

# Transfer Pricing Country Summary Slovakia

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## Legislation

### Existence of Transfer Pricing Laws/Guidelines

The Slovak Republic transfer pricing regulation came into force on 1 January 2009 and is prescribed in Article 2, Article 17 (Section 5-7) and in Article 18 of the [Income Tax Act](#) (ITA). By this virtue, these articles establish explicitly to the arm's length principle. Therefore, if transactions between foreign related parties are made in conditions which differ from comparable transactions between unrelated parties, namely if there is a difference that results in a reduction of the tax base or increase of tax loss.

Effective as of 1 January 2014 an amendment of ITA imposes a shorter deadline for submitting the transfer pricing documentation and the right of the tax authorities to request transfer pricing documentation without opening a tax audit. As of 1 January 2015, in above to the foreign related parties transfer pricing rules apply also to domestic related parties. Guideline no. MF/011491/2015-724 specifies the content of the transfer pricing documentation for all taxpayers that have to apply the transfer pricing rules. This guideline is applicable for tax years starting during 2015 or later.

The OECD Transfer Pricing Guideline (TPG) is not legally binding, but acceptable as an explanatory instrument.

Slovakia has adopted the CbC reporting standards in the local legislation effective as of 1st March 2017. The Slovak legislation on CbC reporting reflects the wording of the legislation presented by OECD within the BEPS Action 13 Implementation Package. The Ultimate Parent or Ultimate Surrogate Parent companies (being a Slovak tax resident) of MNE Groups will be required to submit the CbC Report to the tax authorities if in the preceding tax year its consolidated group revenues reach EUR 750 million, i.e. the "Primary" obligation to submit the CbC Report.

### Definition of Related Party

Related parties are defined as enterprises that would meet any of the following:

- Economically, personally or otherwise connected persons or subjects\*,
- Person or subject which are consolidated for statutory reporting purposes,

- Economic or personal connection
  - 25 % direct or indirect or derived indirect share in the registered capital or in voting rights
  - Not only parent and subsidiary, but also indirect connection (through other entities) and relationship between PEs
  - Members of statutory bodies or supervisory bodies
- Close persons (e.g. family members, dependents)
- Other connection
  - Relation created only for the purpose of decreasing the tax base or increasing the tax loss

\* association of assets (e.g. trust) / bodies (e.g. partnership, association) without legal status of a company or other legal arrangement owning or managing assets.

## Transfer Pricing Scrutiny

Tax authorities increased their focus on Transfer Pricing in all types of business in Slovakia. Therefore, specialized teams of highly skilled inspectors are in the process of preparing more and more audits in order to avoid exit taxation issues. Therefore, companies are strongly recommended to prepare Transfer Pricing documentation as the risk of audit is really high and the requirements for specified documents is strict. Special consideration is applied in transactions with direct or indirect participation of government and transactions with public interest.

## Transfer Pricing Penalties

Penalty up to 3 000 EUR may be imposed if the transfer pricing documentation is not submitted to tax authorities within 15 days of their request or if the content does not follow the Slovak requirements. Penalty may be imposed repeatedly.

### **Tax underpayment arising from non-arm's length pricing:**

In case of tax underpayment resulting from applying non-arm's length prices, a penalty (triple the base interest rate of ECB, currently the minimum of 10% p.a.) from the difference in additional tax assessed would apply.

As of 1st January 2017 a doubled sanction (two times triple the base interest rate of ECB, currently 20% p.a.) shall apply if the tax administration finds, during tax inspection, that the taxpayer reduced their tax base using transfer pricing on the basis of transactions lacking economic substance and resulting in intentional tax evasion (under Article 3(6) of the Tax Code) or violating anti-avoidance rules (Article 50a of the Income Tax Act)

## Advance Pricing Agreement (APA)

Taxpayers in Slovakia may request the tax authorities for an Advance Pricing Arrangement (APA) - an approval of a specific pricing method. Tax authorities approve also the practical application of the transfer pricing method (e.g. profit level indicator, process of identifying comparable transactions or entities, benchmarking analysis). If approved, the method may be applied for a maximum of five tax periods.

There is a deadline for submission of the written request for advanced pricing agreement – no later than 60 days before the beginning of the tax period when the agreed-upon method shall be applied. In other words the request for approval can only be filed in advance of carrying out the transaction.

As of 1st January 2017 the fee for an APA is 10 000 EUR for a unilateral APA and 30 000 EUR for a bilateral or multilateral APA

## Safe Harbor

### Low-Value Added Services

OECD principles are applied.

### Simplified documentation

In accordance with the Guidance, simplified documentation shall contain the following information:

- identification and legal form of each related party of the group, the organizational and ownership structure of the group,
- list of controlled transactions, description of the controlled transactions of the taxpayer that includes the identification of the parties of controlled transactions and value of the transaction expressed in monetary terms and other information about the controlled transactions (business conditions and other factors affecting controlled transactions)

### Thin Capitalization Rules

The maximum amount of tax deductible interest and related expenses from loans provided by related parties (including unrelated party which is a mere intermediary of the loan from related party) will be calculated as 25% of the indicator calculated as a sum of profit before tax and tax depreciation charges and interest expenses.

Expenses related to the received loans (e.g. expert valuations, bank guarantee fees, commissions for mediation of the loan, fees for early repayment of the loan) will be considered as a part of the interest.

Interest treated as a part of the acquisition price of assets will not be included into the above limitation.

