

LITHUANIA

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Article 40 of the Law on Corporate Income Tax (CIT Law) (similar regulations embedded in Article 15 of the Law on Personal Income Tax (PIT Law)):

1. For the purpose of calculating taxable profits in accordance with the procedure laid down in this Law, entities must recognise the amount which is in line with the actual market price of a transaction or economic operation as income from such transaction or economic operation and they must recognise the total amount of costs incurred during a transaction or economic operation which is in line with the actual market price of such transaction or economic operation as allowable deductions or limited allowable deductions.
2. Where the conditions created or prescribed by mutual transactions or economic operations between associated persons are other than those created or prescribed by a mutual transaction or economic operation between non-associated persons, any profit (income) that would be attributed, if no such conditions existed, to one of such persons but due to such conditions is not attributed to him, may be included in the income of that person and taxed accordingly. The rules for implementing the provisions of this paragraph shall be established by the Minister of Finance.

2. Reference to the OECD Transfer Pricing Guidelines

Reference to the OECD Transfer Pricing Guidelines is embedded in Rules for implementation of Article 40 (2) of the Law on Corporate Income Tax and Article 15 (2) of the Law on Personal Income Tax, approved by order of the Finance Minister of the Republic of Lithuania No 1K-123 of 9 April 2004 (the Rules). Clause 78 of the Rules states that it is recommended to apply OECD Transfer Pricing Guidelines in a way that is compatible with the provisions of the Rules.

3. Definition of related parties

Arm's Length Principle applies to associated parties. This concept encompasses both related parties and other associated entities (persons). Article 2 of CIT Law (Article 2 of PIT Law) provides with the following definitions:

Associated persons shall mean persons (entities or natural persons) where they meet at least one of the following criteria:

- 1) they are related persons.
- 2) they may have an influence over each other resulting in the conditions of their mutual transactions or economic operations being other than those where a maximum economic benefit is sought by each of the said persons.

(Article 2 of CIT Law) Related parties shall be treated as such if on any day of the current tax period or the tax period preceding the current tax period they meet at least one of the following criteria, i.e. they are:

- 1) an entity and its members;
- 2) an entity and members of its management bodies;
- 3) an entity and the spouses, engaged couple, fiancés and cohabitants of its members or members of its management bodies, other natural persons related to members of the entity or members of its management bodies by consanguinity (in the direct line up to the second degree, in the collateral line up to the fourth degree) or by marriage (a natural person and the relatives of his spouse (in the direct line up to the second degree, in the collateral line up to the second degree), and also the relatives of the cohabitants of members of the entity or members of its management bodies (in the direct line up to the

- second degree, in the collateral line up to the second degree), the spouses or cohabitants of the relatives of members of the entity or members of its management bodies (in the direct line up to the first degree, in the collateral line up to the second degree) as well as the relatives of the said spouses or cohabitants (in the direct line up to the first degree, in the collateral line up to the second degree);
- 4) members of a group of entities;
 - 5) an entity and members of another entity where such entities comprise a single group of entities;
 - 6) an entity and members of the management bodies of another entity where such entities comprise a single group of entities;
 - 7) an entity and the spouses engaged couple and cohabitants of members of another entity or members of its management bodies, other natural persons related to members of another entity or members of its management bodies by consanguinity (in the direct line up to the first degree, in the collateral line up to the second degree) or by marriage (a natural person and the relatives of his spouse (in the direct line up to the first degree, in the collateral line up to the second degree), and also the relatives of the cohabitants of members of another entity or members of its management bodies (in the direct line up to the first degree, in the collateral line up to the second degree), the spouses or cohabitants of the relatives of members of another entity or members of its management bodies (in the direct line up to the first degree, in the collateral line up to the second degree) where the said taxable entities comprise a single group of entities;
 - 8) two entities where one of them controls directly or indirectly (through a single or several entities or natural persons) over 25% of the shares (interests, member shares) of the other entity or holds the right to over 25% of the decisive votes of the other entity or has undertaken to coordinate its decisions regarding the activities with the other entity or has undertaken to be liable for the obligations of the other entity in respect of third parties or has undertaken to transfer all or part of its profits to the other entity or has granted the other entity the right to use over 25% of its assets;
 - 9) two entities where their members or the spouses, engaged couple and cohabitants of such members, natural persons related by consanguinity (in the direct line up to the second degree, in the collateral line up to the fourth degree) or by marriage (a natural person and the relatives of his spouse (in the direct line up to the second degree, in the collateral line up to the second degree)), and also a natural person and the relatives of his cohabitant (in the direct line up to the second degree, in the collateral line up to the second degree), a natural person and the spouses or cohabitants of his relatives (in the direct line up to the first degree, in the collateral line up to the second degree) as well as the relatives of the said spouses or cohabitants (in the direct line up to the first degree, in the collateral line up to the second degree) control directly or indirectly 25% of the shares (interests, member shares) in each of such entities;
 - 10) an entity and its permanent establishment;
 - 11) two entities where one of them holds decision-making rights in the other entity.

