

Transfer Pricing Country Summary Russia

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Legislation

Existence of Transfer Pricing Laws/Guidelines

The Transfer pricing (“TP”) rules are fixed in the Russian Tax Code (Part 1). Furthermore, the Ministry of Finance and the Federal Tax Service (“FTS”) have issued a significant number of clarifying letters on particular matters regarding transfer pricing issues.

The transfer pricing regulation has been approved in 2011 by the Russian Parliament and became effective as of 1 January 2012. The main changes brought by the new law regards the specification and development of the Transfer Pricing rules that were very general and broad in previous legislation. The new rules namely introduce limits of the list of transactions that can be controlled by FTS to the transactions between related parties and the transactions that are treated as such, the expansion of the list of entities that can be deemed as related parties for tax purposes, the abolishment of the 20% safe harbor and the introduction of an arm’s length range. A formal reporting and certain transfer pricing documentation requirements have been introduced and special transfer pricing audits and penalties apply in case of non-compliance. The TP regulation introduces APAs, for companies qualifying as ‘large’ tax payers.

Even though Russia is not a member of the OECD, the TP rules are based on the OECD Transfer Pricing Guidelines.

Definition of Related Party

With regard to the TP rules, the Russian tax authorities exercise control over:

- All cross border transactions with related parties irrespective of the amount of the transaction;
- Cross border transactions with non-related parties if the amount of income/ expenses exceeds RUR 60 million, including:
- Foreign trade transactions involving commodities traded on a global exchange markets;
- Transactions between entities, if one of these entities is resident or is registered in countries (territories) mentioned in the of Russian Financial Ministry’s “black list” (off- shore territories, which can be used unlawfully to optimize a party’s tax position).

Qualify as related parties the following cases:

- Organizations, if one organization directly and/or indirectly is a participant in the other organization and the share of such participation comprises over 25%;
- A natural person and an organization, if such natural person directly and/or indirectly is a participant in such organization and the share of such participation comprises over 25%;
- Organizations, if one and the same person directly and/or indirectly is a participant such organizations and the share of such participation in each organization comprises over 25%;

- An organization (including a natural person jointly with his relatives) which has the power to appoint (elect) the single-member executive body of this organization, or to appoint (elect) not less than 50% of the composition of this organization's collegiate executive body or board of directors (supervisory council);
- Organizations whose single-member executive bodies or not less than 50% of the composition of whose collegiate executive body or board of directors (supervisory council) are appointed or elected by a decision of one and the same person (or a natural person jointly with his relatives);
- Organizations in which over 50% of the composition of the collegiate executive body or board of directors (supervisory council) are comprised by one and the same natural persons jointly with their relatives;
- An organization and a person exercising the powers of its single-member executive body;
- Organizations, in which the powers of the single-member executive body are exercised by one and the same person;
- Organizations and/or natural persons, if the share of direct participation of every previous person in every subsequent organization comprises over 50%;
- Natural persons, if one natural person is subordinate to another natural person by virtue of his official position;
- Natural person, his spouse, parents (including adoptive parents), children (including adopted children), full and half brothers and sisters, his guardian (trustee) and ward.

The transactions of domestic affiliated entities are controlled when their volume exceeds: 3 billion Russian Rubles ("RUB") a year in 2012; 2 billion RUB a year in 2013; and 1 billion RUB a year in 2014 and in subsequent years.

Transfer Pricing Scrutiny

The FTS may conduct a TP audit no later than within 2 years from when a Notification of Controlled Transactions is given, and this means that the tax authority may oversee all transactions for the 3 years before the year of the tax audit. The TP tax audit lasts for 6 months but this may be extended to 12 months.

Transfer Pricing Penalties

There are two specific transfer pricing penalties:

Article 129.3 of the Russian Tax Code – "Non-Payment or Incomplete Payment of Amounts of Tax as a Result of the Application for Taxation Purposes in Controlled Transactions of Commercial and/or Financial Terms That Are Not Comparable with the Commercial and/or Financial Terms of Transactions Between the Non-Related Parties". Penalties up to 40% of the transfer pricing adjustment can apply for non-complying with the arm's length principle. The TP regulation offer tax payers a transition period during the first years after the law becomes effective. Therefore, only a 20% penalty applies for the years 2014-2016.

