

## **BULGARIA**

### **TRANSFER PRICING PROFILE**

#### **1. Reference to the Arm's Length Principle**

Chapter IV, Article 15 of the Corporate Income Tax Act (Transactions Involving Related Persons) provides that where related persons carry out their commercial and financial relations under conditions, which influence the amount of the taxable basis, differing from those between unrelated persons, the taxable basis shall be determined and taxed under those conditions which would have been made between unrelated persons.

The above provision also applies to transfers between a permanent establishment of a foreign enterprise and the other parts of that enterprise which are situated outside the territory of the country, in accordance with the specificity of the business activity of the permanent establishment (Art. 17 of the Corporate Income Tax Act).

Paragraph 1, subparagraph 8 of the Supplementary Provisions of the Tax and Social Insurance Procedure Code stipulates that "Market Price" shall be the amount, without the value added tax and the excise duties, which shall be paid under the same conditions for an identical or similar goods or service in a transaction between persons which are not related.

Paragraph 1, subparagraph 9 of the Supplementary Provisions of the Tax and Social Insurance Procedure Code stipulates that "Transfer Prices" shall be present, when in the trade or the financial relations between related persons have been made or imposed conditions, different from these, which would have been made between independent persons, and which influence on the amount of their profits or income.

#### **2. Reference to the OECD Transfer Pricing Guidelines**

No specific reference in the tax legislation. However OECD Transfer Pricing Guidelines are accepted as the most relevant tool to set out the principles and standards for applying the arm's length principle as pointed out in the Transfer Pricing Guidance (2008) issued by the National Revenue Agency. Principles and recommendations in the OECD Transfer Pricing Guidelines are used as a basis for the Bulgarian Regulation on the determination of the arm's length prices (Regulation H-9 of 29/08/2006).

#### **3. Definition of related parties**

According to Paragraph 1, subparagraph 3 of the Supplementary Provisions of the Tax and Social Insurance Procedure Code the term "Related Persons" means:

- a) the spouses, the relatives of direct line of descent, collateral relatives – to third degree inclusive; and in-law lineage – to second degree inclusive, and for the purposes of Art. 123, para 1, item 2 – when they are included in joint household;
- b) an employer and an employee;
- c) the partners;
- d) the persons, one of whom participates in the management of the other or of its subsidiary;
- e) the persons, in whose managing or controlling bodies participates one and the same corporate body or physical person, including when the physical person represents another person;
- f) a company and a person who owns more than 5 % of the voting shares of the company;
- g) the persons, one of whom exercises control over the other;
- h) the persons whose activity is controlled by a third person or its subsidiary;
- i) the persons who jointly control a third person or its subsidiary;
- j) the persons, one of whom is a trade representative of the other;
- k) the persons, one of whom has made a donation to the other;
- l) the persons who participate directly or indirectly in the management, control or capital of another person or persons, and therefore conditions, different from the customary, may be negotiated between them;

- m) a resident person and a foreign entity with which the resident person has undertaken a transaction when:
- The foreign entity is registered in a country which is not an EU Member-State and in which the income tax or corporate tax due on the income which the non-resident has derived or would derive from the transaction is below 60% of the tax due in Bulgaria except if the resident person demonstrates that the non-resident entity is not subject to preferential tax treatment or the non-resident has sold the goods or services on the domestic market; and
  - the country in which the non-resident is registered denies or is not able to provide information regarding the transaction made or relations established when there is an effective and applicable Double Tax Treaty with this country.
- n) the owners of the resident person and the foreign entity in the cases of item "m".

Within the meaning of Paragraph 1, subparagraph 4 of the Supplementary Provisions of the Tax and Social Insurance Procedure Code "Control" shall be present when the controlling body:

- a) owns directly or indirectly or under an agreement with another person more than the half of the votes in the general meeting of another person, or
- b) has the possibility to appoint directly or indirectly more than the half of the members of the managing or the controlling body of another person, or
- c) has the possibility to manage, including through or together with a subsidiary company, by the virtue of a statute or a contract, the activity of another person, or
- d) as a shareholder or a partner in one company controls independently, by the virtue of an arrangement with other partners or shareholders in the same company, more than the half of the votes in the general meeting of the company, or
- e) may, in another way, exercise a decisive influence on the taking of decisions in connection with the activity of the company

#### 4. Transfer pricing methods

The transfer pricing methods applied under Bulgarian tax legislation are in line with the TP methods set out in the OECD Transfer Pricing Guidelines. Under Paragraph 1, subpara. 10 of the Supplementary Provisions of the Tax and Social Insurance Procedure Code the TP methods are:

- a) the method of the comparable uncontrolled prices between independent traders;
- b) the method of the market prices, when the usual market price is the price, used in the process of sale of commodities and services in unchanged form to an independent partner, reduced with the expenses of the trader and with the usual profit (corresponding to the resale price method);
- c) the method of the increased cost, by which the usual market price shall be determined, increasing the cost of production with the usual profit mark-up (corresponding to the cost plus method);
- d) the transactional net profit method;
- e) the profit split method.

