PORTUGAL

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Paragraph 1 of Article 63 of Corporate Income Tax Code states that "as far as it concerns business transactions including, in particular, one or more transactions on goods, rights or services, as well as financing operations between a taxable person and any other entity, liable for IRC or not, with which there is a special relationship, there shall be agreed upon, accepted or used terms or conditions substantially similar to those which would usually be agreed upon, accepted or used between independent entities in comparable transactions".
See also paragraph 1 of article 1 of Portaria 1446-C/2001, of 21st of December.

2. Reference to the OECD Transfer Pricing Guidelines

The preamble of the Ministerial Order (Portaria) n.º 1446-C/2001, of 21st of December refers that the OECD Transfer Pricing Guidelines should be followed in a supplementary way, particularly in what concerns complex technical issues or in case of omissions in the domestic transfer pricing regime.

3. Definition of related parties

Paragraph 4 of article 58 of Corporate Income Tax Code states that
"There shall be deemed to be a special relationship between two entities where one of them has the power to exert, directly or indirectly, a significant impact on the management decisions of the other; this shall be deemed to occur, namely, between:

a) An entity and the owners of its equity, or the spouses, ascendants or descendants thereof, holding, directly or indirectly, a participation not lower than 20 per cent of the equity or voting rights;

b) Entities in which the same equity owners, respective spouses, ascendants or descendants hold, directly or indirectly, a participation not lower than 10 per cent of the equity or voting rights;

c) An entity and the members of its corporate bodies, or any administration, direction, management or supervising boards, as well as their spouses, ascendants or descendants;

d) Entities the majority of whose members of the corporate boards or of the administration, direction, management or supervising boards are the same persons or, in case of different persons, are related with each other by marriage, common law marriage or direct parentage;

e) Entities related under a subordination agreement, a parity group or any other agreement of a similar nature;

f) Enterprises having a controlling position in accordance with the terms governing such position in legal texts stating the obligation to produce consolidated accounts;

g) Entities whose juridical relations allow, by its terms and conditions, that one may influence the managing decisions of the other owing to facts or circumstances strange to the commercial or professional relationship itself.

h) A resident entity or a non-resident entity with a permanent establishment situated in the Portuguese territory and an entity subject to a more favourable tax regime, resident in a country, territory or region listed in the Portaria approved by the Minister of State and Finance. "

4. Transfer pricing methods

Paragraph 3 of article 63 of Corporate Income Tax Code states that "the methods to be used are as follows:

a) The Comparable Uncontrolled Price (CUP) method, the Resale Price method or the Cost Plus method;

b) Whenever those methods as mentioned in the previous sub-paragraph cannot be applied or, otherwise they shall not allow for the most reliable measure of terms and conditions which would usually be agreed upon, accepted or used by independent entities, there shall apply the Profit Split method, the Transactional Net Margin method or any other".

According to article 4 of Portaria 1446-C/2001, of 21st of December, the taxpayer shall adopt the most appropriate method, which is defined as the method which is likely to provide the highest degree of comparability.

5. Transfer pricing documentation requirements

The main ancillary obligation - for a taxable person with net sales and other income in the previous fiscal year which is less than 3 million euro - is to set up and maintain a tax documentation file, which justifies the transfer pricing policy adopted and supports the comparability analysis carried out.

That tax documentation file must include namely:

- the description of the special relationship situation;
- the description of the economic activity exercised by the taxable person and by the related entities; detailed identification of the goods, rights and services which are the object of the controlled transactions as well as the terms and conditions settled;
- the description of the duties performed, assets used and risks assumed by the intervenient entities;
- technical studies focusing on the core business areas;
- the internal guidelines concerning the transfer pricing policy;
- the contracts and other legal acts settled with related and independent entities;
- the explanation of the adopted method or methods, as well as of the reasons that justifies the choice;
- information on the comparable data used and on the analysis carried out in order to evaluate the degree of comparability with the transactions carried out by independent entities;
- strategies and business policies, which may affect the transfer pricing determination or the imputation of transactions profits or losses;
- any other information, data or documents considered relevant for the determination of the arm's length price, for the comparability of transactions or for the adjustments carried out.

In what concerns Cost Contribution Arrangements and Intra-group Services, specific information and documentation are required. See articles 13 to 16 of Portaria 1446-C/2001, of 21st of December.

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

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

Specific transfer pricing penalties (paragraph 6 article 117 General Regime of Tax Infractions): "Failure to submit within the deadline that the tax administration shall set for the presentation of the transfer pricing documentation shall be punished with a fine between (euro) 500 and (euro) 10,000".

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-pt.pdf

8. Information on dispute resolution

Competent Authority	António Gouveia Videira Director Address: Avª Engº Duarte Pacheco, 28 – 4º 1099-013 Lisboa Tel: 00 351 21 383 43 84 Fax: 00 351 21 383 44 14 Email: dsri-ci@at.gov.pt
Organization	DSRI - Direcção de Serviços de Relações Internacionais Autoridade Tributária e Aduaneira Address: Avª Engº Duarte Pacheco, 28 - 4º 1099-013 Lisboa Tel: 00 351 213 834 384 Fax: 00 351 213 834 414 Email: dsri-ci@at.gov.pt
Scope of MAP & MAP APA	· As the general rule, MAP is used to discuss interpretation or application of tax treaties. · MAP can also be used to solve double taxation cases related to a particular taxpayer.
Domestic guidelines & administrative arrangements	No specific regulations or instructions on MAP in general. As regards MAP for handling transfer pricing cases, Portaria 1446-C/2001 of 21st December applies, according to paragraph 2 of its article 17. The Code of Conduct on EC Arbitration Convention is also applicable. For APA, article 138º from CIRC (Tax of income of legal persons) and Portaria nº 620-A/2008 of 16 December apply.
Time for filing	In general, within 2 years from the notification of the actions giving rise to taxation not in accordance with DTC but can vary depending on time limits set out in specific DTCs (e.g. EU Arbitration Convention).
Form of request	No specific form. MAP for handling transfer pricing cases requires request in writing or electronically providing information specified in the Code of Conduct on EC Arbitration Convention or in the article 18 of Portaria 1446-C/2001 of 21st December, namely identification of the relevant parties, description of the facts and circumstances of the case, explanation by the enterprise about the alleged double taxation, a proposal concerning one or more solutions for the purpose of solving the case.
Documentation requirement	In general no special requirements. Concerning MAP for handling transfer pricing cases requirements, see above.
User fees	No fees
Tax collection / penalty /	No special regime. Interest is due in case of delay in payment of tax. There is no suspension of payment except if the taxpayer presents a guarantee.

interest	
Other dispute resolution mechanisms	The EU Arbitration Convention for transfer pricing cases.
Government Website	In Portuguese: https://www.portaldasfinancas.gov.pt/pt/home.action In English: http://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/NEWS_Portuguese_Tax_System.htm

Dispute resolution under the Arbitration Convention is not 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).

Unilateral Declaration of Portugal on Article 8 of the Arbitration Convention (*Official Journal C 160, 30/06/2005 P. 0011 – 0022*)

"The term "serious penalties" includes criminal penalties as well as administrative penalties applicable to tax infringements defined by law as serious or committed with intent to defraud."

9. Relevant regulations on Advance Pricing Arrangements

Article 138 of the Corporate Income Tax Code and the Ministerial Order (Portaria) n.º 620-A/2008, of 16 July- which came into force on 17 July 2008 – regulate the process for entering into an Advance Pricing Agreement.

10. Links to relevant government websites

www.min-financas.pt
www.portaldasfinancas.gov.pt
www.e-financas.gov.pt

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