



Transfer Pricing Country Summary

Georgia

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1. Introduction

Georgia is not a member of EU or OECD. Since 2020, Iceland has formal transfer pricing documentation requirements to submit the country-by-country reporting and the notification of country-by-country reporting for qualifying multinational groups.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Although Georgia is not part of the Organization for Economic Cooperation and Development (OECD), Georgian authorities, Revenue Service of Georgia (RS), generally accept the OECD Transfer Pricing Guidelines as a specialized technical reference, additionally its transfer pricing legislation is based on the OECD Transfer Pricing Guidelines.

Except for that, Georgian TP general principles are provided in Articles 126 to 129 of the Georgian Tax Code and the Decree #423 of the Finance Minister. Regulations on CbCR can be found in Article 2(ii) of the Regulation (Rules) For Country-by-Country Reporting and Article 70 of the Tax Code.

b) Definition of Related Party

According to Article 126 of the Tax Code, two persons shall be related if: one person directly or indirectly participates in the management, control or capital of the other person; or the same persons directly or indirectly participate in the management, control or capital of two persons.

The fact that a person directly or indirectly participates in the management, control or capital of an enterprise means that more than 50% of the enterprise is owned directly or indirectly by, or the business decisions are actually controlled by that person.

c) Nature of Transfer Pricing Documentation

Georgia is not a member of OECD, but its TP rules basically follow the OECD TP Guidelines and use it as complements.

Georgia anticipated BEPS Action 13, but it has not wholly adopted the rules yet. Thus, the TP documentation regulated in BEPS are not applicable, except for CbCR.

d) Tax Havens & Blacklists

Georgia does not have a tax haven or 'black list' for non-cooperative jurisdictions.

e) Advance Pricing Agreement (APA)

According to Decree #45, amending Georgia has the unilateral advance pricing agreement (APA). The period covered by the unilateral APA should be within 3 years and it does not accept rollback. Application fee for an APA is GEL 30 000. Moreover, the value of the expected controlled transactions should not be obstacles for the application.

According to Decree #423, the forms for filing APA applications should contain:

- The application form for requesting a pre-APA application meeting with the tax authority;
- The application form for the APA request;
- The form of APA;
- The form for determination consistency of the enterprise's transfer pricing policy with the approach provided in the concluded APA act.

f) Audit Practice

The RS reviews tax returns and credits, deductions, etc. claimed to determine if the correct amounts were reported. It has the authority to request more information. Most audits are limited to a specific issue or set of issues. During the audit, the taxpayer has the right to contact a Georgia audit defense attorney. Once the auditor makes the determination, the taxpayer is still allowed to appeal the decision.

According to the new regulation, controlled transactions with related parties are deemed as distribution of profit if they do not comply with the arm's length principle.

3. Transfer Pricing Documentation

a) Level of Documentation

Georgia partially adopted the requirements of BEPS Action 13 of the OECD. The requirements apply as of financial years starting on or after 22 July 2020. This transfer pricing documentation requires a Country-by-Country Report (pursuant to Annex III to Chapter V of the TP Guidelines) containing certain information relating to the global allocation of the MNE's income and taxes paid together with the list of all constituent entities of the MNE group included in each aggregation per tax jurisdiction.

Georgia also retained its own TP documentation rules before BEPS Action 13. The transfer pricing documentation shall include:

- a) an overview of the Georgian enterprise's business operations, including an analysis of the economic factors that affect the pricing of its products and services;
- b) a description of the Georgian enterprise's corporate organizational structure, including all parties that are potentially important for the analysis of the controlled transaction;
- c) a description of the transaction being analysed, including an analysis of the comparability factors and details of the group's transfer pricing policy (if necessary);
- d) a description of the transfer pricing method selected and an explanation of the selection of the method;
- e) a comparability analysis
- f) an explanation of any economic analysis and forecasts used as a basis in the development of the transfer pricing method;
- g) details of any advance pricing arrangement which are relevant for the controlled transactions;
- h) a conclusion on the compliance with the arm's length principle and, if necessary, any adjustments made by the Georgian enterprise to the price / taxable income of its transactions for the relevant years, in order to ensure compliance with the arm's length principle; and
- i) any other information that may have a significant impact on the Georgian enterprise's compliance with the arm's length principle with respect to the controlled transactions

The Tax administration 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.

