| <b>Exemption from the legislation</b>   | <p>Companies which did not achieve, on last year, an amount of 3.000.000 Euros (annual turnover and other income) do not have to comply with transfer pricing legislation in what respects to the preparation and keeping of the “Transfer Price File”.</p>  |
| <b>Transfer pricing methods</b>   | <p>The methods allowed to be used are:</p> <ul style="list-style-type: none"> <li>I) the comparable market price method;</li> <li>II) the resale price method, the cost plus method;</li> <li>III) the profit split method;</li> <li>IV) the transaction net margin method, or,</li> <li>V) other methods when the methods mentioned above cannot be applied or do not give a reliable measure of the terms that independent parties would apply.</li> </ul>   |
| <b>Transfer pricing documentation requirements</b>  | <p>Companies should indicate, in the annual declaration of accounting and tax information (IES/Declaração Anual), the existence of transactions with entities with which they had special relations in that period.</p> <p>The requested information includes the associated companies, the amount of the controlled transactions and an indication as to whether supporting documentation for transfer prices existed at the time of the transactions Companies with turnover of 3.000.000 Euros or more should also comply with the following documentation to be able to support the pricing adopted:</p> <ul style="list-style-type: none"> <li>■ the terms and conditions agreed</li> <li>■ the selection and application of the method or methods most appropriate for benchmarking transfer prices through the use of arm’s length comparables</li> <li>■ a description of any special relations that exist with any entities</li> <li>■ a description of the activities carried out during the controlled transactions</li> <li>■ a detailed description of the goods, rights or services involved in controlled transactions and of the terms and conditions agreed</li> <li>■ a description of the activities performed, the assets used and the risks assumed</li> <li>■ technical studies on essential areas of the business</li> <li>■ guidelines regarding the transfer pricing policy of the firm</li> <li>■ an explanation of the method or methods applied to determine arm’s length prices for each controlled transaction</li> <li>■ information regarding comparable data used.</li> <li>■ any other information, data or documents considered relevant</li> </ul> |

|  <b>Portugal</b> | <b>Transfer Pricing regulations and Obligations (2/2)</b>  |
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| <b>Thin capitalisation</b>  | <p>Portuguese tax rules for thin capitalization were introduced in January 1996.</p> <p>Where the indebtedness of a Portuguese company to an entity not resident in Portugal or in a EU country with whom special relations exist is deemed excessive, the interest paid in relation to the part of the debt considered excessive will not be deductible for the purposes of assessing taxable income.</p> <p>Excessive indebtedness occurs where the value of the debts in relation to each of the entities is more than twice the value of the corresponding shareholding in the company's equity.</p> <p>In cases where the above ratio is exceeded, the company may be able to avoid adjustments under the thin capitalization rules where it can be shown that the same level of indebtedness could have been obtained with similar conditions from an independent party.</p> |
| <b>Advance Pricing Arrangement ("APA")</b>  | <p>The State Budget for 2008 introduced the possibility of applying to Advance Pricing Arrangements (APA) with the Tax Authorities.</p> <p>It regulates the requirements and conditions for preparing and filing a request, as well as what procedures, information and documentation are to be applied in the APA.</p> <p>The APA's allow the definition of the adequate transfer price principles previously to the existence of the transactions, in order to determine the rules to be applicable during a limited period of time.</p> <p>The APA is valid for a maximum of three years.</p>   |
| <b>Other relevant information</b>   | <p>In general terms, additional assessments usually carry penalties and fines. Currently there are no specific penalties in force for transfer pricing issues.</p> <p>However, a transfer pricing penalty regime may be introduced in the future It is expected that existing transfer pricing regulations will be extended by the publication of specific legislation on penalties for non-compliance with the obligations, especially in respect of non-compliance with documentation requirements.</p>  |



|  <b>Romania</b> | <b>Transfer Pricing regulations and Obligations</b> (1/2)   |
|--|---|
