



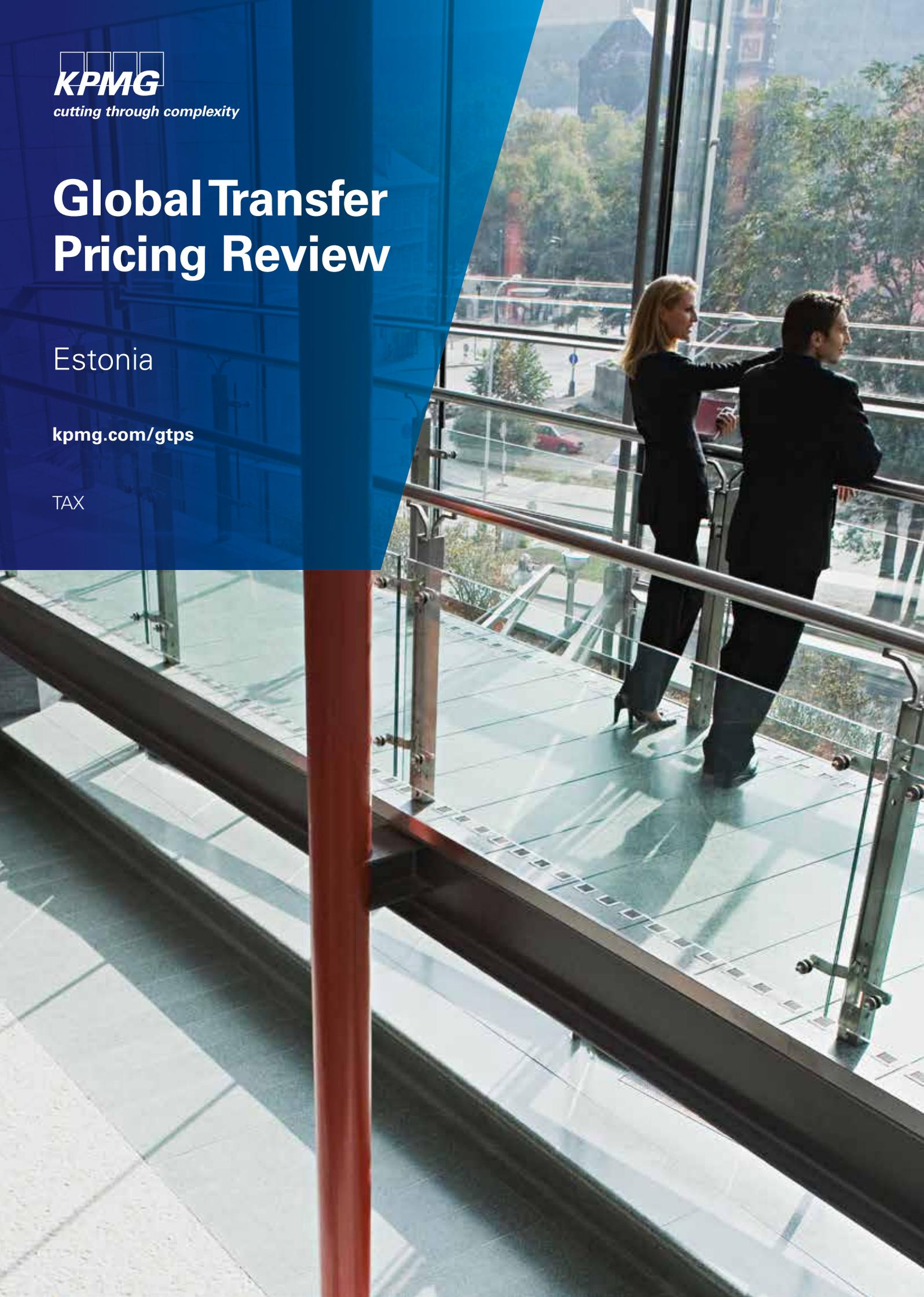
cutting through complexity

Global Transfer Pricing Review

Estonia

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TAX



Estonia



KPMG observation

The Estonian tax authorities have paid more and more attention to transfer pricing issues in recent years. For example, intra-group financing transactions, especially loans granted/deposits made by Estonian taxpayers, have been under public discussions and now face challenges by the tax authorities as mechanisms for hidden profit distribution. In light of this, in Estonia, being prepared for a transfer pricing audit with proper transfer pricing documentation is of key importance to avoid tax liabilities.

