



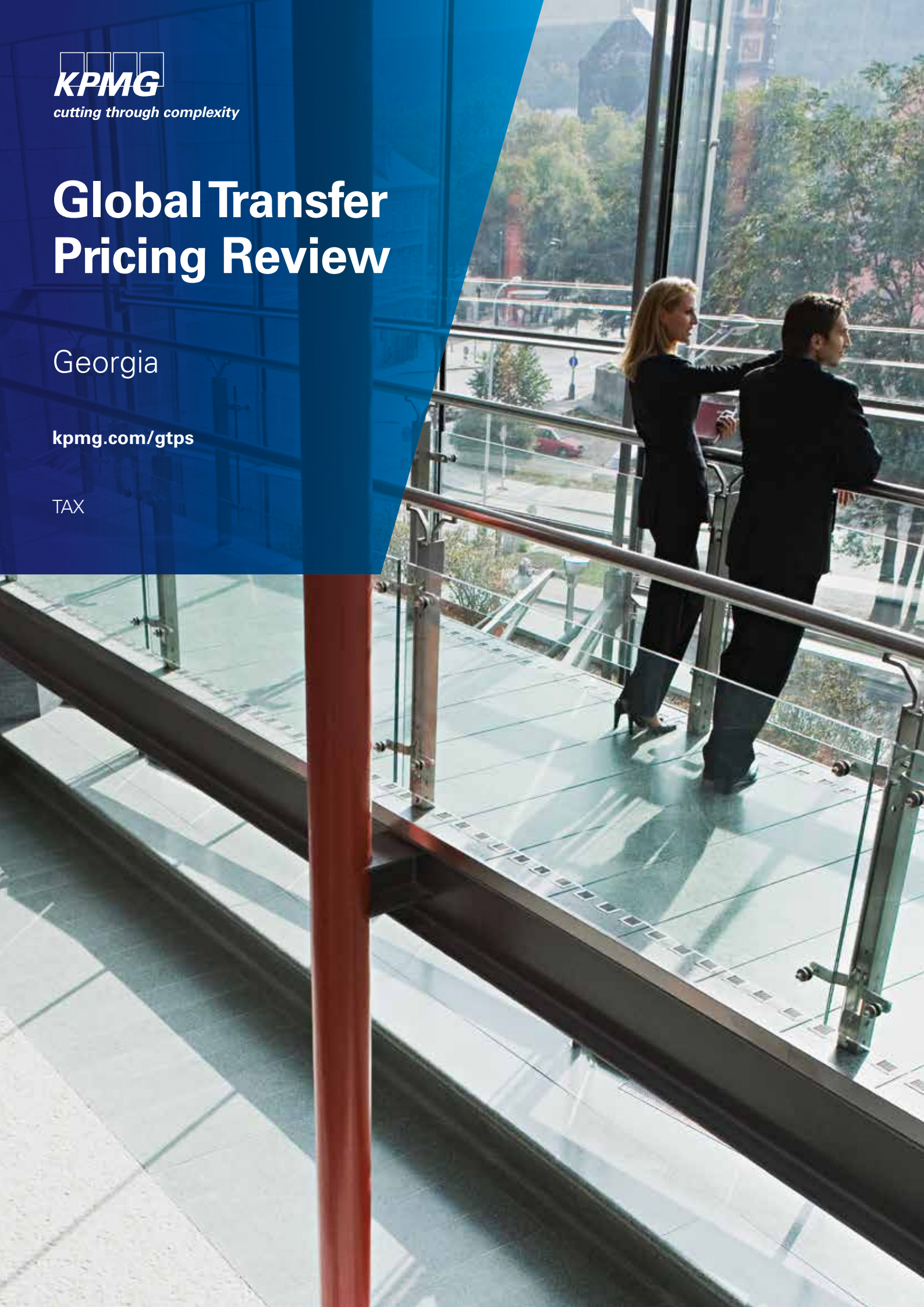
cutting through complexity

Global Transfer Pricing Review

Georgia

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TAX



Georgia



KPMG observation

The Tax Code of Georgia (TCG), effective from 1 January 2011, contains a specific chapter on transfer pricing with rules based on the OECD arm's length principle and OECD methods. The TCG states that the guidance on the application of transfer pricing rules is to be issued by the Minister of Finance of Georgia. Therefore the TCG rules in respect of transfer pricing were not enforced in practice till the issuance of the above mentioned guidance.