| <b>Legislation</b>   | <ol style="list-style-type: none"> <li>1. Transfer pricing is regulated by the Romanian Tax Code, Order no. 222/2008 of Ministry of Finance and by the EU tax legislation in compliance with the OECD guidelines.</li> <li>2. Government ordinance no. 92/2003 regarding the Fiscal Procedure Code, with the subsequent amendments.</li> <li>3. Government decision no. 529/2007 regarding the approval of the procedure for issuing the fiscal solution advance price agreement (APA).</li> </ol> <p>Romanian tax legislation requires the taxpayers who are engaged in transactions with related persons, at the request of the competent tax authority, to prepare and present the file of the transfer prices within the established terms. In a transaction between related persons, tax authorities may adjust the amount of income or expenditure of any of the persons, as necessary, in order to reflect the market price of the goods delivered or rendered services in the transaction.</p> <p>In those transactions between Romanian companies with non-resident related parties, the Romanian tax authorities are allowed, for the purpose of calculating the tax obligations of the Romanian companies, to reconsider the value of transactions.</p> <p>Transactions between affiliated persons should observe the arm's length principle which requires that all transactions to be made at a real market price, the price at which the same transaction would be made between independent entities. The Romanian tax authorities, in those cases where transfer pricing are not set at an arm's length principle have the right to adjust the taxpayer's revenues or expenses, so as to reflect the market value.</p> |
| <b>Transfer pricing methods</b>  | <p>Romanian tax legislation requires selecting the most appropriate transfer pricing methods in determining the market price of transactions between affiliated persons that are:</p> <ol style="list-style-type: none"> <li>a) price comparison method, by which the market price is determined by prices paid to other persons who sell comparable goods or services to independent persons;</li> <li>b) cost-plus method, by which the market price is determined by costs of goods or services provided by the transaction, increased with the appropriate profit margin;</li> <li>c) resale price method, by which the market price is determined by the resale price of goods or services sold to an independent person, decreased with the selling expenses, other expenses of the taxpayer and a profit margin;</li> <li>d) any other method established on transfer pricing guidelines issued by the Organization for Economic Cooperation and Development (OECD).</li> </ol> <p>Even though traditional methods are preferred by the tax authorities, transactional methods are also accepted.</p>  |
| <b>Transfer pricing documentation requirements</b>   | <p>The file for transfer pricing must contain:</p> <ol style="list-style-type: none"> <li>1. Information about the group and related party transactions:             <ul style="list-style-type: none"> <li>■ Structure of the group, legal and operational.</li> <li>■ General description of the group's activity, business strategy, including changes in business strategy from the previous fiscal year.</li> <li>■ Description and implementation for the application of transfer pricing methodology in the group, if applicable.</li> <li>■ Overview of transactions between affiliated persons resident in the EU: the way of trading, billing, transactions value.</li> <li>■ General description of functions and risks assumed by affiliated persons, including changes from the previous year.</li> <li>■ Presentation of the holders of intangible assets in the group (patents, trademarks, know-how, etc.) and royalties paid or received.</li> <li>■ Presentation of advance price agreements concluded by the taxpayer or other companies within the group, except for those issued by NAFA.</li> </ul> </li> </ol>   |

|  <b>Romania</b> | <b>Transfer Pricing regulations and Obligations</b> (2/2)   |
|--|---|
|  | <p><b>2. Information about the taxpayer</b></p> <ul style="list-style-type: none"> <li>■ Detailed presentation of the transactions with affiliated persons:             <ul style="list-style-type: none"> <li>- way of transacting.</li> <li>- way of billing.</li> <li>- value of transactions.</li> </ul> </li> <li>■ Presentation of comparative analysis:             <ul style="list-style-type: none"> <li>- characteristics of goods or services.</li> <li>- functional analysis (functions, risks, used assets).</li> <li>- contractual terms.</li> <li>- economic circumstances.</li> <li>- specific business strategy.</li> <li>- information on external or internal comparable transactions.</li> </ul> </li> <li>■ Presentation of affiliates and their permanent establishments engaged in these transactions or arrangements.</li> <li>■ Description of the calculation method of transfer pricing and argumentation of selection criteria.</li> <li>■ Description of other conditions considered relevant to the taxpayer.</li> </ul> <p>The deadline for submission of file for transfer pricing to the competent tax authority is established by it, and cannot exceed 3 calendar months. The taxpayer may request only once the extension of the deadline for submitting the file for a period that cannot exceed the initial deadline set by the tax authorities. The tax authority may decide to suspend the tax inspection until the submission of the file for to transfer pricing.</p> |
