

Transfer Pricing Country Summary Philippines

June 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

The legal framework for transfer pricing is set out at Section 50 of the National Internal Revenue Code (Tax Code) of 1997. Section 50 provides the arm's length principle to domestic and international related party transactions, and is based on the OECD transfer pricing guidelines.

Definition of Related Party

Related party is defined as:

- enterprises that participates directly or indirectly in the management, control or capital of another enterprise; or
- the same person that participates directly or indirectly in the management, control or capital of two enterprises.

Furthermore, control will be assumed to exist if "one entity holds not less than 30% of the outstanding shares entitled to vote of a corporation, in addition to other situations putting the parties in a controlled environment or relationship"

Transfer Pricing Scrutiny

The transfer pricing audit is carried out by local tax authorities. Companies are audited on a discretionary basis. Transfer pricing scrutiny is most likely applied to (i) companies with consistent losses and increasing assets, (ii) management and other inter-company services, (iii) royalties and intercompany financing. In addition, domestic transfer pricing issues such as (iv) expenses of related companies with tax privileges are transferred to related companies that are subject to regular income tax rate, (v) income and/or expenses are transferred to a related company in order to minimize tax liabilities are also targeted for transfer pricing scrutiny,

Transfer Pricing Penalties

If transfer pricing adjustment leads to additional income tax, a penalty of 25 percent is charged on the extra tax amount. An interest of 20 percent (50 percent in case of fraud) per year is charge on penalties. Interest is imposed on the deficiency tax (but not on the surtax) at 20% per annum. A compromise penalty up to PHP 50.000 may also be imposed.

Advance Pricing Agreement (APA)

Unilateral, bilateral and multilateral APAs are available. The Bureau of Internal Revenue (BIR) has not agreed any APAs to date. The proposed regulations provide general guidance on APAs, which will be administered by the BIR once finalized. According to the draft regulations APAs would be applicable for up to 3 years from the date of agreement. APA application fee is not yet determined.

Documentation and Disclosure Requirements

Tax Return Disclosure

There are no requirements for disclosure of transfer pricing-related information in the corporate tax return. Related party disclosures are required only in the notes to the audited financial statements, which must be filed along with the corporate tax return.

Level of Documentation

There is no statutory obligation to prepare transfer pricing documentation but taxpayers are recommended to do so in order to be able to respond to BIR queries. The proposed legislation provides an indication of the type of documentation that would be helpful in an enquiry, however, the BIR leaves the decision to the taxpayer on the depth of detail that is provided, which should be commensurate with the level and complexity of the related party dealings.

Examples of information indicated in the proposed regulations as being helpful in an analysis of the arm's length nature of related party transactions include:

1. a worldwide organizational structure, showing the location and ownership linkages amongst all related parties;
2. the group's line of business, industry dynamics, market, regulatory and economic conditions in which it operates;
3. the group's business models and strategies (past, present and future);
4. information on the principal business activities and functions of each party in the group, as well as the business relationships (services provided, goods sold, intangible use, etc.) amongst all related parties;
5. consolidated financial statements for the last 3 years must also be provided, if applicable;
6. the company registration number, address, etc, for each related party operating in the Philippines;
7. detailed information on the entity's line of business, business models and strategies, and financial information, including detailed profit and loss statements, for the last 3 years must be provided;
8. details of transactions between the Philippine entity and all related parties and the contracts or agreements (if any) to show the terms of the transactions must be provided;
9. segmented financial accounts with respect to the transactions, for the last 3 years including any allocation keys used in segmenting the financial accounts;
10. a functional analysis, including the assets employed and risks assumed by the relevant enterprise; and
11. an economic analysis documenting the choice of the transfer pricing method, the choice of the tested party and reasons supporting the choice, details on comparables and the screening criteria for choosing the comparables, comparability analysis of the related party transactions and the comparables, as well as the adjustments made to achieve comparability, and the determination of the arm's length price/margin.

Record Keeping

Documentation should be kept for three years after the last day prescribed by law for the filing of the return to which the documentation relates.

Language for Documentation

Filipino and English languages are permitted.

Small and Medium Sized Enterprises (SMEs)

There are no specific rules for small and medium-sized enterprises.

Deadline to Prepare Documentation

Transfer pricing should be prepared contemporaneously.

Deadline to Submit Documentation

Upon request, transfer pricing documents must be submitted within 45 days. This period can be extended subject to the discretion of the BIR Commissioner or his duly authorized representative.

Statute Of Limitations

Generally, the statute of limitations is 3 years from the end of the year of assessment to which the transfer pricing issue relates.

Transfer Pricing Methods

France relies on the 2010 OECD Transfer Pricing Guidelines for transfer pricing methods. In particular, the following methods are accepted:

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

The choice of transfer pricing method depends on circumstances, but generally should be the most appropriate method.

Comparables

Local comparables are preferred. In case local data are insufficient, foreign comparables can be accepted.