

Transfer Pricing Country Summary

Lithuania

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1. Introduction

The Lithuanian transfer pricing laws are mostly consistent with the OECD Transfer Pricing Guidelines ('OECD TPG'). Furthermore, Lithuanian TP Rules propose using the OECD TPG as long as the requirements do not violate the TP Rules.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Article 40 paragraph 2 of the Corporate Income Tax Act introduced in December 2001 constitutes the legal basis for the application of the arm's length principle; • The Minister of Finance decree 1K-123 of 9 April 2004 provided comprehensive documentation requirements, which are applicable to accounting periods beginning in 2004 or later. Lithuania is not an OECD member; but it is currently under the discussion to join OECD. However, Lithuania follows the guidelines for double tax treaties with reasonable consistency. The above mentioned decree 1k-123 replicates the OECD Transfer Pricing Guidelines (OECD Guidelines) in a concise manner as well as providing instructions that the OECD Guidelines are to be followed unless these contradict domestic legislation; • Order No. VA-27 of the Head of the State Tax Inspectorate dated March 2005, regarding the intercompany transaction disclosure; • The tax authorities issued official transfer pricing recommendations for taxpayers in September 2007. The recommendations address a number of specific issues, such as comparability, search of comparables and applicability of methods. These recommendations were also based mostly on the OECD Guidelines; • Additionally, starting fiscal year 2010, if specific criteria are fulfilled, one group company can transfer year-end losses to another group company in Lithuania to reduce its corporate income tax base; • Order No. VA-105 of the Head of the State Tax Inspectorate dated 19 October 2011, regarding APA submission and examination; • An amendment was introduced to the Law on Tax Administration and it introduces a general bidding ruling procedure. The effective date of this amendment is in the beginning of 2012.

b) Definition of Related Party

According to the Lithuanian Law on Corporate Income Tax (Article 2, paragraph 33), Related persons shall be treated as such if on any day of the current tax period or the tax period preceding the current tax period, they meet at least one of the following criteria, i.e., they are:

1. An entity and its members;
2. An entity and members of its management bodies;
3. An entity and the spouses, fiancés and cohabitants of its members or members of its managing bodies, other natural persons related to members of the entity or members of its managing bodies by consanguinity (in the direct line up to the second degree, in the collateral line up to the fourth degree) or by marriage (a natural person and the relatives of his spouse (in the direct line up to the second degree, in the collateral line up to the second degree)), and also the relatives of the cohabitants of members of the entity or members of its managing bodies (in the direct line up to the second degree,

in the collateral line up to the second degree), the spouses or cohabitants of the relatives of members of the entity or members of its managing bodies (in the direct line up to the first degree, in the collateral line up to the second degree) as well as the relatives of the said spouses or cohabitants (in the direct line up to the first degree, in the collateral line up to the second degree);

4. Members of a group of entities;

5. An entity and members of another entity where such entities comprise a single group of entities;

6. An entity and members of the managing bodies of another entity where such entities comprise a single group of entities;

7. An entity and the spouses, fiancés and cohabitants of members of another entity or members of its managing bodies, other natural persons related to members of another entity or members of its managing bodies by consanguinity (in the direct line up to the first degree, in the collateral line up to the second degree) or by marriage (a natural person and the relatives of his spouse (in the direct line up to the first degree, in the collateral line up to the second degree)), and also the relatives of the cohabitants of members of another entity or members of its managing bodies (in the direct line up to the first degree, in the collateral line up to the second degree), the spouses or cohabitants of the relatives of members of another entity or members of its managing bodies (in the direct line up to the first degree, in the collateral line up to the second degree) where the said taxable entities comprise a single group of entities;

8. Two entities where one of them controls directly or indirectly (through a single or several entities or natural persons) over 25% of the shares (interests, member shares) of the other entity or holds the right to over 25% of the decisive votes of the other entity or has undertaken to coordinate its decisions regarding activity with the other entity or has undertaken to be liable for the obligations of the other entity in respect of third persons or has undertaken to transfer all or part of its profits to the other entity or has granted the other entity the right to use over 25% of its assets;

