

Transfer Pricing Country Summary Turkey

August 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

Formal transfer pricing rules were introduced in Turkey on 21 June 2006, under Article 13 Turkish Corporate Income Tax Law (numbered 5520), Disguised Income Profit via Transfer Pricing. The rules are effective for tax years effective from 1 January 2007.

The provisions under Article 13 follow the arm's length principle established by the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations established by the Organization for Economic Co-Operation and Development (OECD Transfer Pricing Guidelines) and are applicable to all financial, economic, commercial transactions and employment relations between associated parties.

Detail on the application of Article 13 is provided in Communiqué Regarding Disguised Income Distribution via Transfer Pricing (the Transfer Pricing Communiqué) via Transfer Pricing Serial Number 1, 2 & 3 are the local Transfer Pricing Regulations, which was first released on 18 November 2007. A second Communiqué was released on 22 April 2008 and the third one was released on 7 December 2017, as supplementary documents to the first communiqué. The third Communiqué changed the 6th Section of the TP Communiqué No 1, which is solely about the Advance Pricing Agreement system.

The Decree No. 2008/13490, with effect from 1 January 2009, introduces the options for companies to apply to Advance Pricing Agreements. Turkish Tax Authorities take into consideration both local TP regulations and OECD TP Guidelines.

Documentation requirements

Per to the documentation requirements, Taxpayer has to fulfill two types of documentation obligations which are defined below.

1- Annual Form attached to the corporate tax return

2- Annual Transfer Pricing Report

For further details refer to chapter Documentation and Disclosure Requirements.

Exemption from documentation obligation applies for companies which are registered to the Large Corporations Tax Office and are required to prepare annual transfer pricing report for their domestic and cross border related party transactions; while companies which are registered to other Tax Offices are required to prepare a transfer pricing report only for their cross border related party transactions.

There is no limited transfer pricing documentation in the current law.

Also, those companies which signed an APA are not required to prepare and submit an annual TP report but only for the transactions that are covered by the APA. However, these taxpayers have to give all information required for annual implementation of the APA.

Transfer Pricing Scrutiny

The Turkish Tax Authority has increased the transfer pricing audit activity considerably since the transfer pricing regulation was adopted in 2007. There is a specialized group in the Ministry of Treasury and Finance¹ who only focus on transfer pricing audits. Companies from all industries can be targeted for transfer pricing audit. The introduction of APAs has increased the interest of companies in transfer pricing, which are trying to eliminate the risks. In line with the Turkish Tax Procedural Code, transfer pricing audits should be finalized in 12 months.

Definition of Related Party

The arm's length principle applies to associated enterprises, which are defined in Section 4 in the Transfer Pricing Communiqué. The term "related party" refers to:

- Shareholders of an entity;
- Individuals or entities related to shareholders or the entity itself;
- Individuals or entities that are directly or indirectly associated with the entity in terms of management, audit or capital;
- Individuals or entities that are directly or indirectly under the management, audit or capital control of the entity or its shareholders;
- Shareholder's spouses; and
- Relatives of the shareholders or their spouses, including upper and lower lineage with third degree relationship by blood or marriage.

The term "natural person" in Article 13 of Corporate Income Tax law refers to any person treated as a natural person who is taxable and their corporations and ordinary partnerships. The term "entity" refers to equity companies, cooperatives, state economic enterprises, associations or foundations, economic enterprises and joint ventures of such entities.

In applications of Turkey's income tax law, related parties have been found to cover a shareholder's (including partners of general partnerships, ordinary partnerships and limited partnerships) spouse and any relatives of the shareholder or his/her spouse including upper and lower lineage with third degree relationship by blood or marriage and companies in which they hold direct or indirect ownership interests, partners to such companies, and companies that are under the management, audit or capital control of such companies are all considered to be related entities.

¹ The name of the Ministry has been changed as the Ministry of Treasury and Finance after 24 June 2018.

With a recent update, definition of related party has been constricted in a way that a 10% threshold will be applied when the relationship occurs directly or indirectly through shareholding. In cases where there is at least 10% voting or dividend rights directly or indirectly without any shareholding relation, parties shall still be treated as related parties.

Transfer Pricing Penalties

No specific transfer pricing penalties. The penalty provisions of the Tax Procedural Law apply to those who do not submit the required documentation and/or where transactions are found to be inconsistent with the arm's length principle.

Tax penalties are calculated as 100 per cent of the taxes that haven't been accrued on time or haven't been accrued at all and there is also default (delay) interest which is calculated as 1.4 per cent of the tax accrued on a monthly basis, effective from 19 October 2010. For previous periods, the interest has different levels: from 19 November until 18 October 2010, the interest is calculated as 1.95 per cent and between 21 April 2006 and 18 November 2009 the interest rate is calculated as 2.5 percent.

Beginning from 1 January 2008, in case of a TP in domestic transactions, in order to be subject to a TP penalty for the disguised income distribution through transfer pricing, there must be a kind of tax loss in the sense of total tax among the whole group of companies not only from a single tax and/or single company perspective. In other words, there is tax penalty if there is a tax loss in the expected total tax in a group of companies.

If the taxpayer meets its transfer pricing documentation requirements both completely and on time, tax loss penalty which equals one time of the corporate tax principle will be applied with a 50% discount.