| <b>Advance Pricing Arrangement (“APA”)</b>   | <p>Advance Pricing Agreement (APA) is issued by the National Tax Administration Agency for settling an application of the taxpayer, establishing the terms and conditions in which will be determined over a fixed period, the transfer pricing, in case of transactions made between affiliated persons.</p> <p>The issuance of an APA is conditioned by the payment of a fee equivalent in RON of 20,000 Euro for large taxpayers, and also for other taxpayers if the consolidated value of the requested transactions exceeds the equivalent of 4 million Euro threshold respectively of a fee representing the equivalent in RON of 10,000 Euro by other contributors. The amendment of the price in advance at the request of the taxpayer is also subject to payment of a fee the equivalent in RON of 15,000 Euro for large contributors and other contributors if the consolidated value of transactions subject to the agreement exceeds 4 million Euro, respectively of a fee representing the equivalent in RON of 6,000 Euro for other taxpayers.</p> <p>Taxpayers who have obtained an APA issued by the competent tax authorities of Romania no longer have the obligation to prepare the file for transfer pricing.</p>   |
| <b>Other relevant information</b>  | <p>Transactions concluded between Romanian legal entities are not subject to adjustment by the tax authorities, but only those concluded by Romanian legal entities with non-resident affiliated persons and also Romanian individuals.</p> <p>Adjustments to incomes and expenditures made by tax authorities by applying the transfer pricing provisions are made solely for tax purposes, without affecting the financial statements of the affiliated persons.</p> <p>Failure to comply with the terms and conditions on preparing the transfer pricing file may be sanctioned with a fine from 12,000 lei to 14,000 lei for legal entities, according to the Fiscal Procedure Code.</p>  |



|  <b>Mexico</b> | <b>Transfer Pricing regulations and Obligations</b>  |
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| <b>Legislation</b>  | <p>Specific legislation was introduced in Income Tax Law (ITL) since 1997. The first target was the Maquiladora Industry, but since 2003 tax reforms compliance provisions have been strengthened for all type of companies. In spite of lack of legal grounds or argumentation, transfer pricing rules must be accomplished even when a transaction is made with a related party residing in Mexico (Article 86th-fr.XII and fr.XV).</p> <p>Article 215 of ITL deems that OECD Transfer Pricing Guidelines must be applied for Interpretation of the provisions of ITL.</p> |
| <b>Exemption from the legislation</b>   | <p>Doubtfully article 86th fr. XII pretends to grant an exemption for those companies with no more than one million dollars in revenues in the preceding fiscal year because, on the other hand, all type of companies seems to be obligated to prepare legal documentation that proves the arm's length principle regarding intercompany transactions.</p>  |
| <b>Transfer pricing methods</b>   | <p>Mexico has formally adopted a hierarchy of transfer pricing methods with a preference for traditional transactional methods(TTM) over profit Methods (PM). ITL describes same OECD methods: CUP, Cost Plus and Resale Price among TTM, and Profit Split and Transactional Operating Profit Method for PM.</p>   |
| <b>Transfer pricing documentation requirements</b>  | <p>Contemporary documentation must be available to prove that transactions with related parties are made under arm's length standards. In fact, Mexican Tax Authorities has implemented strong and abundant information that has to be gathered in the external auditing process. The documentation that an external auditor is required to present</p> <p>Includes: the transfer pricing study, the transfer pricing annual informative return, written agreements and working papers.</p>  |
| <b>Thin capitalisation</b>  | <p>ITL deems as a no deductible expense interests that comes from debt incurred with foreign resident related party and when such debt is more than three times its shareholders's equity. The limit can be raised when some circumstances are met, but only if taxpayer obtains a favourable APA resolution.</p>  |
| <b>Advance Pricing Arrangement ("APA")</b>  | <p>Mexican Tax Code (MTC) provides a chance for an APA request granting a 5 (five) years benefit: the fiscal year which it is requested, the preceding year, and up to three following fiscal years.</p> <p>APA's process takes so much time and, additionally, uncertainty about output resolutions has turn it out almost as a null option.</p>  |
| <b>Other relevant information</b>   | <p>A Transfer pricing adjustment may give raise to normal regulatory penalties for the Understatement of income, which could be 70% up to 100% of tax avoided.</p>   |

|  <b>United Kingdom</b> | <b>Transfer Pricing regulations and Obligations</b>  |
|--|--|
| <b>Legislation</b>   | <p>UK legislation requires companies (both UK resident companies and branches of non UK companies in the UK) to complete their UK tax returns on the basis that all transactions between companies under common control are on an arms length basis.</p> <p>Where transactions are not on an arms length basis and this results in less UK tax, the transaction has to be adjusted on the tax return to give the right level of UK tax. In those cases legislation requires an adjustment to increase UK tax, and does not permit a decrease.</p> <p>This applies to transactions between UK companies as well as transactions between UK and non UK companies. Where transactions are between UK companies, if an adjustment has to be made in one company, an adjustment will almost always automatically be made in the other to compensate.</p> <p>The legislation includes financial transactions, and thin capitalisation.</p> |