9. Two entities where their members or the spouses, fiancés and cohabitants of such members, natural persons related by consanguinity (in the direct line up to the second degree, in the collateral line up to the fourth degree) or by marriage (a natural person and the relatives of his spouse (in the direct line up to the second degree, in the collateral line up to the second degree)), and also a natural person and the relatives of his cohabitant (in the direct line up to the second degree, in the collateral line up to the second degree), a natural person and the spouses or cohabitants of his relatives (in the direct line up to the first degree, in the collateral line up to the second degree) as well as the relatives of the said spouses or cohabitants (in the direct line up to the first degree, in the collateral line up to the second degree) control directly or indirectly 25% of the shares (interests, member shares) in each of such entities;

10. An entity and its permanent establishment;

11. Two entities where one of them holds decision-making rights in the other entity. According to Lithuanian Law on Corporate Income Tax (Article 2, paragraph 8), Associated persons shall mean

persons (entities or natural persons) where they meet at least one of the following criteria: • they are related persons; • they may have influence over each other resulting in the conditions of their mutual transactions or economic operations other than those where a maximum economic benefit is sought by each of the said persons

c) Nature of Transfer Pricing Documentation

- Master file consistent with Annex I to Chapter V of the TPG
- Local file consistent with Annex II to Chapter V of the TPG
- Country-by-country report consistent with Annex III to Chapter V of the TPG
- Specific transfer pricing returns

d) Tax Havens & Blacklists

There is not a tax haven list in Lithuania.

e) Advance Pricing Agreement (APA)

APAs are available in Lithuania as of 1 January 2012. The Head of the State Tax Inspectorate decree VA-106 of 21 October 2011 established the procedures and requirements of applying for and issuing of an APA:

- An application for an APA is free of charge;
- An application for an APA may be submitted only in respect of a future transaction or an operation to be carried out after the application is submitted (if the contract concerning the operation is concluded before submitting the application);
- An application for an APA must contain information about the parties involved in the future associated transaction, their relations and activities carried out by each of the parties, their business strategy as well as information about the object of the transaction, functions performed, risks assumed and assets used by the parties. Based on this information the taxpayer in its application must describe the transfer pricing method, provide comparability analysis, critical assumptions and other information demonstrating compliance with the arm's length principle;
- The tax administration must adopt a decision on an APA in 60 calendar days. The deadline for adopting a decision may be prolonged for 60 calendar days; • The decision is mandatory for the tax authorities of all levels throughout the entire period of the transaction but no longer than five calendar years after the year in which the decision was adopted. The decision is not mandatory for the taxpayer.

f) Audit Practice

There are no specific audit procedures established solely for transfer pricing purposes, thus, ordinary control procedures (tax investigation, tax audit, operational check) are performed for transfer pricing risk evaluation. The form of the control procedure is selected regarding the riskiness of a case. Consistent loss-making companies or a drop in profitability mostly trigger transfer pricing investigation/audit.

3. Transfer Pricing Documentation

a) Level of Documentation

The content of the documentation should include the following:

- Economic analysis that includes the methodology chosen and the reason for choosing the methodology, including the reasons for rejection of more prioritized methods;
- Information about the controlled transaction, including its functional analysis, economic circumstances, business strategy, characteristics of the transaction;
- Information on the parties involved in the transaction, describing legal and (or) economic relations thereof during the pricing of the transaction;
- Other relevant related party transactions describing information and (or) circumstances. The obligation to prepare transfer pricing documentation arises for the year following a year for which taxpayer's turnover exceeded EUR 2,896,200. The above obligation applies equally to nonresident taxpayers carrying on activities through a permanent establishment located in the Lithuanian territory. Irrespective of the level of turnover, all financial institutions and insurance companies are obliged to prepare contemporaneous transfer pricing documentation.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

The following methods are accepted:

- Comparable uncontrolled price (CUP) method;
- Resale price method;
- Cost plus method;
- Profit split method;
- Transactional net margin (TNMM) method.