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 TP method of Georgia is the same as OECD TP Guidelines, including: (1) CUP, (2) cost plus, (3) resale price, (4) TNMM, (5) profit split and (6) other methods. It does not have hierarchy, but apply the most appropriate method. The other methods can only be applied in exceptional cases with sufficient reasons.

f) Economic Analysis – Benchmark Study

Belgium follows the guidance on comparability analysis outlined in Chapter III of the OECD TP Guidelines.

Foreign comparables with the analysis the impact of geographic differences and the solution of appropriate adjustments can be accepted. The benchmarking criteria shall be in accordance with the general comparability factors stipulated in local legislation and OECD TP Guidelines. The applicable independence criterion is 50% or less. A fresh benchmarking search should be conducted every year. Taxpayers with small turnover can do it every three years under certain conditions.

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

Georgia does not have concrete regulations regarding financial statements.

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 | Prepare | Local GAAR | Must be prepared before the due date for the filing of the tax return and must be submitted to the tax authorities within 30 days upon request from the tax authorities | No | No | No (At the request of the Georgian tax authorities, English may have to be translated into Georgian) |
| Master File | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. |
| Local File | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. |
| CbCR | File | N.A. | Not later than 31 December of the next year of the reporting fiscal year of the MNE group | No later than the last day of the reporting fiscal year of the MNE Group | Yes | N.A. |
| Local form | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. |
| Annual Accounts | File | Local IFRS | September 30 th | N.A. | No | Yes (Georgian) |
| Segmented P&L | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. |

* Georgia has signed the MCAA agreement for the filing of CBCR.

* Georgia 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.

The CbCR must be filed before 31 December of the next year of the reporting fiscal year of the MNE group. The TP documentation should be prepared before the due date for the filing of the tax return and must be submitted to the tax authorities within 30 days upon request from the tax authorities.

There is no specific statute of limitations on TP assessments. So according to the general laws, the limitations is three years. It shall be extended for one year, if

- before the expiration of the period, there is less than one year left; and
- the taxpayer has filed a claim or a tax return for the relevant period.

Tax cannot be reassessed after the end of this period.

j) Mandatory Language

The TP documentation may be submitted in Georgian or English. However, when submitted in English, the tax authorities may request the taxpayer to arrange a Georgian translation.

k) Notification Requirement

Every Georgian group entity, which is obliged to file a country-by-country report, should file the country-by-country reporting notification form. The Country-by-Country reporting notification form must be filed no later than the last day of the reporting fiscal year of the MNE Group.

l) Record Keeping

Small and medium-sized businesses must keep accounts in accordance with the International Financial Reporting Standards for SMEs. They may also use the International Financial Reporting Standards (IFRS).

Micro enterprises are not required to keep financial records. Unless otherwise provided for by legislation, a legal entity under private law, other than a business entity, must keep accounts in accordance with the local (national) financial reporting standards for non-entrepreneurial (non-commercial) legal entities.

Furthermore, the legal entity under private law may use IFRS or IFRS for SMEs.

A budgetary organization and a legal entity under public law are required to keep accounts in accordance with public sector accounting standards. An entity may keep its own accounts, hire someone to do so, or outsource accounting services.

Accounting services provided by a person to an entity are considered accounting services. Except as otherwise provided by Georgia law, an entity must keep an accounting document for six years after the end of a fiscal period.

m) Penalties and Interest Charges

Specific penalties from GEL 400 to GEL 5,000 apply in case of non-filing, incorrect or incomplete filing.