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Introduction
Slovene transfer pricing legislation, which generally embraces the Organisation for Economic Co-operation and Development (OECD) Guidelines, applies to cross-border and domestic inter-company transactions. Supporting transfer pricing documentation has been required since 2005. As of 2006, the transfer pricing documentation for cross-border inter-company transactions must be prepared concurrently; documentation for domestic inter-company transactions needs to be submitted only upon request from the tax authorities in the course of a tax inspection.

The introduction of Slovenia’s transfer pricing rules has been accompanied by efforts to train Slovene tax inspectors in transfer pricing analysis using consultants from foreign revenue authorities.

Statutory rules
Definition of taxable basis between related parties
The arm’s-length principle is described in Article 16 of the Slovene Corporate Income Tax Act (CITA), which is valid from 1 January 2007. In establishing a taxable person’s revenues and expenses, the pricing of transfers of assets (including intangible assets) between related parties and inter-company services should not be less than the arm’s-length amount for revenues, and not greater than the arm’s-length amount for expenses.

Methods for determining the arm’s-length price
Comparable market prices are determined by one or a combination of the methods specified in the OECD Guidelines. The traditional transactional methods specified in the OECD Guidelines include the comparable uncontrolled price (CUP) method, the resale price method and the cost plus method.

Where these traditional transaction methods cannot be applied, the transactional profit methods (transactional net margin method and profit split method) may be used.

The Slovene Ministry of Finance issued regulations on transfer pricing which came into force on 1 January 2007. These regulations set out in more detail the application of the five pricing methods in a manner similar to that outlined in the OECD Guidelines.

Definition of related parties
Provisions in Articles 16 and 17 of the CITA differentiate between the definition of related parties, depending on whether the transactions are cross-border or domestic.

Cross-border controlled transactions are transactions between a taxable person (resident) and a foreign entity (non-resident) related in such a way that:
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• the taxable entity directly or indirectly holds 25% or more of the value or number of shares of a foreign entity through holdings, control over management, supervision or voting rights; or controls the foreign entity on the basis of a contract or terms of transactions different from those that are or would be achieved in the same or comparable circumstances between unrelated parties

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• the same entity directly or indirectly holds 25% or more of the value or number of shares, or participates in the management or supervision of the taxable entity and the foreign entity, or of two Slovene taxable entities, or they are under the same control on the basis of a contract or transaction terms that differ from those that are or would be agreed in the same or comparable circumstances between unrelated parties, and

• the same individuals or members of their families directly or indirectly hold 25% or more of the value or number of shares, holdings, voting rights or control over the management or supervision of the taxable entity and the foreign entity, or of two Slovene tax resident entities; or they are under their control on the basis of a contract or transaction terms that differ from those that are or would be agreed in the same or comparable circumstances between unrelated parties.

Domestic inter-company transactions are transactions between two taxable resident persons. Residents shall be related parties if either of the following conditions exists:

• They are related in terms of capital, management or supervision by virtue of one resident, directly or indirectly, holding 25% or more of the value or number of shares, equity holdings, control, supervision or voting rights of the other resident; or controls the other resident on the basis of a contract in a manner that is different from relationships between non-related parties.

• The same legal or natural persons or their family members directly or indirectly hold 25% or more of the value or number of shares, holdings, control, supervision or voting rights; or control the residents on the basis of a contract, in a manner that is different from relationships between nonrelated parties.

Related parties are also taxable and natural persons performing business, provided that such natural persons (or their family members) hold 25% or more of the value or number of shares or equity holdings; or participate in the management, supervision or voting rights of the taxable person; or control the resident on the basis of a contract in a manner that is different from relationships between non-related parties.

Notwithstanding the above provisions, the tax base may be adjusted only in cases when one of the residents: (1) has an unsettled tax loss from previous tax periods in the tax period concerned, or (2) pays tax at a rate that is lower than the standard corporate tax rate of 18%\(^1\), or (3) is exempt from paying corporate tax.

