

SPAIN

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Art.16.1 1º (CITLaw): The transactions between associated persons or entities should be assessed at their arm's length price, being this understood as the price which would have been agreed between unrelated parties in free market conditions.

To the effects of the Spanish Law, any mention made to "entity" shall be understood as entities liable to the Spanish corporation tax.

2. Reference to the OECD Transfer Pricing Guidelines

Preamble of the Law 36/2006 of 29 November. It mentions that the law should be interpreted according to the OECD Guidelines.

3. Definition of related parties

Art. 16.3 (CITLaw). It is deemed to be associated:

- a) An entity and the owners of its equity (at least the 5% or 1% when the shares are carried out on official secondary securities regulated markets), or the spouse, ascendants or descendants.
- b) An entity and the member of its board of directors or their administrators (includes the fact administrators) or the spouse, ascendants or descendants.
- c) Two entities of the same group.
- d) An entity and the partners (or the spouse, ascendants or descendants) of an entity of the same group.
- e) An entity and the members of the board of directors of an entity of the same group or their administrators.
- f) Two entities where the second entity owns, indirectly, at least, 25% of the capital of the first one.
- g) Two entities when the same person (or the spouse, ascendants or descendants) or entity own, directly or indirectly, 25% of the equity.
- h) An entity resident in Spain and their permanent establishment situated in other country.
- i) An entity resident in other country and their PE situated in Spain.
- j) Two entities of the same group liable to tax under the cooperative group's regime.

4. Transfer pricing methods

Art.16.4 CITLaw states that to determine the AL price the following methods should be used:

- a) The comparable uncontrolled price (CUP) method;
- b) The cost plus method;
- c) The resale price method.

Where the methods mentioned before cannot be applied in a proper manner because of the complexity of the transactions or the information available is considered not to be sufficient, the two profit methods could be apply:

- a) the profit split method, or
- b) the transactional net margin method.

5. Transfer pricing documentation requirements

Art. 16.2 CIT Law states that associated persons or entities should keep some documentation; the specific documents are specified in Corporate Income Tax Regulations (as drafted in Royal Decree 1973/2008, of 3 November and in Royal Decree 897/2010, of 9 July).

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

National transfer pricing documentation rules are drafted along the lines of the EU TPD Code of Conduct.

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

Art. 16.9 CIT Law states the basic principles of a specific transfer pricing audit procedure to be developed on further regulations.

Art. 16.10 CIT Law states a new penalty regime based on two pillars:

- a) It will constitute serious tax penalty the failure to provide transfer pricing documentation or provide it in a severe incomplete manner and if the arm's length price states in the CIT assessment differs from that derived from the documentation;
- b) No penalty will be levied in the case the taxpayer has complied with the documentation requirements and has properly applied the criteria in the tax assessment even if there is an adjustment.

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-es.pdf

8. Information on dispute resolution

Competent Authority

MAP
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Organization

- MAP: General Directorate for Taxation with the cooperation from the Tax Office during the process, especially in TP MAP.
- Bilateral MAP APA: Tax Office
- Unilateral APA: Tax Office

Scope of MAP & MAP APA	To solve double taxation of a particular taxpayer. To discuss the interpretation or application of the convention.
Domestic guidelines & administrative arrangements	MAP: Royal Decree 1794/2008, 3rd November, regulating the MAP on direct tax matters (Spanish Official Gazette 18th November 2008). APA: Article 16 of the Corporate Tax Law and Chapter VI of Corporate Income Tax Regulations, as drafted by Royal Decree 1793/2008, 3 rd November
Time for filing	N/A
Form of request	N/A
Documentation requirement	No special requirement.
User fees	None
Tax collection / penalty / interest	Under certain circumstances, collection of taxes might be suspended during MAP. No interests are accrued during MAP
Other dispute resolution mechanisms	The EU Arbitration convention for transfer pricing cases.
Government Website	http://www.agenciatributaria.es http://www.minhap.es

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).

Unilateral Declaration of Spain on Article 8 of the Arbitration Convention (*Official Journal L 174, 03/07/2008 P. 0001 – 0005*)

"Serious penalties" shall include administrative penalties for serious and very serious tax infringements, as well as sentences for offences affecting public finances."

9. Relevant regulations on Advance Pricing Arrangements

Art. 16.7 CIT Law. The new regulation has slightly changed to extend the period of coverage to a maximum of four years plus the current tax period (the period which the APA is signed) and the one immediately preceding it making it to propose a period up to six years. Bilateral APAs are enhanced although unilateral APAs are admitted. Regulations will follow to develop basically the internal procedure

10. Links to relevant government websites

Competent authority for Mutual Agreement Procedures
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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 (JTTPF) 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](#)