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GLOBAL TRANSFER PRICING SERVICES

# Global Transfer Pricing Review

Montenegro

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TAX



# Montenegro

## KPMG observation

Transfer pricing rules have been present for more than a decade in Montenegrin Corporate Income Tax (CIT) Law, but specific and detailed regulations on the application of these rules have never been published by the Ministry of Finance. However, due diligence should be taken with respect to the transfer pricing rules stipulated in the CIT Law (even though they are not applied in practice) since the tax authorities may change their current practice retroactively.

## Basic information

### Tax authority name

Tax Administration of Montenegro.

### Citation for transfer pricing rules

Articles 19, 20 and 38 of the Corporate Income Tax (CIT) Law.

### Effective date of transfer pricing rules

1 January 2002.

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

A company is defined as being related to another company or an individual if this other company or the individual has a direct effect on the conditions or economic results of the transactions between these entities.

Special conditions are:

- participation in the capital or in the voting power of at least 25 percent,
- the existence of a subordinated relationship between two entities,
- if one entity is under control (direct or indirect) of another entity,

- if two entities are subsidiaries of the same entity or
- if entities are under direct or indirect control of a third entity.

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

Generally 5 years from the end of the year in which a tax liability should have been determined. The absolute period of limitation is 10 years. There is no special statute of limitations on assessment of transfer pricing adjustments.

## 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.

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

Income and expenses generated from related party transactions during the year must be separately disclosed in the CIT return.

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

No consequences are defined in the CIT Law for failure to prepare or submit disclosures.

## 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?

No. However, supporting documentation for disclosed transfer prices is recommended (specific form is not prescribed).

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

Since there are no specific requirements regarding the documentation, preparing a transfer pricing study provides a benefit of shifting the 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?

No specific requirements.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

As there is no required documentation necessary to support transfer prices applied, taxpayers are advised to follow the OECD Guidelines.

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. However, please note that only the traditional methods are prescribed by the regulations i.e. comparable uncontrolled price (CUP) resale minus and cost plus.

Is there a priority among the acceptable methods?

Yes. When CUP is not possible, the cost plus method or the resale price method should be used.

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?

The taxpayer should in principle possess documentation to support transfer prices

declared at the moment of request from the tax authorities. Time may be granted for the preparation of documentation during the tax audit.

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

Adjustments assessed by the tax authorities must be applied and then the taxpayer has an option to appeal to the second instance degree procedure with the tax authorities or finally to the administrative court.

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

No penalties are defined in the CIT Law for underpayment of tax due to transfer pricing.

To what extent are transfer pricing penalties enforced?

Not applicable.

What defences are available with respect to penalties?

Not applicable.

What trends are being observed currently?

The government is currently rarely performing transfer pricing audits due to lack of experience and a relatively low corporate income tax rate (9 percent), which results in much more attention paid to indirect and payroll taxes. Taking into account that the tax authorities in neighboring countries in South Eastern Europe have started to pay much more attention to transfer pricing, it is expected that this trend will spread to Montenegro as well.

## 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, none in practice.

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

Interaction between tax and customs authorities regarding VAT is high. However, it is not possible to estimate the level of interaction regarding transfer pricing.

Are management fees deductible?

Generally, yes. Please note that non-documented costs are non-deductible as well as costs that are not incurred for business purposes.

Are management fees subject to withholding?

Yes, a 9 percent withholding tax applies unless there is a double taxation treaty between Montenegro and the country of the beneficial owner of the income.

Are year-end transfer pricing adjustments permitted?

No.

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?

Minimal.

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

No experience.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist in this area.

May a taxpayer go to competent authority before paying tax?

No formal rules exist in this area.

## Advance pricing agreements

What Advance Pricing Agreement (APA) options are available, if any?

No APAs or advance rulings of any kind are available.

Is there a filing fee for APAs?

Not applicable.

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

Not applicable.

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

Not applicable.

## Language

In which language or languages can documentation be filed?

Montenegrin.

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Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 133196

Publication date: June 2014