| <b>Exemption from the legislation</b>  | <p>Small enterprises (those with fewer than 50 employees and either an annual turnover of up to 10 million euros, or total assets of up to 10 million euros over the worldwide group) do not have to comply with transfer pricing legislation (unless the transaction is with a non qualifying country – broadly tax havens)</p> <p>Medium-sized enterprises (not a small enterprise but with fewer than 250 employees, and has either an annual turnover of up to 50 million euros, or total assets of up to 43 million euros over the worldwide group) need not apply the legislation (unless the transaction is with a non qualifying country – broadly tax havens), but the UK revenue authorities can impose it at their discretion.</p>  |
| <b>Transfer pricing methods</b>  | <p>UK legislation does not specify any particular pricing method to use to adjust prices to an arms length basis. Therefore methods used in OECD guidelines would be appropriate.</p>  |
| <b>Transfer pricing documentation requirements</b>   | <p>In the event of a revenue authority enquiry into pricing it is necessary to produce documentation to be able to support the pricing adopted, and to show that thought has been given. It is advisable to have documentation readily available as it will always be asked for at an early stage in any revenue enquiry. Inadequate documentation may lead to penalties being imposed on any tax adjustments arising from enquiries. There is no specified format for documentation.</p>  |
| <b>Thin capitalisation</b>   | <p>UK legislation does not give any indication of permitted levels of debt to equity, and therefore businesses should consider what level of debt a third party might provide to the UK business as a stand alone company. In practice UK revenue authorities are relatively unlikely to query a 1:1 debt:equity ratio or 3:1 or higher interest cover ratio.</p> <p>It is possible to seek an advance thin capitalisation agreement with the UK revenue authorities to confirm that the debt levels are acceptable to the UK revenue authorities, though this tends to be sought in larger and more complex cases rather than all cases.</p>  |
| <b>Advance Pricing Arrangement (“APA”)</b>   | <p>This arrangement enables UK companies to agree in advance with the UK revenue authorities that their transfer prices are acceptable for a pre-determined period of time. However, the UK revenue authorities have indicated that APAs are only designed to assist taxpayers with 'complex' issues – generally where there is significant doubt as to the manner in which the arm's length principle should be applied or where there is difficulty in establishing a market comparable. APAs are therefore unlikely to be of everyday practical use to the average inbound or outbound investor.</p>  |

|  <b>Argentina</b> | <b>Transfer Pricing regulations and Obligations</b>   |
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| <b>Legislation</b>   | <p>In 1998, Argentina formally introduced the concept of transfer pricing, how to determine the same and Income Tax conditions to be applied in the case of transfer pricing (Income Tax Law - ITL). The existing legislation is currently regulated by General Resolution No. 1122/01 and the watchdog agency (AFIP).</p> <p>It provides the obligation to adjust the price of transactions for any of the methods defined by law as transactions between related persons or companies.</p> <p>The relationship between the local subject and foreign individuals may be of a corporate (or majority control of corporate capital) or economic nature (level of debt, or functional influences of any kind, contractual or otherwise).</p> <p>In addition, all transactions between countries or JURISDICTIONS where low or no taxation is applied are not considered to be in line with market practices, and therefore must be analysed within the framework of transfer pricing legislation.</p> <p>Although Argentina is not a member of the OECD, in practise the tax authorities recognize the organisation's guidelines concerning transfer prices, as they do not conflict with the ITL regulations.</p> |
| <b>Exemption from the legislation</b>  | <p>The legal assumptions of relationship are extremely broad, requiring the taxpayer to perform comprehensive analysis of the elements involved in any business relationship with foreign subjects in order to determine whether the economic relationship is verified or not.</p>  |
| <b>Transfer pricing methods</b>  | <p>The accepted methods for transactions between related parties and tax havens pursuant to the ITL are the Comparable Uncontrolled Price (CUP), Resale Price, Cost Plus, Profit Split and Transactional Net Margin Methods. The taxpayer selects the most appropriate method, but the AFIP may oppose the selection. The ITL does not prioritize methods. However, in some cases the AFIP does not view the TNMM method favourably. The local entity, (i.e., the entity based in Argentina) is that which is always subject to the analysis.</p>   |
