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GLOBAL TRANSFER PRICING SERVICES

# Global Transfer Pricing Review

Israel

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TAX



# Israel

## KPMG observation

The transfer pricing regulations require companies to list all international transactions on the corporate tax return (Form 1385) and to declare that the transactions were conducted according to “market conditions”.

As a member of the Organisation for Economic Co-operation and Development (OECD), Israel will be affected by the planned changes relating to transfer pricing as a result of the OECD’s Base Erosion and Profit Shifting (BEPS) work plan/initiative. The potential effects and implications will be clearer as the specifics of the initiative take form and move closer to implementation.

## Basic information

### Tax authority name

Israel Tax Authority.

### Citation for transfer pricing rules

Israel Tax Ordinance Section 85A and Israel Tax Regulations (Market Conditions Determination), 2006.

### Effective date of transfer pricing rules

29 November 2006.

### What is the relationship threshold for transfer pricing rules to apply between parties?

In general, any special relationship (controlled directly or indirectly by the same interest). Specifically (but not limited to): ownership or control of 50 percent or more.

### What is the statute of limitations on assessment of transfer pricing adjustments?

Three years from end of year of tax return submission. May be extended in special cases.

## Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or

submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. The Market Conditions Survey should be prepared and a special declaration form should be submitted with the corporate tax return (form 1385).

### What types of transfer pricing information must be disclosed?

Ongoing or one-time transaction, description of intra-group transaction, details and location of foreign related party to the transaction, and total transaction price. The form must be signed under the declaration that the transaction was conducted under “market conditions” as described in Section 85A and the transfer pricing regulations.

### What are the consequences of failure to prepare or submit disclosures?

Statute of limitations begins following full submission. Burden of proof falls on taxpayer.

## Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes for all transactions, unless it is a one-time transaction with prior approval from the tax assessor.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Penalty reduction and shifting of burden of proof to the tax authorities.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Transfer pricing analysis must be prepared before submission of tax return and a full study must be submitted within 60 days of request.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

## Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

Comparable uncontrolled price is preferable to all other methods. The transaction-based methods (cost plus or resale price) have priority over the transactional net margin method.

If there is no priority of methods, is there a "best method" rule?

Not applicable.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Within 60 days of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Yes – appeals, courts, treaties.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

No specific transfer pricing penalties; general tax penalties.

To what extent are transfer pricing penalties enforced?

Not applicable

What defences are available with respect to penalties?

Documentation or negotiation.

What trends are being observed currently?

Restructuring and intellectual property (IP) migration are under scrutiny from the Israeli Tax Authority.

The Tax Authority takes the position that stock options must be included in the cost base. It should be noted that in many circumstances, stock options are not deductible expenses for tax purposes.

In addition, the Tax Authority has taken an aggressive approach and is assessing secondary adjustments in cases where a transfer pricing adjustment is made.

## Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

No specific requirements (in practice, Israeli tax authorities use Osiris and Amadeus databases).

What level of interaction do tax authorities have with customs authorities?

Low.

Are management fees deductible?

Yes, if conducted at arm's length terms.

Are management fees subject to withholding?

No.

Are year-end transfer pricing adjustments permitted?

Yes, but we recommend seeking professional advice before doing so.

Other unique attributes?

Not applicable.

## Other recent developments

Not applicable.

## Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive, approximately 40 countries.

If extensive, is the competent authority effective in obtaining double tax relief?

Sometimes.

When may a taxpayer submit an adjustment to competent authority?

No formal domestic rules, depends on treaties.

May a taxpayer go to competent authority before paying tax?

No formal domestic rules, depends on treaties.

## Advance pricing agreements

What advance pricing agreement (APA) options are available, if any?

Unilateral and advance rulings.

Is there a filing fee for APAs?

At this stage, there are no filing fees.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Please provide some information on how successful the APA programme is and whether there are any known difficulties?

The APA procedure is lengthy.

## Language

In which language or languages can documentation be filed?

English or Hebrew. In some instances, the tax authorities request translation for documentation filed in English.

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