On 18 December 2013, the Minister of Finance of Georgia signed Decree 423 "on the Approval of the Instructions on International Transfer Pricing" (the Decree). The Instruction clarifies transfer pricing principles set forth in the Tax Code, including:

- definition of terms
- interpretation of the practical control concept
- transactions with off-shore jurisdictions
- comparability factors and comparability adjustments
- information sources to be used
- selection and application of transfer pricing methods
- selection of the tested party
- market range calculation
- transfer pricing documentation requirements; and
- advance pricing arrangements.

As a result of the guidance in the Instruction, transfer pricing became a hot topic in Georgia and number of companies are already hiring advisors to help them in preparing transfer pricing documentation.

Transfer pricing study snapshot

The purpose of a transfer pricing study

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

Basic information

Tax authority name

Revenue Service.

Citation for transfer pricing rules

Tax Code of Georgia, Chapter XVII:

- Article 126 – Meaning of the concepts for the purposes of this Chapter
- Article 127 – General principles of transfer pricing
- Article 128 – Transfer pricing methods
- Article 129 – Special provisions of transfer pricing
- Article 129–1 – Advance Pricing Agreement
- Decree N423 of Minister of Finance - Instructions on International Transfer Pricing.

Effective date of transfer pricing rules

Tax Code of Georgia effective from 1 January 2011 contains a specific chapter on transfer pricing.

Decree N423 of Minister of finance (Instructions on International Transfer Pricing) is effective from December 18, 2013.

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

Two persons shall be deemed related if:

- a person participates directly or indirectly in the management, control or capital of another person
- the same persons participate directly or indirectly in the management, control or capital of both persons.

A person participates directly or indirectly in the management, control or capital of another enterprise if such person:

- holds directly or indirectly more than 50 percent of such enterprise
- exercises practical control over business decisions of an enterprise, including:
 - person holds or controls directly or indirectly a majority of voting stocks/shares
 - person can control directly or indirectly the composition of the board of directors

- person is entitled to (directly or indirectly) 50 percent or more of the profits of the enterprise
- the value of loans received by an enterprise from or under guarantee of the person is more than 50 percent of the enterprise's total assets
- a relative of a person directly or indirectly holds more than 50 percent of an enterprise or directly or indirectly manages the enterprise
- control is otherwise evidenced by facts and circumstances.

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

No specific statute of limitations is established for transfer pricing adjustments, therefore the general provisions of the Tax Code of Georgia would be applied, according to which the statute of limitations is three years. However, according to the transitional provisions of the Tax Code of Georgia, the statute of limitations within the period from 1 January 2015 to 1 January 2016 is five years and within the period from 1 January 2016 to 1 January 2017 is four years.

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)?

Yes. In the annual corporate income tax return the taxpayer should indicate whether it carried out any transactions with related parties or the persons registered in the so-called offshore countries.

Note that the instruction defines transfer pricing documentation as one prepared before submitting the tax return.

However, taking into account that a) no further clarification is provided to which tax return refers the Instruction b) no specific tax return is to be submitted for transfer pricing, it appears that the rules indicated in preceding paragraph should be applied.

What types of transfer pricing information must be disclosed?

In the annual corporate income tax return the taxpayer should indicate

whether it carried out any transactions with related parties or the persons registered in the so-called offshore countries.

What are the consequences of failure to submit disclosures?

No specific penalties are defined for not submitting disclosure, however a general penalty of 100 Georgian lari (GEL) may be imposed for failure to do so.

Transfer pricing study overview

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

Yes. The documentation can be prepared in English, however tax authorities may require Georgian translation to be arranged by taxpayer.