| <b>Transfer pricing documentation requirements</b>   | <p>Taxpayers are required to file the following documentation with the AFIP: a special report including the key elements of the transfer pricing study; audited financial statements for the previous three years; independent verification by a Chartered Accountant of certain contents of the special report; completed and returned Annual Form 743; Form 742 (for the first six-month period of each fiscal year).</p> <p>Transfer pricing regulations require a significant quantity of updated documentation. Taxpayers are required to keep and eventually submit all the documents evidencing that prices, amount received and profit margins have been established on an arm's length basis. Furthermore, taxpayers are required to keep an annual transfer pricing study for transactions with related parties, deemed related parties and independent parties' transactions subject to transfer pricing methods.</p>  |
| <b>Thin capitalisation</b>   | <p>Applies only to interest on loans received from related individuals who reside in a country with which Argentina has signed agreements to avoid double taxation on income tax, which applies to interest with a lower effective rate than 35% of overall withholding tax interest rate for foreign recipients.</p> <p>Additionally the amount of financial liability associated with the creditor as of the date of the exercise should be greater than 200% of equity.</p> <p>Consequence:<br/>The financial interests equivalent to the proportion of the amount of liabilities which exceed the limit mentioned under equity shall not be deductible in the settlement of income tax for the Argentina based company, which are considered dividends paid.</p>  |
| <b>Advance Pricing Arrangement ("APA")</b>   | <p>APAs are not specifically addressed.</p>   |

|  <b>Bulgaria</b> | <b>Transfer Pricing regulations and Obligations</b> (1/2)   |
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| <b>Legislation</b>   | <p>Transfer pricing rules in Bulgaria are not fully developed.</p> <p>At present, the only direct legal act in terms of the transfer pricing is <b>Ordinance No H – 9 from August 14, 2006 defining the terms and the manners for application of the methods to define the market prices (Ordinance H-9)</b> (prom. SG 70 from August 29, 2006).</p> <p>Indirect source of law as regards the transfer pricing are:</p> <ul style="list-style-type: none"> <li>■ <b>The Tax Insurance Procedure Code (TIPC)</b> (Prom. SG No 105 from December 29, 2005, last amend SG No 93 from November 24, 2009) where are provided the definitions of "related persons" (§ 1, item 3); "market price" (§ 1, item 8) and "transfer pricing" (§ 1, item 9) ; and</li> <li>■ <b>The Corporate Income Tax Act (CITA)</b> (Prom. SG No 105 from December 22, 2006, last amend SG No 95 from December 01, 2009) which regulates that the transactions between related persons shall have the same tax effect as transactions concluded between notrelated persons (Art.15 of the CITA)</li> </ul> <p>The application of the methods for defining the market prices fully complies with the transfer price rules laid down in the OECD Transfer Pricing Guidelines from July 1995.</p> <p>Under the TIPC and Ordinance H-9 there are five methods to define the market price, namely:</p> <ul style="list-style-type: none"> <li>■ The Comparable uncontrolled price method ("traditional method");</li> <li>■ The Resale price method ("traditional method");</li> <li>■ The Cost plus method ("traditional method");</li> <li>■ The Transactional net margin method ("not traditional method");</li> <li>■ The Profit split method ("not traditional method").</li> </ul> <p>In general, the transfer pricing rules apply to transactions (both, domestic and international) between "related parties". In certain cases, however, the law regulates their application between "not-related parties".</p> |
| <b>Exemption from the legislation</b>  | <p>The legislation does not provide for exemption from the transfer pricing rules.</p>  |
| <b>Transfer pricing methods</b>  | <p>The "traditional" methods have priority over the "not-traditional" methods. The methods to define the market prices apply based on comparison of controlled and comparable not controlled transaction.</p> <p>Under the laws, the tax authority commences with an analysis of the prices, by following the method which is indicated by the tax payer. Nevertheless, where the tax authority establishes that the method which is indicated by the tax payer does not lead to the results which usually follow the normal commercial or financial relations between independent parties, the tax authority shall be entitled to apply other method, on its own discretion. A different method from those which is indicated by the tax payer shall be also applied by the tax authority in case that the tax payer does not provide documentation, which reflects the character and the scope of the respective transaction.</p>   |

|  <b>Bulgaria</b> | <b>Transfer Pricing regulations and Obligations</b> (2/2)   |
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| <b>Transfer pricing documentation requirements</b>   | <p>Although there are no mandatory documentation requirements, the Bulgarian tax authorities are permitted to request documentation of transfer pricing transaction during the course of an audit.</p> <p>When the Bulgarian tax authorities apply the methods for application of the market priced, they are authorized to collect (and analyze) additional information, different from those submitted by the obliged party, such as statistic, fund, custom and any other necessary information needed with regard to the analysis of the transactions. In addition, in order to define the market prices tax authorities shall be entitled to use the valuation of licensed appraisers and conclusions of experts.</p>  |