4. Transfer pricing methods

All methods, established in OECD Guidelines are acceptable. Clause 19 of the Rules provides with the list of acceptable methods:

- 1) comparable uncontrolled price method;
- 2) resale price method;
- 3) "cost plus" method;
- 4) profit split method;
- 5) transactional net margin method.

Possibility to combine and modify the methods is also recognized if this allows to attain more accurate results for transfer price.

Priority is granted to comparable uncontrolled price method. In case there is no possibility to apply this method, other traditional methods are to be taken into consideration. Profit-based methods may be eligible if there is no sufficient reliable data for application of the traditional methods.

5. Transfer pricing documentation requirements

(Clause 68 of the Rules) Transfer pricing documentation would prepare:

- Lithuanian entities and permanent establishments of foreign entities acting in Lithuania with turnover of a previous taxable year when the transaction was actually carried out exceeding 10 million LTL (approximately 2,9 million EUR);
- Financial companies and credit institutions;
- Insurance companies.

If taxpayer satisfies one of the mentioned criteria, it is obliged to prepare transfer pricing documentation for every controlled transaction undertaken. Transfer pricing documentation has to be provided within 30 days after a special request of Tax Administration.

A transfer pricing documentation file shall include these major elements:

- information on the parties to the controlled transaction. The latter covers legal and economic relations as well as description on control, financial and information flows between the parties;
- information on the controlled transaction, encompassing both industry analysis, business strategy;
- functional analysis;
- selection of method (the reason for choosing the methodology, including the reasons for rejection of more prioritised methods);
- description of comparables;
- comparability analysis (benchmarking);
- other information that taxpayer regards as relevant.

Those taxpayers, that are not legally obliged to prepare transfer pricing documentation according to the provisions of the Rules, are required to substantiate transfer price being at arm's length in a free form (burden of proof rests with them).

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

The EU TPD has not been implemented in national law of Lithuania, however if company provides documentation prepared according to EU TPD, it will be accepted.

National transfer pricing documentation rules are in place in Lithuania. More information can be found in Part XI of the Rules.

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

There is no specific audit procedures established solely for transfer pricing purposes, thus, ordinary control procedures (tax investigation, tax audit, operational check) are performed for transfer pricing risk evaluation as well. The form of the control procedure is selected regarding the riskiness of a case.

There are no specific transfer pricing penalties. General tax penalties applicable in the case of the taxable income adjustments by the tax authority are equal to 10 to 50 percent of the tax additionally calculated. In addition, there would be penalty interests calculated.

There are no specific documentation-related penalties introduced in Lithuanian legal acts.

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/company_tax/transfer_pricing/forum/profiles/profile-lt.pdf

8. Information on dispute resolution

According to the national legislation, a taxpayer is entitled to object against every act or failure to act by the tax administration that affects his legal status. According to the subject there are two types of disputes in tax administration field – tax disputes and other administrative disputes.

In cases of disputes arising for elimination of double taxation with other tax jurisdictions, process is carried out following the provisions of Double Tax Avoidance treaties concluded with certain countries and/or Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (with EU countries).

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 the Republic of Lithuania (*Official Journal C 160, 30/06/2005 P. 0011 – 0022*)

"The term "serious penalties" includes criminal penalties and administrative penalties such as penalties for lack of good faith and for opposition to tax inspection."

9. Relevant regulations on Advance Pricing Arrangements

New legislation regarding unilateral Advance Pricing Agreements (APA) for forthcoming transactions (including transactions on a long term and continuous basis) came into force since 01/01/2012, when Law amending Law on Tax Administration was adopted and Central Tax Administrator issued regulations implementing law provisions in the field (Regulations for handling Request of Taxpayer for approval of transfer pricing principles applicable for forthcoming controlled transactions and adopting binding Tax Administrations decision in the field, approved by The Order of Head of State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania 21/10/2011 No. VA-106).

10. Links to relevant government websites

Ministry of Finance of the Republic of Lithuania: <http://www.finmin.lt/web/finmin/home>

State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania (Central Tax Administrator): <https://www.vmi.lt/index.jsp?lang=en>

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](#)

The text of the Law on Corporate Income Tax in English is available at:
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=390605&p_query=&p_tr2=2

The text is dated 23/12/2010. The updated version can be found only in Lithuanian.

Personal Income Tax Law in English may be found at:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=321613

The text is dated 15/05/2008. The updated version can be found only in Lithuanian.

The text of the Rules for implementation of Article 40 (2) of the Law on Corporate Income Tax and Article 15 (2) of the Law on Personal Income Tax is available at:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=231272&p_tr2=2

The text can be found only in Lithuanian.