Regulation H-9 stipulates the methods to be used, the application of each method, as well as the approach of the tax authorities in case the taxpayer has transfer pricing documentation in place.

#### 5. Transfer pricing documentation requirements

Bulgarian tax legislation does not prescribe comprehensive documentation requirements in cases of related parties' transactions. Art. 116, paragraph 2 of the Tax and Social Insurance Procedure Code contains a general requirement that obliges the taxable entities to demonstrate the arm's length character of the prices charged in transactions with related parties, including through submitting all relevant evidence kept abroad. Section II "Documentation Requirements" of the Transfer Pricing Guidelines (revision 2010) of the National Revenue Agency gives more detailed overview of the content and structure of the TP documentation, as well as the principles to be followed by the taxpayers when preparing a TP documentation file.

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf/2013/summary-ms.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf)

## 6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

Transfer pricing may be examined during a regular tax audit. However there are not any audit techniques or procedures specifically developed in the field of transfer pricing. In a course of a tax audit the revenue authority may request all relevant information necessary to demonstrate the arm's length character of the prices charged between related parties. The deadline for the provision of such information is determined by the tax authority but it may not be less than 7 days.

According to §1, subparagraph 5 and 4 of the Supplementary Provisions of the Corporate Income Tax Act, any amount exceeding the arm's length prices, accounted, paid or distributed in any form in favour of the shareholders, or parties related thereto, shall be regarded as hidden distribution of profits and taxed at source with a 5% tax rate as constructive dividend. According to Art. 267, para.1 of the Corporate Income Tax Act a taxable person who is involved in a hidden distribution of profit shall be punished with a pecuniary sanction of 20 percent of the amount constituting the hidden distribution of profit. However if the taxable person, who has been involved in a hidden distribution of profit, reports this circumstance in its annual tax return, sanction envisaged in para 1 shall not be applied.

Finally, Bulgaria does not apply specific documentation related penalties.

## 7. Information for Small and Medium Enterprises on TP

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/companytax/transfer\\_pricing/forum/profiles/profile-bg.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/companytax/transfer_pricing/forum/profiles/profile-bg.pdf)

## 8. Information on dispute resolution

The Competent Authority in dispute resolution is the Minister of Finance, Ministry of Finance, 102 G. S. Rakovski Str., Sofia 1000 and the Director of the Tax Treaties Directorate, National Revenue Agency, 52 Dondukov Blvd., Sofia 1000, tel. + 359 2 9859 3060. The Tax Treaties Directorate is responsible for all MAPs. The scope of MAPs extends to situations of taxation levied not in accordance with a specific Tax Treaty, relief of double taxation (including economic double taxation in transfer pricing cases) and issues of interpretation of tax treaties. Brief overview of the legal instruments and procedures on dispute resolution of tax issues is presented in Section 14 of the Transfer Pricing Guidelines (revision 2010) of the National Revenue Agency. Requests for dispute resolution should comply with the specific time limits for submission of MAP applications under the relevant Tax Treaty (usually 3 years). The requests should be in writing filed in the Head Office of the National Revenue Agency. Supporting documentation required includes, in particular, detailed presentation of the facts and circumstances of the case, copies of the relevant tax assessment notices, as well as documents used by the local authority as a basis for the proposed taxation. No user fees are allowed for under Bulgarian domestic legislation. Tax collection and interest charges are not suspended during the dispute resolution phase. Taxpayers may also take advantage of the dispute resolution mechanism provided for in the EU Arbitration Convention. Relevant information may be found at [www.nra.bg](http://www.nra.bg).

Dispute resolution under the Arbitration Convention does not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Declaration by Bulgaria (*Official Journal L 174, 03/07/2008 P. 0001 – 0005*)

"The term "serious penalties" means penalties of every kind, imposed for actions constituting administrative or tax infringements, including infringements of procedural law concerning tax assessment and tax collection, as well as for crimes against the tax system. "Serious penalties" imposed on the enterprise are also deemed to exist when penalties are imposed for offences

committed against the tax system on an individual from that enterprise whose actions have influenced the amount of tax liabilities of the enterprise or the collection therewith.”

## 9. Relevant regulations on Advance Pricing Arrangements

APAs are not provided for under Bulgarian legislation. However it is possible to obtain an opinion from the revenue authorities on a case-by-case basis which is not binding but may protect the taxpayer involved from being subject to payment of interest for late payments and/or penalties.

## 10. Links to relevant government websites

National Revenue Agency: [www.nra.bg](http://www.nra.bg)

## 11. Other relevant information

Secondary and compensating year-end adjustments may result in double taxation. Two questionnaires launched by the EU Joint Transfer Pricing Forum (JTPF) in 2011 took stock of the situation prevailing in each EU Member State with respect to secondary and compensating year-end adjustments as on 1 July 2011.

[Secondary Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

[Compensating/year-end Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)