| <b>Thin capitalisation</b>   | <p>The thin capitalization rules which applies in Bulgaria provides that if the debt equity ratio does not exceed 3:1 as of the end of the respective calendar year, the interest costs can be deducted for tax purposes in full. If the debt equity ratio is higher than 3:1, then the maximum tax deductible portion could not exceed the amount of the interest income of the taxpayer and 75 (seventy five) percent of the accounting financial result prior to all expenses from interest payments and income from interest receivable. The portion that appears to be non-deductible in the current year can be carried forward and deducted in the following five years.</p> <p>The thin capitalization rule applies to all types of financing, with the exception of:</p> <ul style="list-style-type: none"> <li>■ any interest payments on financial leases and bank loans excluding where the parties to the transaction are related parties,</li> <li>■ any penalty charges for late payment and damages; and</li> <li>■ any interest unrecognized for tax purposes under the CITA.</li> </ul> |
| <b>Advance Pricing Arrangement (“APA”)</b>   | <p>The legislation does not provide for Advance Pricing Arrangement / rules.</p>  |



|  | The Republic of Chile  | Transfer Pricing regulations and Obligations |
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| <b>Legislation</b>   | <p>Up to now, Chile has had very limited experience in taxation issues concerning transfer pricing, mostly due to the fact that the lack of specialist highly trained professional teams and given that the tax authorities have not focused audit procedures on this matter as they have considered there are so few economic agents in our country as to establish comparables. Therefore, since the regulation was introduced in 1998, it has only been a permanent concern at an academic level, in congress, etc. without the authorities actually carrying out any fiscal action to focus on this issue.</p>   |  |
| <b>Transfer Pricing Methods</b>  | <p>The instructions delivered by National Tax Office do not mention the OECD criteria, as Chile was not a member of the organisation until very recently (it was incorporated in January, 2010), and therefore it can only be interpreted in a restrictive manner pursuant to Chilean case law, which are the following:</p> <p><b>a) Prices charged by the agency to head office or to another related agency or head office are:</b></p> <p>When prices are not adjusted to values which are charged by independent companies for similar transactions, the National Tax Office will be able to challenge said prices, taking the following criteria as a reference basis:</p> <ol style="list-style-type: none"> <li>1. Reasonable profitability for the nature of the transaction (CUPM)</li> <li>2. Production cost plus a reasonable profit margin (CPPM)</li> </ol> <p><b>b) Prices paid by the agency or branch or amounts due to the head office, its agencies or companies related to head office:</b></p> <p>When prices are not adjusted to values which are charged by independent companies for similar transactions, the National Tax Office will be able to challenge said prices, taking the following criteria as a reference basis:</p> <ol style="list-style-type: none"> <li>1. Reasonable profitability for the nature of the transaction (CUPM)</li> <li>2. Production cost plus a reasonable profit margin (CPPM)</li> <li>3. Resale prices to third party of goods acquired from an associated company, discounting profit margin observed in similar operations with or between independent companies (RPM)</li> </ol> |  |
| <b>Challenge by tax authorities</b>  | <p>For our National Tax Office authority, transfer pricing is the amount paid for goods or services exchanged between companies belonging to a transnational group.</p> <p>Operations subject to transfer pricing are: purchase and sale of goods, provision of services, technology transfer, or temporary use or enjoyment of a patent or trademark.</p> <p>The elements considered by our tax authority when analyzing or challenging TP procedures are the following: the background of the transaction according to reasonable analysis and logical agreement, enable the assignment of another transfer value, prices to be charged for goods and services exchanged between related companies.</p>  |  |
| <b>Applicable taxation to contested expense entries.</b>                         | <p>The highest income resulting from the application of contesting criteria by the National Tax Office, would be added to the taxable net income of First Category income tax, and at the same time, it will be considered part of FUT, and thereby subject to First Category income tax at a rate of 17% for the reporting period concerned and with Additional tax, in the period for which the highest income is allocated, or remittance of income overseas at a rate of 35%, minus 17% credit or grace period for payment of taxes.</p>   |  |



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COLOMBIA  
COSTA RICA  
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ECUADOR  
EL SALVADOR  
GREECE  
FRANCE  
GERMANY  
GUATEMALA  
HONDURAS  
ITALY  
LUXEMBOURG  
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