**Documentation**

A taxable entity must maintain information about related parties, the types and extent of business transactions with these entities, and the determination of comparable

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1  Statutory tax rate intended to be reduced to 15 % within the next 3 years.
market prices as prescribed by the Tax Procedure Act (TPA). The provisions of the TPA on transfer pricing follow the EU Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD). Therefore, companies need to prepare a masterfile and country-specific documentation as described below:

- The masterfile should contain at least the description of the taxable entity, group structure, and type of relationship, transfer pricing system, general business description, business strategy, general economic and other factors and competitive environment.
- The country-specific documentation should contain information about transactions with related entities (description, type, value, terms and conditions), benchmark analysis, functional analysis, terms of contracts, circumstances that have an influence on transactions, application of the transfer pricing method used and other relevant documentation.

The masterfile must be assembled concurrently, and no later than the submission of the tax return. The Ministry of Finance determines what information should be provided upon submission of the tax return.

If the masterfile is not in the Slovenian language, it must be translated on the request of the tax authorities within a minimum of 60 days.

**Other regulations**

The Slovene Ministry of Finance has issued explanatory regulations on transfer pricing and regulations on reference interest rates.

The regulations on reference interest rates define a methodology for determining a reference interest rate on inter-company loans between related parties, to be taken into consideration when determining revenues and expenses. The reference interest rate is the sum of a variable part of an interest rate (e.g. EURIBOR, LIBOR-USD) and a mark-up expressed in basis points, which is determined for a particular maturity period and depends on the credit rating of the taxable person (i.e. borrower).

Regulations on transfer pricing replaced the regulations on determination of comparable market prices and introduced some important changes. The most important changes are provisions on the use of cost contribution agreements and the use of the inter-quartile range. Regulations on the determination of comparable market prices (valid until 1 January 2007) prescribed the use of the arithmetic mean, while the new regulations on transfer pricing declare that the inter-quartile range should be used when determining an arm’s-length price. Moreover, the use of multiple-year data is accepted. In addition, the regulations set out situations where business interdependence can arise without one party having at least a 25% share in the other party.

The new regulations also pay attention to the loss positions of related entities resulting from inter-company transactions. This approach tests whether comparable unrelated-party transactions would be profit-making by considering whether an independent entity would be in a loss position under the same circumstances.
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**Disclosure**
Entities that have transactions with related parties must supply in the supplement to the corporate tax return certain information on the value of controlled transactions.

Supplements to the tax return concerning controlled transactions disclose the names of the entities involved, the type of relationship, and the total value of the controlled transactions for each related entity separately. A supplement containing information on interest rates between related parties discloses the total value of received and granted loans, classified by each related entity, and specifies whether a related entity has an adjusted tax base. The supplement must be completed only when the total value of received and granted loans in the tax period amounts to more than 50,000 euros (EUR) per related entity, as provided by regulations on the corporate income tax return, in force as of 29 May 2007.

**Legal cases**
The Slovene tax authorities began to perform tax inspections concerning the fulfilment of transfer pricing documentation requirements in the second half of 2006. So far, we are not aware of any legal cases on transfer pricing.

**Burden of proof**
Since documentation requirements for transfer pricing came into force in Slovenia, the burden of proof is placed on the taxpayer. Taxpayers must keep specific documentation proving that they apply transfer prices in line with the arm's-length principle. If proper transfer pricing documentation is in place, together with the corporate tax return, the burden of proof shifts to the tax authority.

When examining transfer prices, the Slovene tax authorities must determine the arm's-length nature of inter-company transactions using the method(s) previously applied by the taxpayer, provided that the taxpayer submitted prepared documentation, used one of the recognised methods and that the method used is supported by appropriate calculations.

**Tax audit procedures**
To date, the Slovene tax authorities have raised the transfer pricing issue only in the context of regular tax audits. However, recently we have experienced that Slovene tax authorities have also commenced specific transfer-pricing-oriented audits.

**Additional tax and penalties**
Any entity engaged in intra-group transactions must be able to support the prices agreed between related parties to meet the arm's-length criteria. Failure to comply with these laws may result in significant tax exposure and penalties.

Sanctions include adjustment of the tax base to increase the tax charge (or reduce a tax loss), as well as the following penalties:

- 30% of underpaid tax for micro and small legal entities (underpaid tax from EUR 1,500 to EUR 150,000).
- 45% of underpaid tax for medium and large companies (underpaid tax from EUR 2,000 to EUR 300,000).
- Additional fines of up to EUR 5,000 for the responsible representative of the entity.
For taxes not paid within prescribed deadlines, late payment interest is levied at a daily interest rate of 0.0274%.

