

Transfer Pricing Country Summary

Spain

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1. Introduction

Transfer pricing policy in Spain is only determined by central government, so no local governments have any role in these issues. The primary legislation is the Corporate Income Tax Act. The TP regulations are contained in the Corporate Income Tax Law (CITL) 27/2014 of 27 November and in the Corporate Income Tax Regulations (CITR), approved by Royal Decree 634/2015, of 10 July.

Spain does not have any international rules or agreements that act as hard law on transfer pricing. However, as a member of the EU, all European tax legislation that indirectly impacts transfer pricing policies must be applied directly.

In terms of soft law, Spain follows the following as far as they affect transfer pricing:

- OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017.
- The work of the EU Joint Transfer Pricing Forum.
- OECD 2010 Report on the Attribution of Profits to Permanent Establishments.
- OECD Model Double Taxation Convention on Income and on Capital 1977 (OECD Model Tax Convention 1977).

2. Laws & Regulations

a) References to OECD/EU/Local Rules

For tax years beginning as from 1 January 2015, the Spanish transfer pricing regime is regulated by article 18 of the Law 27/2014 on Corporate Income Tax. This provision establishes that related-party transactions should be valued at arm's length for tax purposes.

Additionally, the comparability analysis and the most appropriate method rule are regulated by article 17 of the Spanish Corporate Income Tax Regulations, approved by Royal Decree 634/2015, on 10 July.

Finally, the Preamble of the Law also indicates that the interpretation of the Spanish transfer pricing rules should be consistent with the OECD Transfer Pricing Guidelines and the recommendations of the EU Joint Transfer Pricing Forum, insofar as they do not contradict what is expressly stated in the Spanish Law and Regulations.

b) Definition of Related Party

Spanish Corporate Income Tax Law provides a wide definition of related party. According to article 18 (2) of the Law, an individual or entity is a related party in any of the following cases:

- a) A company and a shareholder with a direct holding of 25% or more of its share capital;
- b) A company and its directors (except for director's fees);
- c) A company and the spouse or relatives, in direct or collateral line, by blood or affinity up to the third degree, of a related-party shareholder or a director;

- d) Two companies belonging to the same group of companies, irrespectively of the tax residency or the obligation to issue consolidated financial statements;
- e) A company and another group company's directors
- f) A company and other company indirectly holding 25% or more of its share capital;
- g) Two companies with the same shareholders (jointly with their spouse and relatives, in direct or collateral line, by blood or affinity up to the third degree) holding, directly or indirectly, 25% or more of their share capital;
- h) A Spanish resident company and its permanent establishments abroad; and
- i) A non-resident company and its permanent establishments in Spain.

c) Nature of Transfer Pricing Documentation

Spanish Corporate Income Tax Regulations provides two simplified TP documentation regimes for SME's:

1. Simplified documentation for mid-size groups

A company belonging a group with a net turnover exceeding 10 million euros but less than 45 million, is allowed to prepare only the following documentation:

- Description of the nature, characteristics and amount of the related-party transactions;
- Corporate/full name, tax address and tax identification number of the taxpayer and the involved related-parties; • Identification of the selected transfer pricing method;
- Selected comparables and the value or range of values.

2. Simplified documentation for small businesses

A company belonging a group with a net turnover under 10 million euros is just obliged to file a tax return with the following content:

- Description of the nature, characteristics and amount of the related-party transactions;
- Corporate/full name, tax address and tax identification number of the taxpayer and the involved related-parties;
- Identification of the selected transfer pricing method;
- Arm's length value or range of values.

3. Exceptions

Notwithstanding the above, the following "high-risk transactions" cannot benefit from the simplification and should be documented according to the ordinary requirements:

- Transactions between resident individuals carrying on economic activities taxed according to the simplified income tax regime and entities in which those individuals, their spouses, children or parents own at least 25% of the equity;
- On-going business transfers;

- Transfers of shares or participations in non-quoted companies or companies quoted in tax havens;
- Transfers of real estate property; • Transactions relating to intangible assets.

d) Tax Havens & Blacklists

Spain adopts the "black list" model, which means that inclusion on the list of tax havens for Spain implies that the nations involved are non-cooperative low-tax jurisdictions. There are 48 territories on the list of non-cooperative low-tax jurisdictions. However, the Law stipulates that if any of the countries named signs a DTT or Treaty with Spain for the exchange of tax information, that nation will be assumed to be removed from the list as of the day the Treaty came into force.

The basic measures adopted to prevent the tax erosion through low tax jurisdiction are:

- Disallowance of expenses invoiced by residents in low tax jurisdictions, unless the tax payer can prove that the transaction is genuine.
- Arm's length rules are applicable to transactions with residents in these jurisdictions even with non-related parties.
- The participation exemption regime is not applicable to subsidiaries located in low tax jurisdictions
- The distribution of dividends by the Special Spanish Holding companies to their shareholders resident in low tax jurisdictions are subject to the standard withholding tax
- The criteria to apply the controlled foreign company "CFC" rules are presumed in respect to companies located in low tax jurisdictions.

e) Advance Pricing Agreement (APA)

Corporate Income Tax Law provides the possibility to apply for an Advanced Pricing Agreement based on the Arm's Length Principle to the Spanish Tax Authorities. The APA requests may be unilateral, bilateral or multilateral.

An APA may be applied for an initial period of up to 4 tax years since its approval. However, it may also include the tax year in which the APA is approved and the previous tax years if they are not statutory-barred or the transactions have not an unappeasable re-assessment.