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. Transfer pricing documentation should contain:

- an overview of the Georgian enterprise's business operations, including an analysis of the economic factors that affect the pricing of its products and services
- a description of the Georgian enterprise's corporate organizational structure covering all parties potentially relevant to the controlled transactions being analyzed
- a description of the transaction being analyzed, including an analysis of the comparability factors and details of the group's transfer pricing policy (where relevant)
- a description of the transfer pricing method selected and an explanation of why this method was selected
- a comparability analysis, including: a description of the comparable uncontrolled transactions that were utilized, explanation of the basis for the rejection of any potential internal comparable uncontrolled transaction (where applicable), details of the external comparables search process (where applicable), the assessment of comparability of the controlled transactions and the comparable uncontrolled transactions

(with reference to the comparability factors specified in Article 5 of these Instructions), and, a description of any comparability adjustments that were made

- an explanation of any economic analysis and projections relied on in developing the transfer pricing methodology
- details of any Advance Pricing Agreements or advance decisions relevant to the controlled transactions
- a conclusion as to compliance with the market principle, and where relevant, any adjustments made by the Georgian enterprise to its transfer prices/taxable income for the relevant years in order to ensure compliance with the market principle; and
- any other information that may have a material impact on the determination of the Georgian enterprise's compliance with the market principle with respect to the controlled 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.

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, 30 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.

Taxpayer should present transfer pricing documentation to the tax authorities

within 30 calendar days after their written request.

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

A tax dispute may be resolved within the system of the Ministry for Finance of Georgia and in court.

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

No specific penalties are defined in respect of transfer pricing. The standard penalties for under reporting of tax will apply. Penalty in the amount of 50 percent of under reported tax and late payment interests of 0.06 percent per each overdue day may be applied. It should be noted that late payment interest is decreased to 0.05 percent starting from 1 July 2015.

To what extent are transfer pricing penalties enforced?

Transfer pricing requirements are relatively new in Georgia and the attitude of Georgian tax authorities is not yet known.

What defenses are available with respect to penalties?

Comprehensive and proper transfer pricing documentation.

What trends are being observed currently?

Not yet known.

Special considerations

Are secret comparables used by tax authorities?

No. Tax authorities are not allowed to use secret comparables.

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

Due to the difficulties associated with obtaining information on comparable uncontrolled transactions in Georgia, the use of foreign comparables is acceptable, provided that the standard of comparability is met. When foreign comparables are relied upon, geographic differences, as well as other differences in comparability factors, must be analyzed and, where

appropriate, comparability adjustments may need to be made.

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.

Generally, taxpayers are expected to conduct economic analysis using the benchmarks relevant to the financial year in which controlled transactions occurred; except:

- a. if information relating to the financial year in which the controlled transaction took place is not available at the time of assessing the comparability of a comparable uncontrolled transaction with a controlled transaction, then information from the preceding year may be used provided the standard of comparability is satisfied
- b. if information relating to a period, not being more than four years prior to the financial year in which the controlled transaction took place, reveals facts which could have an influence on the determination of the comparability of the transactions being compared (for example, evidence of impact of product, industry or economic cycles).

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

Customs authorities are part of the Revenue Service.

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

No.

Are management fees subject to withholding?

Yes.

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

No.

Are royalties subject to withholding?

Yes.

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

Yes. No specific restriction exists in this area.

Other unique attributes?

Controlled transactions include transactions between a Georgian enterprise and a resident of a so-called offshore country, regardless of whether they are related persons. The list of countries that are considered offshore countries was specified by the government in Resolution 132 of 30 May 2013.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive (nearly 50 effective double tax treaties).

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

Frequently.

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 APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

No. No specific fee is determined for APA yet. Also there is no practice of issuance of APA so far.

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. There is no practice of issuance of APA so far. Unilateral APA can be concluded by the Georgian taxpayers for the transactions going forward if the value of such transactions is expected to exceed GEL50 million and the maximum period covered by an APA is three years.

KPMG in Georgia

Ioseb Garsevanishvili

Tel: +995322935713 Ext. 40010

Email: igarsevanishvili@kpmg.ru

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.

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