



Transfer Pricing Guide for Hungary

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Summary

As the Hungarian tax authority had a continuously growing focus on transfer pricing issues in the last years, in our Transfer Pricing Guide following during the next weeks we will present the main transfer pricing rules and the requirements of preparing transfer pricing documentation so that you can easier meet the exceptions of the legislator and the tax authority.



Taxpayers subject to the transfer pricing rules

Transfer pricing rules are applicable for transactions between related parties as defined by the Hungarian Act on Corporate Income Tax. If a company owns directly or indirectly more than 50 percent of the voting rights in another company, or holds by way of any agreement with another member of the company more than 50 percent of the voting rights in the company, or is entitled to appoint/dismiss the majority of the executive officers or the supervisory board members of another company, the companies will be deemed as related parties for income tax purposes. In addition, both Hungarian head office and foreign PEs/branches, as well as Hungarian PEs/branches and the foreign head office qualify as related parties; thus, the transfer pricing rules also apply to these enterprises.

Furthermore, the definition of related parties was amended as of 1 January 2015. As a result of the changes, the concept of common directorship was added to the definition. Thus, even if the ownership (voting) rights of one entity in another entity do not exceed 50 percent, but the entities in question have the same managing director, the two entities are subject to the obligations prescribed by transfer pricing rules.

Act on CIT defines the cases when entities are obliged to apply transfer pricing adjustments. According to paragraph 18 of the Act on CIT, transfer pricing adjustment is required if the price used between related parties based on their agreement is lower or higher than the consideration used by independent parties within comparative conditions. The profit before taxation has to be modified by TP adjustment in following cases:

- if the profit before taxation is higher due to the agreed consideration between related parties, TP adjustment has to be made as tax base decreasing items;
- if the profit before taxation is lower due to the agreed consideration between related parties, the tax base has to be increased by TP adjustments.

Reduction of the tax base is only allowed if both parties are in possession of a declaration signed by both declaring the difference between the arm's length price and the price used and the other party is subject to Hungarian corporate tax or a similar tax abroad.

The reduction can not be validated if the related party is considered as a controlled foreign company (CFC) .

TP adjustments are to be applied irrespective of other tax base increasing and decreasing items.



Methods and comparables

According to the Hungarian transfer pricing regulation, the comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the transactional net margin method (TNMM) and the profit split method are the designated methods.

Hungary does not establish priority of methods, the designated methods are equal. Other methods may be used after the listed ones have been eliminated.



Availability of benchmarking/comparative data

Limited local data is available in Hungary; however, the use of pan-European data is allowed for transfer pricing purposes. The tax authority also uses the data of these data bases for its reviews.

Section 18 of the Corporate Income Tax Act was modified as of 1 January 2015, to make the interquartile range applicable when determining the arm's length price range in certain (reasonable) cases. The new decree sets forth those cases in which the interquartile range is applicable (for example, application of a profitability-based method or another method for determining the arm's length price range, or preparation of a database-based benchmark analysis). However, the new legislation also includes some cases in which the interquartile range is not applicable (for example, if a functional analysis is available in a properly).



Documentation and tax return disclosures

As of 2012, transfer pricing documentation must be prepared for all related-party transactions (with the exception of transactions covered by a valid APA ruling, third-party cost recharges in unchanged amounts in certain cases, and minor transactions). For low value adding services, simplified documentation may be prepared if certain conditions are met.

As of 1 January 2010, taxpayers may choose to prepare documentation based on the “stand-alone” Hungarian documentation requirements or follow the EU master file concept (centrally prepared master file and country-specific documentation). The taxpayer’s choice to follow the master file concept must be indicated in the corporate income tax return submitted for the respective year. The relevant rules are incorporated in Decree no. 22/2009 on transfer pricing documentation requirements. The rules will be detailed in our following newsletters.





Documentation requirements

There are no specific rules under the Hungarian regulations regarding the annual updates; however, based on the general rules, the transfer pricing report must be updated if certain conditions have changed in the tested financial year, and those changes have an effect on the pricing mechanism. Furthermore, in a recent change, the Hungarian tax authorities prefer benchmark updates on a yearly basis.

The deadline for finalizing the corporate income tax return is 31 May for calendar year taxpayers. For non-calendar year taxpayers, the filing deadline is the last day of the fifth month following the last day of the financial year.

Documentation does not have to be submitted to the tax authorities; however, it should be provided immediately upon request. The statutory deadline for the preparation of transfer pricing documentation is the filing date of the corresponding year's corporate income tax return.

Expiration date of the transfer pricing documentation is five years from the last day of the year when the concerning tax return is due.

Transfer pricing documentation and supporting documentation may be compiled in languages other than Hungarian, but the taxpayer is liable to present a Hungarian translation of documentation prepared in languages other than English, French, and German, at the tax authorities' request, by the deadline specified.



Penalty on transfer pricing assessment

If the tax base adjustments required by the tax authority based on transfer pricing rules result in tax default, the standard assessments — tax penalty and late payment interest — will be due in accordance with the general rules.

Furthermore, if the taxpayer fails to present appropriate transfer pricing documentation upon the request of the tax authorities, it may be fined up to HUF 2 million per related-party transaction.

In case of repeated violations of the documentation obligation, the taxpayer may be penalized up to HUF 4 million, and in case of repeated default related to the same transfer pricing report, the tax authority may impose default penalty even up to HUF 16 million per related-party transaction.

Late payment interest may be levied based on the additional tax assessed by the tax authority. No late payment interest should be assessed on default penalties levied due to not having appropriate transfer pricing documentation.

If you need further information related to the transfer pricing rules, please do not hesitate to contact our experts.

Contact us for more about transfer pricing in Hungary!

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