Companies primarily must try to apply the comparable uncontrolled price method to establish a market price for transactions. If there is no sufficient data to apply the comparable uncontrolled price method or if the data is not reliable, the resale price method or the cost-plus method must be applied. If there is no sufficient data to apply the above-mentioned methods or if the data is not reliable, the profit split method or the transactional net margin method may be applied.

f) Economic Analysis – Benchmark Study¹

Before proceeding to an external database search for comparables, Lithuanian tax authorities will expect to see that a search for potential internal comparables has been conducted. Local comparable companies are preferred, but EMEA or regional comparable companies can also be considered. Geographic location, market size, overall competitive market position, level of demand and supply, and other economic factors all influence market comparability. The pricing documents must specify the following in the search and selection of comparable companies:

- each step of this search
- quantitative and qualitative selection
- the criteria used for the selection of comparative data
- the reasons for including or excluding specific comparative data
- the list of selected and qualitative comparative data, (or) adjustments to comparative data.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept.

¹ <https://www.grantthornton.global/en/insights/articles/transfer-pricing-guide/transfer-pricing---Lithuania/>

h) Financial Statements²

On 1 January 2014, the amendments to the Company Law on reporting data of the shareholders entered into force.

All private limited liability companies founded before January 1, 2014 and with more than one shareholder must provide the following information to the Informative System on Members of Legal Persons (hereinafter – the "System") by July 10, 2014:

- shareholders' data has to be provided to the System by electronic means;
- data has to be provided within 5 days from the receipt of documents, based on which the entries in personal securities accounts of shareholders or shareholders' register are recorded;
- the Managing Directors of the companies remain liable for preparation of the lists of shareholders. The obligation to submit the lists of shareholders to the Commercial Register has been amended by new obligation to provide data on shareholders to the System.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)* (If "No", it can be filed in English)
Corporate Income Tax	File	IAS and IFRS	15th day of the 6th month of the following tax period	Not applicable	Not applicable	Yes
Master File	Prepare	OECD Guidelines 2017	15th day of the 6th month of the next tax period	Not applicable	Yes – EUR 15 million or more	No

² <https://www2.deloitte.com/lt/en/pages/legal/articles/obligation-data-providing.html>

Local File	Prepare	OECD Guidelines 2017	15th day of the 6th month of the next tax period	Not applicable	Yes – EUR 3 million or more	No
CbCR	Prepare	OECD's XML format	No later than 12 months after the last day of the reporting fiscal year	Yes - No later than the last day of the reporting fiscal year	Yes – EUR 750 million or more	Not applicable
FR0528	File	Available on the website of the tax authority	Must be submitted together with the annual corporate income tax return no later than the 15th day of the 6th month after the last day of the fiscal year, or no later than the 30th day after the end of the entity's operations	Not applicable	Not applicable	Yes

Annual Accounts	Prepare	Local IFRS	Within six months of the end of the financial year	Not applicable	Not applicable	Yes
Segmented P&L	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
* Lithuania has signed the MCAA agreement for the filing of CBCR.						
* Lithuania does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.						

j) Mandatory Language

The documentation can be submitted in any chosen language by the taxpayer. Nonetheless, the Tax Authorities may request a Lithuanian translation.

k) Notification Requirement

There is no statutory deadline to submit the TP documentation. In general, documentation must be submitted 30 days after the request of the tax authorities.

l) Record Keeping

Article 68 of Law on Tax administration establishes that the taxpayer or the tax administrator may calculate the tax for the period of no more than the current and five previous calendar years counting back from the 1st of January of the year when tax was calculated. Naturally, the taxpayer is expected to have supporting documentation for this period.

m) Penalties and Interest Charges

Regarding non-compliance with transfer pricing documentation procedures an administrative penalty is foreseen under Article 188 of Administrative Offences Code (monetary fine EUR 1,400 – EUR 4,300 may be imposed, whereas for repeated offense EUR 2,900 – EUR 5,800); in addition, general penalties under the Tax Administration Law apply. Tax adjustments are generally subject to a penalty of between 10% and 50% of the unpaid tax, which may be mitigated if there is no overall loss to the budget. However, mitigation does not apply to penalty interest; therefore, even in a domestic only error with

no loss of tax revenue, a transfer pricing adjustment can give rise to a tax cost. Daily penalty interests are calculated from the day that the tax should have been paid, and the rate is set by the Ministry of Finance. The late payment interest at a rate of 0.03% from outstanding amount per day may be imposed towards the taxpayer.