



cutting through complexity

GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Slovakia

kpmg.com/gtps

TAX



Slovakia

KPMG observation

After the introduction of mandatory transfer pricing documentation (for taxable periods starting from 2009), transfer pricing became one of the top priorities for the Slovak tax authorities. The tax authorities started to focus on transfer pricing audits and inspect transfer pricing arrangements in more detail than ever before. The tax authorities have placed a greater focus on transfer prices for transactions with foreign related parties than the prices used for domestic transactions, since in principle transfer pricing only applies to transactions with foreign related parties in Slovakia. The tax authorities have built specialized transfer pricing teams and it is expected that the number of transfer pricing audits to be carried out on corporate taxpayers is again going to increase.

Basic information

Tax authority name

Daňový úrad (tax authorities).

Citation for transfer pricing rules

Article 2 Letter n through r, Article 17 (5) through (7), and Article 18 of the Act No. 595/2003 Coll. on the Income Tax as amended.

Guidelines of the Ministry of Finance of the Slovak Republic No. MF/8288/2009-72 on details regarding the content for keeping documentation for the transfer pricing method applied by a taxpayer according to the Article 18 (1) of the Act No. 595/2003 Coll. on the Income Tax as amended.

Effective date of transfer pricing rules

General transfer pricing rules have been applicable since the introduction of the first post-communist income tax legislation in the 1990s. An important amendment laying down the obligation to maintain transfer pricing documentation became effective on 1 January 2009.

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

More than 25 percent direct or indirect share of voting rights or registered capital, or personal relation (statutory

bodies) or business relation solely for the purpose of decreasing tax base/ increasing tax loss.

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

Five years from the calendar year-end of the filing date. Seven years if the taxpayer carries forward tax losses according to income tax legislation effective from 1 January 2010. Maximum statute of limitations is 10 years. Ten years always applies if international tax treaties are involved.

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)?

Corporate taxpayers are required to disclose in their annual tax return certain information regarding transactions with related parties.

What types of transfer pricing information must be disclosed?

Terms of the following transactions concluded with foreign-based related parties have to be reported in the annual

tax return of a corporate entity (all values stated in Euros (EUR)):

- Interest resulting from provision of loans or credits.
- Granting license rights.
- Provision of services.
- Transfer of tangible, intangible and financial assets.
- Transfer of inventory.

However, disclosure of details regarding individual transactions is not required in the annual tax return.

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

The tax return is not complete and the tax authorities may ask for the completion of the respective information in the tax return after the tax return was filed.

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. The Ministry of Finance of the Slovak Republic issued guidelines which specify

details regarding the content and the rules for preparing and maintaining documentation of the transfer pricing method applied by the taxpayer to transactions with its foreign-based related parties.

According to the guidelines, entities which are obliged to prepare financial statements under International Financial Reporting Standards (IFRS) according to Slovak Accounting Act (IFRS reporters) are required to keep full scope transfer pricing documentation for the respective tax period. It must include a master file and a country file including a transfer pricing study, i.e. internal and external comparables on transactions conducted between independent parties, a comparability analysis, functional analysis, etc.

Other taxpayers not meeting the set criteria for IFRS reporting have to prepare 'simplified transfer pricing documentation' that shows compliance with the arm's length principle in transactions with foreign-based related parties.

The documentation must support the fulfilment of arm's length principles in significant controlled transactions performed by the taxpayer.

Entities which do not perform transactions with foreign related parties are currently not required to maintain transfer pricing documentation.

If the transfer pricing documentation was not provided to the tax authorities based on their request within the set deadline of 15 days, the taxpayer could be penalized up to EUR3,000, also repeatedly.

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

Preparation of a transfer pricing study, including benchmarking, is recommended even for taxpayers who are not obliged to maintain a benchmarking study (i.e. for those entities which do not maintain accounting records under IFRS). If the tax

authorities were to challenge the prices applied in related party transactions, the taxpayer would be required to support compliance with the arm's length principle. Existence of a benchmarking study may help shift 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?

For relevant taxpayers the deadline for submitting transfer pricing documentation is within 15 days of the tax authorities' request.

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

No. The content of the full scope transfer pricing documentation prepared by IFRS reporters should correspond with the requirements of the European Union (EU) Code of Conduct on Transfer Pricing Documentation, i.e. it must include a master file for the group of related parties and country specific documentation for the taxpayer. However, requirements of EU Code of Conduct on Transfer Pricing Documentation are similar to those outlined in OECD Guidelines.

Simplified transfer pricing documentation must contain the following major elements:

- List of transactions with related parties, and their nature.
- Description of major transactions, their volume or percentage from the overall volume of transactions.
- Information on the volume of incomplete/in-process transactions.
- Information on prices of completed transactions between the taxpayer and the related parties.

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?