## Documentation And Disclosure Requirements

## Tax Return Disclosures

Taxpayers must report general information regarding transactions with related parties and the volumes of these transactions. This information has to be prepared yearly and included in the tax return and in the notes of the financial statements, disclosed in the Collection of Documents.

The statutory deadline for filing a tax return is three up to six months following the end of the tax period.

## Level of Documentation

According to the latest legislation (guidance No. MF/011491/2015-724), there are three categories of documentation:

- Full Transfer Pricing scope documentation;
- Basic Transfer Pricing documentation;
- Abbreviated Transfer Pricing documentation.

**The full scope** documentation might be compared to the content of a Master file and a Country file report, according to the OECD guidelines. Full scope TP documentation must be prepared by taxpayers who:

- are obliged to prepare financial statements under IFRS,
- perform transactions with related parties' tax resident in non-treaty countries,
- request for advanced pricing agreements or corresponding adjustment,
- deducted tax loss in excess of 300 000 EUR in one or 400 000 EUR in two subsequent tax periods;
- applies tax relief or incentives.

**Basic documentation** should be prepared by all tax payers that do not fall in the categories mentioned for Full scope documentation and Abbreviation documentation. The basic level of documentation requires:

- Information on the taxpayer's group;
- General overview of functions and risks within the group;
- General information on the taxpayer;
- Description of the taxpayer's business activities;
- Identification of the taxpayer's industry;
- General overview of the taxpayer's functions and risks;
- Description of transactions with related parties;
- Volume of related party transactions; and
- Description of the transfer pricing method applied in the related party transactions.

**Abbreviated TP documentation** should be prepared by:

- Natural persons with respect to their business activities and taxpayers meeting the definition of micro accounting unit , i.e. a company with (2 out of 3 criteria must be met):value of net assets not exceeding thousand EUR 350 threshold,net turnover not exceeding thousand EUR 700 threshold,the average number of employees not exceeding 10 during the accounting period;
- Taxpayers performing only local transactions with Slovak taxpayers with exception of:
- taxpayers applying state subsidy in form of tax allowance;
- taxpayers utilizing tax loss in the amount exceeding thousand EUR 300 threshold or exceeding aggregate amount of thousand EUR 400 threshold in two taxation periods;
- taxpayers who request for advanced pricing agreements; and
- taxpayers who request for corresponding adjustment;
- Public administration accounting entity.

All levels of documentation should include information on monetary and non-monetary income (with exception of clinical testing) provided to a health care provider, its employee or health professional (Slovak tax residents) provided on behalf of taxpayer by foreign related party.

### Language for Documentation

Transfer pricing documentation must be submitted in Slovak language. However, other languages are accepted, but need approval before they are submitted to the tax authority. In general, the documentation in German and English language are likely to be approved.

### Country-by-Country Reporting

Slovakia has adopted the CbC reporting standards in the local legislation effective as of 1st March 2017. The Slovak legislation on CbC reporting reflects the wording of the legislation presented by OECD within the BEPS Action 13 Implementation Package. Reports should be submitted within 12 months of the last day of the tax period.

### Small and Medium Sized Enterprises (SMEs)

There are no special transfer pricing rules for small and medium-sized enterprises deviating from the general transfer pricing regime.

### Deadline to Prepare Documentation

There is no deadline for preparing the documentation, except from the case when taxpayer was challenged by the tax office. In such a case, taxpayer must prepare and submit the documentation within the deadline given by the tax office, keeping up the minimum legal 15 days.

## Deadline to Submit Documentation

By virtue of the new legislation, the Transfer Pricing documentation needs to be submitted within 15 days from the date of the request from the tax authority. Tax authority can request the relevant documentation even if not subject to a tax audit. Per our experience, such a deadline might be slightly extended (e.g. 1-2 weeks), but depends on the communication between the taxpayer and a particular tax office.

## Statute Of Limitations

The statute of limitation in Slovakia is 5 years, in standard cases. In case of assessments of taxes, the period can be extended up to 7 years. In the case of applying of international tax agreements, the period amounts to 10 years.

## Transfer Pricing Methods

The Slovakian legislation follows the recommendation of the OECD Guidelines. The following methods are accepted:

- Comparable Uncontrolled Price Method;
- Resale Price Method;
- Cost Plus Method;
- Transactional Net Margin Method;
- Profit Split Method;

No hierarchy in application of the above methods has been applied.

For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.

## Comparables

Comparables are available via Pan-European database Amadeus. Although not each type of transfer pricing documentation involves the benchmark study according to the guideline MF/011491/2015-724, tax office usually asks for benchmark analysis through their additional questions related to the submitted transfer pricing documentation.

Process of comparability adjustments are defined in domestic legislation – Income tax Act, Section 18, Subsection 1 : “The difference referred to in Section 17 subsection 5 above shall be determined using

any of the methods pursuant to subsection 2 or 3 or their mutual combination or, as appropriate, other methods, which are not described in subsections 2 or 3 below.. Only such methods may be used, the use of which complies with the arm's length principle. The arm's length principle is based on a comparison of the terms which were agreed in any business or financial transactions between related parties and the terms which would have been agreed between unrelated parties in similar business or financial transactions, in comparable circumstances. The review of comparability of the terms is made by confronting in particular the businesses conducted by the parties, including, but not limited to, their production, assembly works, research and development, purchase and sale, the scope of their business risks, the characteristics of the compared property or the service, the terms agreed between the parties to the transaction, the economic environment in the marketplace, and the business strategy. The terms shall be considered comparable if there is no difference at all or if only minor adjustments would compensate any such a difference."

**Note:** This document is for informative purposes only.

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