Royal Decree 1793/2008 regulates the tax procedure to file an APA request and its negotiation.

f) Audit Practice

Transfer Pricing scrutiny is one of the mandatory points in the working plan for Spanish tax inspectors when reviewing the tax obligations of a company. The review of the transfer prices is performed within

the ordinary tax audit procedure by the in-the-field auditor, with the assistance of specialised auditors in complicated cases.

The Spanish general guidelines of the tax control plan states that transfer pricing is one of the key areas of focus in the review of multinational groups, especially transactions involving high value intangibles, intra-group services, corporate restructuring and intra-group financing transactions.

3. Transfer Pricing Documentation

a) Level of Documentation

In order to evidence the arm's length nature of the related-party transactions, a Spanish company should prepare and keep in its files at the disposal of the Spanish Tax Authorities a transfer pricing documentation.

Spanish Regulations defines the contents of this transfer pricing documentation, which is consistent with the OECD TP Documentation Package approved in the BEPS Project.

This documentation package consists of two files:

1. Documentation relating to the controlled transactions within the group ("Masterfile");
2. Taxpayer's specific documentation ("Local file").

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

Article 18(4) of the Spanish Corporate Income Tax Law, provides that the following OECD-accepted methods can be applied for transfer pricing purposes in Spain:

- 1) Comparable Uncontrolled Price Method;
- 2) Resale Price Method;
- 3) Cost-Plus Method;
- 4) Profit Split Method;
- 5) Transactional Net Margin Method.

When none of these methods can be applied, the Law allows to use other generally-accepted valuation methods or techniques in a consistently manner with the arm's length principle.

Also, the Law establishes that the selection of the most appropriate method should be based on:

- The nature of the related-party transaction;
- The availability of reliable information on comparables; and
- The comparability analysis.

f) Economic Analysis – Benchmark Study

Although tax auditors prefer Spanish comparables, Pan-European searches of comparables are generally accepted and even used by the Spanish Tax Authorities, based on the recommendations of the EU Joint TP Forum's reports.

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.

h) Financial Statements

Since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept, parties need to also make sure their conduct is in line with what is reported in their accounts.

The notes to the annual accounts should disclose information about related-party transactions that have taken place and the effect of those transactions on the financial statements.

Taxpayer's financial information:

- Company's separate financial statements for the tax year;
- Conciliation between the data used to apply the transfer pricing methods and the separate financial statements (P&L segmentation), when applicable;
- Financial information of the selected comparables and source.

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	Local GAAP	Filed 25 days after a six-month period after the end of the fiscal year.	No	No	Yes
Master File	Prepare	OECD Guidelines 2017	Prepare within six months and 25 days after the end of the fiscal year	No	Yes	No
Local File	Prepare	OECD Guidelines 2017	Prepare within six months and 25 days after the end of the fiscal year	No	Yes	No
CbCR	File	OECD XML format	Within twelve months after the end of the	Before the end of the fiscal year. Special form available for this.	Yes	Yes. Annex III in Spanish and English

			reporting fiscal year			
Form 232	File	Available on the website of the tax authority	The statement should be filed within one month after a 10-month period after the end of the fiscal year. Normally, it is 30 November for companies closing books on 31 December.	No	Yes	No
Annual Accounts	Prepare	Local Tax GAAP	The latest on the last day of the seventh month following the end of the financial year	No	Yes	No
Segmented P&L	Prepare	Excel/Other	Ready upon filing CIT/TP documents.	No	No	No
* Spain has signed the MCAA agreement for the filing of CBCR.						
* Spain 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

Spanish Corporate Income Tax Regulations do not contain any provision relating to the language of the mandatory TP documentation. According to the recommendations of the EU Joint TP Forum and the recent amendments in the OECD Guidelines, documentation written in English should be acceptable.

Nonetheless, the tax auditor may request for a sworn translation into Spanish of any document (documentation, contract, invoices) written in a foreign language, as per the general administrative rules applicable also to tax procedure.

k) Notification Requirement

The CbCR documentation should be filed before the end of the fiscal year.

l) Record Keeping

Generally, TP documentation must be kept during the statute-of-limitations period: 4 years following the end of the tax return filing deadline (6 months and 25 days after the year-end).

However, if the company is offsetting tax losses, this record keeping period could be extended to the tax year in which the tax losses were generated

m) Penalties and Interest Charges

Article 18(13) of the Spanish Corporate Income Tax Law provides a specific tax penalty regime for infringements related with transfer pricing obligations. In this regard, the Law defines two separate cases of serious tax infringement, which implies the following tax penalties:

- 1) When there is no transfer pricing adjustment, but the transfer pricing documentation was not filed, or the documentation is incomplete or with wrong data, a tax penalty is calculated as the sum of 1,000€ per “data” and 10,000 € per “group of data” (“data” and “group of data” are defined in the documentation requirements for each item of the documentation) which is missing, incomplete or wrong. The total amount of this penalty is capped to the lower of:
 - a) 10% of the value of the transactions; or
 - b) 1% turnover.
- 2) When there is a transfer pricing adjustment made by the Tax Authorities and the transfer pricing documentation was not filed or the documentation is incomplete or with wrong data, a tax penalty is calculated as 15% of the transfer pricing adjustment;
- 3) When there is a transfer pricing adjustment made by the Tax Authorities and the value of the transaction is not consistent with the documentation filed, a tax penalty is calculated as 15% of the transfer pricing adjustment.

In order to obtain penalty protection, the company should have and file at Tax authorities' request a complete set of transfer pricing documentation with accurate information, consistent with the value of the transactions included in the tax returns and prepared in accordance with the Spanish Corporate Income Tax Regulations.