No, with effect from 1 January 2014.

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

Yes, OECD 'most appropriate method' rule.

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?

According to Article 18 (6) of the Slovak Income Tax Act, transfer pricing documentation must be made available to the tax authorities within 15 days of request.

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

Most tax treaties which Slovakia has with other OECD countries contain mutual agreement procedures (MAPs) if the adjustment assessed by the tax authorities results, or is likely to result, in double taxation.

Furthermore, the EU Arbitration Convention lays down mechanisms on how disputes between the authorities of the involved countries should be resolved.

The respective proceedings are rather lengthy and administratively cumbersome procedures with results being difficult to anticipate.

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

If a tax difference detrimental to the State budget is assessed as a result of non-compliance with the arm's length principle, a penalty in the amount of three times the base interest rate of the European Central Bank will be assessed; however, not less than 10 percent from the mis-stated tax would be levied.

To what extent are transfer pricing penalties enforced?

Always, if a misstatement of tax is identified.

What defences are available with respect to penalties?

No defenses if the documentation is not provided to the tax authorities within statutory limits. Penalties can be reduced only in extraordinary circumstances stipulated by the tax law.

In the case of penalties arising from additional tax assessments resulting from a tax audit, ordinary and extraordinary legal remedies are available for the taxpayer, including appeal, review beyond appellate proceedings, and renewal of proceedings. An action may be filed by the taxpayer with the court against the decision on tax assessment (confirmed by the appellate tax authorities) against which no ordinary legal remedy is allowed.

What trends are being observed currently?

The tax authorities are more frequently focusing on transfer pricing audits of all types of businesses, and exit taxation issues are starting to be discussed in Slovakia.

The tax authorities are more and more familiar with transfer pricing issues and the inspections are more efficient and sophisticated (e.g. tax authorities are preparing their own benchmark studies).

Tax inspections could be carried out by specialized teams with trained and skilled people, who can help the tax authorities in any region. Taxpayers are advised to prepare extended transfer pricing documentation (not just content specified for simplified documentation) as tax authorities may additionally require supporting information/documents upon a potential inspection.

Special considerations

Are secret comparables used by tax authorities?

Under certain circumstances the tax authorities are allowed to determine tax according to aids at their disposal or procured without cooperation with the taxpayer. This may potentially involve comparables derived from the files of other taxpayers which are not publicly available. However, based on other law provisions, the tax authorities are required to clearly demonstrate what aids have been used to assess the specific tax difference.

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?

The tax authorities in Slovakia use the Amadeus database.

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

Regarding corporate income tax, the interaction of the tax authorities with the customs authorities is low. However, the responsibilities of both authorities can lead to a higher level of interaction in the area of VAT.

Are management fees deductible?

In general, yes, but subject to documentation requirements and justification of how the management services serve to generate, assure or maintain taxable income of the Slovak company.

Are management fees subject to withholding?

In general no, but if these also comprise intellectual property transfer (know-how) and this is not separately disclosed on invoice, then they could be subject to withholding tax. A 'security tax' is withheld in some circumstances, if the entity to which fees are paid has a permanent establishment in Slovakia and is a tax resident outside the EU.

Are year-end transfer pricing adjustments permitted?

Yes, although the Slovak transfer pricing legislation does not specifically address a term year-end adjustment. In practice year-end transfer pricing adjustments (reflected in the same taxable period as related transactions) in both directions are used. In general, it is expected that a year-end adjustment is described/anticipated in relevant agreements covering intra-group transactions and specific formulae/calculations are in place.

Other unique attributes?

Not applicable.

Other recent developments

The Slovak central tax authorities have built a transfer pricing department and therefore more focus by the tax authorities on transfer pricing is expected in the near future.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. The current double tax treaty network includes 64 tax treaties. New tax treaties are being negotiated.

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

Almost always.

When may a taxpayer submit an adjustment to competent authority?

No formal rules. However, at the latest within four to 10 years after the respective taxable period.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

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

Unilateral.

Is there a filing fee for APAs?

No/immaterial.

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 program is and whether there are any known difficulties?

It is not common in Slovakia to ask for an APA.

Language

In which language or languages can documentation be filed?

Documentation should be filed with the Slovak tax authorities in the Slovak language, but upon request of the taxpayer the tax authorities may allow the submission of the documentation in another language.

KPMG in Slovakia

Tomáš Círan

Tel: +421 2 599 84 111

Email: tciran@kpmg.sk

Branislav Durajka

Tel: +421 2 599 84 303

Email: bdurajka@kpmg.sk

Zuzana Blažejová

Tel: +421 2 599 84 331

Email: zblazejova@kpmg.sk

As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.

kpmg.com/socialmedia



kpmg.com/app



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2014 KPMG International Cooperative ("KPMG International"), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International.

Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 133196

Publication date: June 2014