Article 129.4 of the Russian Tax Code – "Unlawful Failure to Submit a Notification of Controlled

Transactions and Supply of Inaccurate Information in a Notification of Controlled Transactions”. For submissions after the deadline or inaccurate completion of the documents, a penalty of RUB 5000 can apply.

Advance Pricing Agreement (APA)

Large taxpayers are entitled to enter into an advance pricing agreement. A “large taxpayer” is defined by FTS as a company having the following characteristics:

- total amount of annual federal taxes of at least RUB 75 million;
- total annual revenue of at least RUB 1 billion; and
- total assets of at least RUB 100 million

Foreign companies (including those having permanent establishments or offices in Russia) may not conclude APAs. The APAs are valid for a period of three years, with the possibility of a two-year extension.

Documentation and Disclosure Requirements

BEPS Action 13 – Three-tiered documentation requirements

On November 28, 2017, Russia published Federal Law No. 340-FZ, implementing the BEPS Action 13 documentation requirements.

CbCR

Applies to MNEs with annual consolidated group revenue equal to or exceeding RUB 50 billion for fiscal years beginning on or after 1 January 2017. It must be filed no later than 12 months after the last day of the financial year of the MNE (i.e. 31 December). Entities are obliged to notify the Russian tax authorities which entity from the group will file CbCR within 8 months since the end of the last fiscal year of the parent entity. In case the entity fails to do so, a penalty of up to RUB 50,000 may be applicable. The report needs to be prepared in Russian.

Master file

Applies to MNEs with annual consolidated group revenue equal to or exceeding RUB 50 billion if the parent company of the group is the Russian resident for fiscal years beginning on or after 1 January 2017. Master file needs to be provided if required by the Russian tax authorities within three months upon request. Such request can be made no earlier than 12 months and not later than 36 months from the last day of the reporting fiscal year. The report needs to be prepared in Russian.

Local file

Applies to MNEs with annual consolidated group revenue equal to or exceeding RUB 50 billion if the parent company of the group is the Russian resident. Local file requirement applies for fiscal years beginning on or after 1 January 2018. Local file has to be provided only within TP audit scheduled by the FTS and under

its request. The company has 30 days to provide FTS with Local file after the date when a request is received. Local file may be requested by the FTS not earlier than as of 1 June of the year when Notification is submitted.

Tax Return Disclosures

Taxpayers must inform tax authorities of transactions which fall within the scope of TP control. The Notification of Controlled Transactions and Supply of Accurate Information in a Notification of Controlled Transactions must be sent to tax authority before 20 May of the year that follows the year in which the controlled transactions take place. The Transfer pricing forms, filed along with the tax return, need to document each intercompany transaction.

Record Keeping

Transfer pricing documentation must be kept at least for a period of 3 years.

Language for Documentation

Documentation should be in Russian.

Small and Medium Sized Enterprises (SMEs)

There are no specific provisions.

Deadline to Prepare Documentation

The Notification of Controlled Transactions and Supply of Information in a Notification of Controlled Transactions must be prepared and sent to tax authority before 20 May of the year that follows the year in which the controlled transactions take place.

Statute Of Limitations

The statute of limitations is 3 years.

Transfer Pricing Methods

As of 2013, the Russian tax authority uses the methods outlines in the OECD Guidelines:

- identical or similar goods/ comparable uncontrolled price method (CUP);
- re-sale price method (RPM);
- cost plus method (CPM);
- transactional net margin/comparable profitability method (TNMM);
- profit split method (PSM).

The first method that must be applied is the comparable uncontrolled price method. In cases where it is not possible to apply the CUP method (e.g. in the absence of comparables) and also when it is impossible to determine appropriate prices because of the absence or the inaccessibility of information sources to determine a market price, the other methods are applicable.

Comparables

Only publicly available information sources may be used by taxpayers and the tax authorities alike for transfer pricing purposes. This includes:

- information on Russian and foreign exchange prices and quotations;
- officially published customs statistics;
- information on prices and exchange quotations from authorized state government authorities, foreign countries and international organizations;
- information from agencies providing information on prices; and
- information regarding internal comparable uncontrolled transactions.

Both local and foreign databases are generally acceptable if relevant and if the information mentioned above is not available.