If adequate transfer pricing documentation is not in place, the penalty is EUR 1,200 to EUR 15,000 for micro and small legal entities, EUR 3,200 to 30,000 for medium and large legal entities and up to EUR 4,000 for the responsible representative.

**Resources available to the tax authorities**
The Slovene tax authorities have a specialised group that is trained to perform transfer pricing examinations.

**Use and availability of comparable information**
Comparable information is required to support the arm’s-length nature of related party transactions and should be included in the taxpayer’s transfer pricing documentation. The arm’s-length nature of transactions with related parties can be demonstrated by applying one or more of the prescribed acceptable methods. Acceptable methods include the traditional OECD methods or any combination of them. The comparable uncontrolled price method is the preferred method as defined in the regulations on transfer pricing. Additionally, the comparable uncontrolled price method, resale price method and cost plus method are preferable methods compared to the profit split method and transactional net margin method. In practice, it is often not easy to obtain information on comparable uncontrolled prices.

The Slovene tax authorities have access to the Amadeus database and local databases containing financial information for Slovene companies, such as GVIN and IBon. In accordance with the Slovenian Companies Act, companies and sole proprietors are required to submit annual reports that are publicly available.

The Slovene tax authorities have a preference towards using local comparable companies for benchmarking purposes, although a Pan-European benchmark may also be accepted.

**Risk transactions or industries**
Transfer pricing is an area of increasing interest for the Slovene tax authorities. So far, they have not concentrated on any particular industry, but special attention has been directed towards management fees and royalties charged between related parties.

**Advance pricing agreements (APA)**
Currently, there is no legal basis for an APA in Slovenia. Although the new tax legislation contains provisions on binding tax rulings in certain circumstances, obtaining a binding ruling for transfer pricing purposes is not possible.

**Anticipated developments in law and practice**
Although the Slovene tax authorities have not been considered aggressive, their approach to transfer pricing issues is starting to change. The expanded practical training and experience of tax inspectors is raising the profile of transfer pricing issues in tax audits. It is also expected that the tax authorities will have to deal with a higher number of complex transfer pricing issues.
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OECD issues
Slovenia joined the OECD in 2010. Transfer pricing legislation generally reflects the arm's-length principle and methods provided by OECD Guidelines.

Joint investigations
There is no evidence of joint investigations.

Thin capitalisation
Thin capitalisation provisions restricting the tax deductibility of interest expenses on related party loans came into force in Slovenia on 1 January 2005. The tax deductibility of interest payments on loans granted by a related party (a party that owns at least 25% of the shares or voting rights in the taxpayer or vice versa) is generally restricted, where the amount of loans exceeds a certain multiple of the shareholder's share in the equity of the taxpayer in a particular tax period (see below regarding the debt-to-equity ratio). These rules do not apply to banks and insurance companies.

Loans from third parties for which the shareholder issues a guarantee, and loans granted by a bank that are linked to a deposit of the shareholder in the same bank, are also subject to the thin capitalisation rules. The size of the shareholder's share in the equity of the loan recipient is calculated as the average of the subscribed capital, retained net profits and the capital reserves held on the last day of each month in the taxation period.

The Slovenian tax provisions related to thin capitalisation are less rigorous than in some comparable EU tax jurisdictions.

The applicable debt-to-equity (D/E) ratio is as follows:

- 5:1 D/E ratio applies for the year 2011.
- 4:1 D/E ratio applies for subsequent years, starting from 2012.

Management services
For companies receiving management services, the general rules on the deductibility of expenses apply. In effect, this means that the payment is tax deductible where the company receives a benefit for the service provided, the payment is connected with the company's trade, and the cost does not exceed an arm's-length price.

A company providing management services should be remunerated for those services on an arm's-length basis. Usually, a company providing services is remunerated on a cost plus basis to represent a market value for the provision of the services. A service provider may, in general, divide its fee between the recipients of the services by applying a direct charge method or an indirect charge method. The direct charge method is used only when there is a clear connection between the services rendered by the management services provider and the costs resulting from the provision of those services for every recipient within the group. In all other cases, an indirect charge method is allowed.