

Moldova introduces its first transfer pricing legislation

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In brief

The Republic of Moldova recently formally introduced its first transfer pricing regulations, which follow the OECD's Transfer Pricing Guidelines.

Law no. 356 of December 29, 2022 introduced the transfer pricing concept in the Moldovan Tax Code along with the general rules related to transfer pricing reporting and documentation requirements.

The legislation will enter into force on January 1, 2024. In the months following the approval of the legislation, the government intends to provide further guidance on the contents of the transfer pricing documentation and details regarding the application of the law.

Action item: Multinational enterprises operating in Moldova and Moldovan-headquartered groups should review their related-party transactions and documentation in view of compliance with the arm's length principle and further transfer pricing documentation requirements. Where appropriate, such groups should consider adjusting their operational and pricing models in seeking to avoid potential transfer pricing disputes with the Moldovan tax authorities and sanctions due to noncompliance with the new regulations.

In detail

The new legislation provides guidance as to the subjects that fall under the new transfer pricing rules, as well as the thresholds that should be considered, the types of transactions to be monitored when calculating the thresholds, accepted transfer pricing methods, procedures for the elimination of double taxation, and penalties in cases of noncompliance. The key requirements provided under the Law no. 356/2022 are highlighted below.

Definition of related parties

From the transfer pricing perspective, two legal entities are considered related parties provided:

- One entity holds directly or indirectly (including the shareholdings of related entities) a minimum of 25% of shares with voting rights in the other entity or effectively controls the other entity, and
- One entity holds directly or indirectly (including the shareholdings of related entities) a minimum of 25% of shares with voting rights in the two entities.

An individual is a related party with a legal entity if he/she holds directly or indirectly, including the shareholding of related entities, a minimum of 25% of shares with voting rights in the legal entity or he/she effectively controls the legal entity. Two individuals are related parties provided that they are spouses or relatives up to the second degree.

The arm's length principle

The arm's length principle is defined in line with the general OECD definition and is applicable to all related-party transactions — i.e., transactions carried out between two Moldovan related legal entities, as well as transactions with nonresident related parties.

Note: The burden of proof lies with the taxpayer, who should prepare transfer pricing documentation in order to defend the arm's length nature of its transfer prices.

Transfer pricing methods

The legislation provides that taxpayers may use the following transfer pricing methods for the purpose of attesting compliance with the arm's length principle:

- Comparable uncontrolled price method
- Cost-plus method
- Resale price method
- Transactional net margin method
- Profit split method
- Any other method as recognized by OECD Transfer Pricing Guidelines.

The Moldovan tax authorities should first assess the arm's length character of the controlled transaction by using the method applied by the taxpayer. However, in case the tax audit reveals that the arm's length principle is not observed, the Moldovan tax authorities may change the method proposed by the taxpayer.

Materiality thresholds and other legal requirements

The Moldovan government has set two materiality thresholds to be considered with regard to taxpayers that fall under transfer pricing requirements:

- Taxpayers carrying out transactions with related parties, where the total annual value of related-party transactions is equal or exceeding MDL 20 million (approx. USD 1 million), must prepare and present the information on related-party transactions and must prepare and present the transfer pricing file **only at the request of the tax authorities**.
- Taxpayers carrying out transactions with related parties, where the total annual value of related-party transactions is equal or exceeding MDL 50 million (approx. USD 2.6 million), must prepare and present the information on related-party transactions and the transfer pricing file on a contemporaneous basis.

Documentation requirements

A Moldovan taxpayer must prepare two types of documents for transfer pricing purposes:

- A transfer pricing form, generically named "information on related-party transactions," due by the 25th day of the third month following the end of the tax period.

- A transfer pricing file (due dates depend on the type of taxpayer as further established by the secondary legislation).

Penalties

According to the new legislation, the following penalties will apply:

- Late presentation of the information on related-party transactions is sanctioned with a fine from MDL 30,000 to MDL 50,000 (approx. USD 1,500 to USD 2,600).
- Presentation of incorrect information on related-party transactions (similar to a tax return) that led to the reduction or avoidance of tax obligations are sanctioned with a fine of MDL 150,000 to MDL 200,000 (approx. USD 7,800 to USD 10,400).
- Failure to present the information on related-party transactions is sanctioned with a fine from MDL 300,000 to MDL 500,000 (approx. USD 15,600 to USD 26,000).
- Late presentation of the transfer pricing file is sanctioned with a fine from MDL 30,000 to MDL 50,000 (approx. USD 1,500 to USD 2,600).
- Presentation of the transfer pricing file with incorrect information is sanctioned with a fine of MDL 150,000 to MDL 200,000 (approx. USD 7,800 to USD 10,400).
- Failure to present the transfer pricing file is sanctioned with a fine from MDL 300,000 to MDL 500,000 (approx. USD 15,600 to USD 26,000).

Entry into force

The new transfer pricing rules will enter into force starting January 1, 2024. In the following months, the government will elaborate further guidance and secondary legislation with regard to implementation of the law and the content of the transfer pricing file.

The takeaway

To adequately prepare for the implementation of the new transfer pricing legislation, taxpayers carrying out transactions with Moldovan related parties should review existing transfer pricing policies or take step to intended to implement compliant transfer pricing policies (as the case may be) starting with 2023. Also, the existing contractual framework governing intragroup transactions performed with Moldovan related parties should be reviewed and updated in line with the recently introduced legal requirements in seeking to achieve compliance with the new transfer pricing rules.

Let's talk

For a deeper discussion of how Moldova's new transfer pricing legislation might affect your business, please contact:

Transfer Pricing – Romania & Moldova

Ionut Simion, Bucharest
+40 722 316 531
ionut.simion@pwc.com

Monica Todose, Bucharest
+40 723 411 819
monica.todose@pwc.com

Anastasia Dereveanchina, Bucharest
+40 722 616 668
anastasia.dereveanchina@pwc.com

Transfer Pricing Global and US Leaders

Horacio Peña, *New York*
Global Transfer Pricing Leader
+1 917 478 5817
horacio.pena@pwc.com

Paige Hill, *New York*
US Transfer Pricing Leader
+1 917 923 8412
paige.hill@pwc.com

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