

**accace**

# 2018 Transfer Pricing Overview

## Romania



[romania.office@accace.com](mailto:romania.office@accace.com)

[www.accace.com](http://www.accace.com) | [www.accace.ro](http://www.accace.ro)

## Contents

|   |           |
|---|-----------|
| <b>Introduction</b>                     | <b>3</b>  |
| <b>Applicable legislation</b>           | <b>4</b>  |
| <b>Arm´s length principle</b>           | <b>5</b>  |
| <b>Related parties</b>                  | <b>6</b>  |
| <b>Documentation</b>                    | <b>7</b>  |
| Content                                 | 7         |
| General rules                           | 7         |
| Tax payers categories                   | 7         |
| Deadlines                               | 8         |
| <b>Methods</b>                          | <b>9</b>  |
| Methods based on comparison of prices   | 9         |
| Methods based on comparison of profits  | 9         |
| <b>Advance Pricing Agreements (APA)</b> | <b>10</b> |
| <b>Penalties</b>                        | <b>11</b> |
| <b>ABOUT ACCACE</b>                     | <b>12</b> |





## INTRODUCTION

Companies that carry out transactions with related parties often face financial, tax and legal obstacles that impact their daily business activities. Therefore, in order to comply with domestic and international Transfer Pricing regulations and to ensure a smooth transfer of goods and services among related parties, it is necessary to have a sound and coherent Transfer Pricing policy.

General Transfer Pricing rules have been implemented in the Romanian legislation in 2003 via the Tax Code, mentioning arm's length principle and the specific methods provided by OECD in order to determine the market value of transactions between related parties.

Currently, Romanian companies are obliged to keep Transfer Pricing documentation for both cross-border and domestic transactions. According to the Romanian tax legislation, all related parties are obliged to prove the method applied for setting the prices of controlled transactions (domestic or cross-border) between related parties and keep a relevant documentation justifying this method.

In recent years, the number of tax inspections on Transfer Pricing rapidly increased, that is why we recommend to focus on this area and especially on preparation of the proper Transfer Pricing documentation.



## APPLICABLE LEGISLATION

- Romanian Fiscal Code (art. 11(4) of Law 227/2015)
- Methodological Norms for the application of the Fiscal Code
- Double Tax Treaties
- OECD Transfer Pricing Guidelines
- Order No. 222/2008 regarding the content of the Transfer Pricing documentation (for transactions up to January 1<sup>st</sup>, 2016)
- Order 442/2016 regarding Transfer Pricing thresholds, deadline and content of the Transfer Pricing file and the adjustment procedure (for transactions after January 1<sup>st</sup>, 2016)
- Order 3735/2015 regarding the issuance and amendment of advance pricing agreements
- Fiscal Procedure Code – Law 207/2015





## ARM'S LENGTH PRINCIPLE



The arm's length principle is based on a comparison of the terms which were agreed in any business or financial transactions between related parties and the terms which would have been agreed between unrelated parties in similar business or financial transactions, in comparable circumstances.

The review of comparability of the terms is made by confronting, in particular, the businesses conducted by the parties, including, but not limited to, their production, assembly works, research and development, purchase and sale, the scope of their business risks, the characteristics of the compared property or the service, the terms agreed between the parties to the transaction, the economic environment in the marketplace, and the business strategy. The terms shall be considered comparable if there is no difference at all or if only minor adjustments would compensate any such difference.

If there is a difference between the prices agreed in transactions of related parties and the prices applied between unrelated parties in comparable business transactions, the tax authorities may adjust the taxable base of the related parties involved in the transactions.

## RELATED PARTIES

Any Romanian tax payer that carries out transactions with related parties, for both domestic and cross border transactions, is subject to Transfer Pricing rules.

Related parties are defined as:

1. An individual is affiliated with another individual if such person is spouse or relative up to the third degree, inclusive. Between affiliated persons, the price at which tangible or intangible goods are transferred or services are rendered is transfer price.
2. An individual is affiliated with a company if the individual owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% from the value/number of shares or from the voting rights in the company, or effectively controls the company.
3. A company is affiliated with another company if at least:
  - The first company owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% of the value/number of shares or voting rights in the other company, or if it controls the company;
  - The second company owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% from the value/number of shares or voting rights in the first company;
  - A third company owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% by the value/number of shares or voting rights both in the first and in the second company.



# DOCUMENTATION



## Content

Transfer Pricing documentation represents a set of information, data and facts which demonstrate and explain the method of taxpayer's price formation in controlled transactions. Transfer Pricing documentation, in general, consists of two parts: a general one and a specific one.

The general part contains a set of information giving an overall picture of the group of related parties, while the specific part contains specific information related to the taxpayer and to the controlled transactions in which the taxpayer is engaged.

## General rules

Transfer Pricing documentation shall be prepared for each controlled transaction separately or for each group of aggregated controlled transactions. Transfer Pricing documentation shall be prepared in Romanian. Transfer Pricing documentation shall be kept for the respective tax period.