The Estonian Tax and Customs Board is closely following the OECD's BEPS developments. The BEPS initiative is expected to begin to have an effect on the Estonian regulatory regime in 2016.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Thresholds apply/exist
Legal requirements	●		●
Protection from penalties		●	
Reduce risk of adjustment	●		
Shifts burden of proof	●		

Basic information

Tax authority name

Eesti Maksu- ja Tolliamet (Estonian Tax and Customs Board).

Citation for transfer pricing rules

General rules are established by the Income Tax Act. Organisation for Economic Co-operation and Development (OECD) compliant methods and pricing principles are established with the Decree by the Minister of Finance.

Effective date of transfer pricing rules

Current general rules are effective from 1 January 2000. Amended rules together with documentation requirements are effective from 1 January 2007. New

regulations concerning related parties in the Income Tax Act are effective from 1 January 2011.

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

According to the Estonian Income Tax Act, persons are considered to be associated if they have common economic interests or if one person has dominant influence over the other. The official translation of the legislations defines associated persons as:

- spouses, cohabiters, direct blood or collateral relatives
- companies belonging to one group
- legal person and natural person who owns at least 10 percent of the share

capital, total number of votes or rights to the profits of the legal person

- one person, together with other persons with whom the person is associated, owns more than 50 percent of the share capital, total number of votes or rights to the profits of a legal person
- legal persons where more than 50 percent of the share capital, total number of votes or rights to the profits belong to one and the same person or associated persons
- persons who own more than 25 percent of the share capital, total number of votes or rights to the profits of one and the same legal person
- legal persons where all members of the management boards or the bodies

substituting for the management boards are the same persons

- employers and their employees, employee's spouses, cohabiters or direct blood relatives
- a person is a member of the management or controlling body of a legal person, or the spouse or a direct blood relative of a member of the management or controlling body.

Where 'legal person' is broadly defined as a company, 'natural person' is an individual, and 'person' can be either a legal or natural person.

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

Three years from the filing date of the tax return. In the event of intentional failure to pay or withholding an amount of tax, the limitation period for making an assessment of tax is five years. In Estonia, tax returns are submitted on a monthly basis.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes. Not specified. Studies in English are generally accepted; however, Estonian language is highly preferred and translation into Estonian may be required.

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

Yes, for all transactions.

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

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes. Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 60 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

The documentation must be submitted within 60 days of the tax authorities' request.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Disputes are generally resolved between taxpayers and the tax authorities. If they fail to reach an agreement, the taxpayer has the right to turn to administrative court.

There is no tax arbitration institution or a special tax court in Estonia.

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

General rules are applicable, but there is no special penalty for transfer pricing. Thus, if the taxpayer fails to submit the documentation, a penalty up to 3,200 euros (EUR) may be imposed.

To what extent are transfer pricing penalties enforced?

So far no penalties have been imposed.

What defenses are available with respect to penalties?

Documentation.

What trends are being observed currently?

The number of audits covering transfer pricing issues is increasing. Recently, the tax authorities have put more focus on the finance transactions between the taxpayer and its related parties. Special focus is on loans granted/deposits made by the Estonian taxpayer to its related party.

Transfer pricing documentation in the local language is highly preferred by the tax authorities.

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?

Yes. Estonian comparables are preferred, but if not available, foreign comparables are accepted.

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

No.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, sometimes.

Does the tax authority have other preferences in benchmarking? If so, please describe.

Not applicable.

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

Unknown, but in Estonia, tax and customs authorities operate as one institution.

Are there limitations on deductibility of management fees beyond the arm's length principle?

No.

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

No, if related to business.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. Tax return numbers may be in different period than book entries (tax returns are filed monthly in Estonia).

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

The double tax treaty network of Estonia is extensive, with 56 treaties altogether.

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. Basically anytime within three years of the submission of the tax return on the adjusted period.

May a taxpayer go to competent authority before paying tax?

Yes, but no formal rules.

Advance pricing agreements

What APA options are available, if any?

None.

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.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable.

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