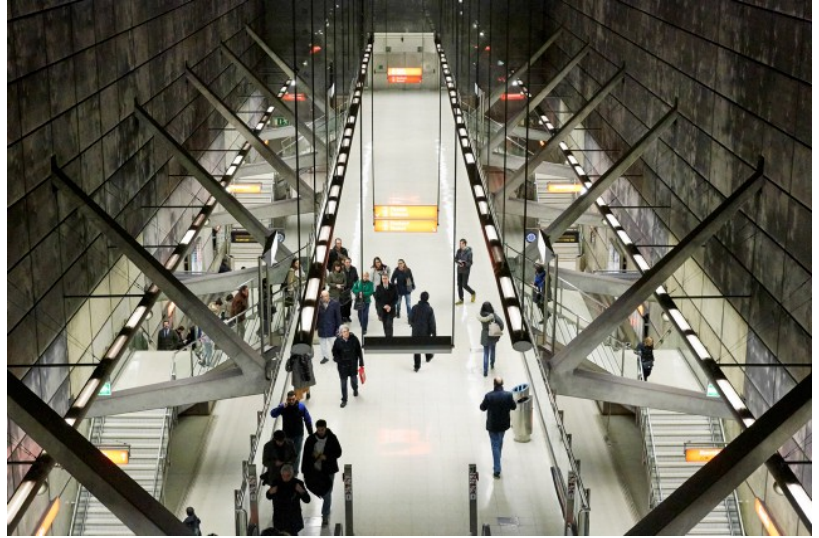


Transfer Pricing

*New Rules
New Challenges
New Possibilities*



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Transfer Pricing

- ✓ Are you part of a group of companies?
- ✓ Do you carry out controlled transactions with other companies in your group?

If yes, then transfer pricing is of interest to you.

New Rules on Transfer Pricing

The new draft administrative instruction on CIT, expected to be enforced soon in Kosovo, includes new rules on Transfer Pricing area.

The aforementioned rules, highlight the following:

- ✓ The intra-group transactions should be performed as per **arm's length principle**.
- ✓ A taxpayer is subject to Transfer Pricing rules and documentation, if it performs controlled transactions with its **related parties**.

Parties are considered to be as “*related parties*” when one of the parties:

- Holds or controls fifty percent (50%) or more of the shares or voting rights in the other person's company;
- Can control the structure of the board of directors of the other party;
- Has the right to distribute 50% or more of the profits of the other party;
- The other party is a relative (i.e. husband, wife, children or parent), or a related party to a relative, or

- Based on facts and verified circumstances, controls the business decisions of the other party.

✓ Taxpayers subject to Transfer Pricing rules must have in place:

i. The Transfer Pricing documentation

The Transfer Pricing documentation includes documented information and analysis, which verifies that the taxpayer's controlled transactions are performed in line with the arm's length principle.

Transfer Pricing documentation must include the following information:

- Summary of business operations of the taxpayer and the organizational scheme of the company;
- Description of the organizational structure of the group in which the taxpayer is a member of;
- Description of controlled transaction(s);
- Description of the methodology used in selecting the most suitable Transfer Pricing method(s);
- Comparability analysis including functional and risk analysis for each of the controlled transactions;
- Economic analysis for each of the controlled transaction(s);
- Details on any previous APA (Advanced Pricing Agreement) agreement, or similar agreements applicable in controlled transaction(s);
- Conclusion on the compliance of the controlled transaction(s) as per the arm's length principle.

Transfer pricing documentation has to be provided to the tax administration *within 30 days* upon their request.

ii. Annual Controlled Transactions form

Taxpayers engaged in controlled transactions above a specified threshold are required to submit an annual controlled transactions form. The draft instruction defines the threshold to be 50,000 EUR.

The format and deadline for submission of such controlled transactions forms will be defined later.

✓ The consistency of controlled transactions with the arm's length principle is determined by applying the most appropriate transfer pricing method from the five methods provided below:

- i. Comparable Uncontrolled Price Method;
- ii. Resale Price Method;
- iii. Cost Plus Method;
- iv. Transactional Net Margin Method;
- v. Transactional Profit Split Method.

✓ Controlled transactions are not subject to tax adjustments if the financial indicator, such as the profit, sales margin or price, deriving from the controlled transactions tested under the appropriate transfer pricing method is within the market range.

What are the consequences of non-compliance?

- ✓ If the price adjustments based on Transfer Pricing principles affect the taxpayer's taxable results, it will be subject to additional tax liabilities and penalties (for example VAT and CIT).
- ✓ The current legislation does not yet provide for any specific penalties in case of transfer pricing adjustments or failure to submit the Annual Controlled Transactions form. Therefore, in case of an adjustment, the general tax penalties would apply. Additional local regulations are expected to be issued by Kosovo's government.

[Source: Draft Administrative Instruction for implementing the law on CIT no. 05/L-029 on Corporate Income Tax]

What are the benefits of a proactive approach?

- ✓ Preparing documentation in advance is the best defence against the potential negative consequences of transfer pricing inspections;
- ✓ Gaining awareness of exposure areas so as to take corrective measures before a transfer pricing inspection starts;
- ✓ A formalised transfer pricing policy facilitates a clear and structured picture of your inter-company transactions, pricing and invoicing mechanism;
- ✓ A transfer pricing analysis leads to a better awareness of your supply chain and identification of optimisation opportunities.



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