**Even if any Romanian tax payer should prepare a Transfer Pricing documentation, there are some differences when it comes to deadlines and timing, as detailed in the following two subsections.**

## Tax payers categories

1. Large tax payers are obliged to prepare the Transfer Pricing documentation if they carry out transactions with related parties exceeding the following thresholds:
  - EUR 200,000 – cashed in/paid interest for financial services
  - EUR 250,000 – services rendered/received towards/from related parties
  - EUR 350,000 – acquisitions/sales of tangible/intangible assets



2. Large tax payers that do not meet the above thresholds or medium or small tax payers are obliged to prepare the Transfer Pricing documentation if they carry out transactions with related parties exceeding the following thresholds:
  - EUR 50,000 – cashed in/paid interest for financial services
  - EUR 50,000 – services rendered/received towards/from related parties
  - EUR 100,000 – acquisitions/sales of tangible/intangible assets
3. The other tax payers who do not fall in any of the above-mentioned categories are not obliged to prepare the Transfer Pricing documentation, however they should document that the arm's length principle is observed in the dealings with the related parties in line with financial and tax applicable principles.

## Deadlines

Based on the classification detailed above, the deadlines for drafting/presenting the Transfer Pricing documentation are as follows:

- Tax payers in category 1 should present the Transfer Pricing documentation within 10 days of the tax authorities' request.
- Tax payers in category 2 should present the Transfer Pricing documentation within 30-60 days of the tax authorities' request. The tax payers may ask for maximum 30 day postponement.

**Due to the short preparation period, it is recommended having the documentation prepared in advance.**



The word "METHODS" in a bold, white, sans-serif font, centered on an orange rectangular background.

Any traditional and other Transfer Pricing methods according to OECD Transfer Pricing Guidelines can be used while the principle of the best method shall be applied. Also, a combination of more methods is possible if necessary. If appropriate, other methods may be used, too.

### Methods based on comparison of prices

- **Comparable uncontrolled price method** - used mainly for transactions with tangible and intangible assets and financial transactions
- **Resale minus method** - used mainly for distributors of products
- **Cost plus method** - used mainly for transactions related to manufacturing and sale of semi-finished products/finished products which do not include high added value

### Methods based on comparison of profits

- **Net trading margin method** - mainly for comparable transactions that significantly differs in functions
- **Profit split method** - suitable for very integrated transactions when the parties contribute in a unique way or they possess valuable tangible asset



A close-up photograph of a hand holding a silver fountain pen, signing a document. The document has some text and a signature. The background is slightly blurred, showing a desk with a pair of glasses.


## ADVANCE PRICING AGREEMENTS (APA)

Advance Pricing Agreements (APA) are available under Romanian legislation. APA are valid up to 5 years with possibility of extension in case of long term contracts.

For large taxpayers and other taxpayers with consolidated value of transactions higher than EUR 4,000,000, the fee is EUR 20,000 for the initial APA and EUR 15,000 for amending the initial APA.

For other taxpayers and consolidated value of transactions lower than EUR 4,000,000, the fee is EUR 10,000 for the initial APA and EUR 6,000 for amending the initial APA.



The word "PENALTIES" in a bold, white, sans-serif font, centered within a solid orange rectangular background.A photograph showing a person's hands in a dark suit jacket, one hand resting on a black briefcase and the other on a grey briefcase, set against a blurred background of a business meeting.

For non-compliance regarding the preparation and presentation of the Transfer Pricing documentation, penalties are applicable:

- For large and medium tax payers – RON 12,000-14,000 (approx. EUR 2,600-3,050)
- Other tax payers – RON 2,000-3,500 (approx. EUR 430- 750)

**Separately, adjustment of tax base plus late payment interest and penalties may be applicable.**

#### Disclaimer

Please note that our material has been prepared for general guidance on the matter and does not represent a customized professional advice. Furthermore, because the legislation is changing continuously, some of the information may have been modified after the material has been released and Accace does not take any responsibility and is not liable for any potential risks or damages caused by taking actions based on the information provided herein.

# *accace*

## ABOUT ACCACE

With more than 550 professionals and branches in 13 countries, Accace counts as one of the leading outsourcing and advisory services providers in Central and Eastern Europe. During the past years, while having more than 2,000 international companies as customers, Accace set in motion its strategic expansion outside CEE to become a provider with truly global reach.

Accace offices are located in the Czech Republic, Hungary, Poland, Romania, Slovakia, Ukraine, Bosnia and Herzegovina, Croatia, Germany, Macedonia, Montenegro, Serbia and Slovenia. Locations in other European countries and globally are covered via Accace's trusted network of partners.

More about us: [www.accace.com](http://www.accace.com) | [www.accace.ro](http://www.accace.ro)

[Subscribe to our newsletter!](#)



## CONTACT US!

Tel.: +40 314 050 440

E-mail: [romania.office@accace.com](mailto:romania.office@accace.com)