Advance Pricing Agreement (APA)

Clause 5 of Article 13 of the Corporate Income Tax Law grants corporate income taxpayers the right to apply for an APA, which would be applicable for up to 3 years. The usual application procedure applies. If the Ministry of Treasury and Finance and the applicant(s) conclude to make an APA, then the three-year period might be started on the date of this conclusion or might be started from the beginning of the following year.

Unilateral, bilateral, and multilateral APAs are now available for large corporate income taxpayers, since 1 January 2009. Bilateral APAs are concluded on the basis of income tax treaties.

As of 5 December 2017, the APAs application fee has been abolished with Law no 7061. Currently, there is no fee requirement for the application of APA.

The new regulations (Law no. 6728) allows for the transfer pricing methodology stated in an APA to be applied to the previous tax periods where the statute of limitation has not yet expired.

Implementation of BEPS-related documentation requirements

Turkish Tax Authority has released a Draft Communique regarding new documentation requirements, in line with BEPS Action 13, in 2016. Please note that the Communique is still draft. Until it is effective, current documentation requirements are to be applied.

Documentation And Disclosure Requirements

Tax Return Disclosures

Taxpayers are required to submit “Form Relating to Transfer Pricing, Controlled Foreign Entities, and Thin capital” as an appendix to the corporate income tax return. Disclosure is required of the methods applied per inter-company type of transaction (sale of goods, loans, services, licensing, transfer of capital assets etc.) and the value of those transactions. To be more specific:

Tax payers are obliged to fill a form attached to their annual corporate tax returns. In this form, taxpayers are required to present all the intra-group transactions within the current year and the applied transfer pricing methods. The form includes;

- General Information about the company;
- General Information about the related parties of the company;
- The description of intercompany transactions and the amounts of the transactions;
- Transfer pricing method selected by the company;
- Information about foreign subsidiaries of the company (if exists);
- Information about thin capitalization application of the company;
- Information about the borrowings of the company from related parties.

Level of Documentation

Corporate and individual income taxpayers must prepare transfer pricing documentation. The type of information that is required is outlined in the Transfer Pricing Communiqué and is as follows:

- Organizational chart and business description of the entity, identification of related parties (tax identification numbers, addresses, telephone numbers, etc.) and property relations among them;
- All information relating to the functions undertaken and risks borne by the entity;
- Price lists for the transaction year;
- Production costs for the transaction year;
- Volume of transactions with related and unrelated parties for the transaction year and associated invoice information;

- Copies of all related party contracts for the transaction year;
- Summary financial statements of related parties;
- Internal pricing policies relating to the related party transactions for the transaction year;
- Relevant information if related parties use different accounting standards and methods;
- Information related to intangible property ownership and royalties paid or received;
- Justification for the selected transfer pricing method and information and documentation regarding its application (internal and/or external comparables, comparability analysis);
- Calculations used to determine the arm's length price or profit margin and detailed information related to assumptions used;
- Statistical method used to determine the arm's length price range, if applicable; and
- Other documents used to determine the arm's length price.

Turkey's Ministry of Treasury and Finance may request additional information and documentation from the taxpayer as deemed necessary.

Country-by-country reporting obligation:

Turkey has adopted CbC reporting in the local legislation through Draft Communiqué. In order to start CbC reporting, Draft Communiqué should be finalized, the President's Decision should be announced.

Record Keeping

The Turkish Tax Procedure Law requires taxpayers to keep documentation for a period of 5 years after the end of the financial year to which they relate.

Language for Documentation

Transfer pricing documentation should be prepared in Turkish. If the documentation is in a foreign language, Turkish translations must be submitted.

Small and Medium Sized Enterprises (SMEs)

Corporate income taxpayers that are registered with the tax office of the Large Taxpayers are required to submit an annual transfer pricing documentation report for both their domestic and foreign related party transactions. Those that are registered with other tax offices are required to submit an annual transfer pricing documentation report for only their foreign related party transactions.

Deadline to Prepare Documentation

Transfer pricing documentation must be prepared and available when the corporate income tax return is submitted following the end of the fiscal year. The TP Report of the previous year must also be ready until the corporate tax return is filed (i.e. 25 April of the following year) by those who have to prepare a TP report compulsorily. Those taxpayers who are (i) registered at Large Taxpayers Tax Office; (ii) who have related parties abroad; and (iii) who have related parties at the free trade zones in Turkey must prepare the annual TP Report compulsorily.

Every taxpayer has to fill the Annex II of the annual income return, if there are any related party transactions.

Deadline to Prepare Documentation

The submission of the transfer pricing documentation is due within 15 days upon request.

Statute Of Limitations

The statute of limitation for taxpayers is 5 years.

Transfer Pricing Methods

The five OECD transfer pricing methods, i.e. the comparable uncontrolled price (CUP) method, resale price method, the cost plus method, the transactional net margin method and the profit split method are accepted, with a preference for the CUP method to be applied where possible. Other methods are also accepted provided the taxpayer can prove that the method is in accordance with the arm's length principle.

Comparables

Turkish Tax Authority is in favor of internal(self) comparable or Turkish (third party) comparable. Provided that tax payers explain in their Report that these types of comparable do not exist or not accessible, foreign data bases can also be used as long as the economic conditions and sector dynamic are comparable.

Mutual Agreement Procedure

There is a Guideline on Mutual Agreements “Guidance related to Mutual Agreement Procedure in the Agreements for the Avoidance of Double Taxation” was published in 2009. However MAP is not common in practice.