



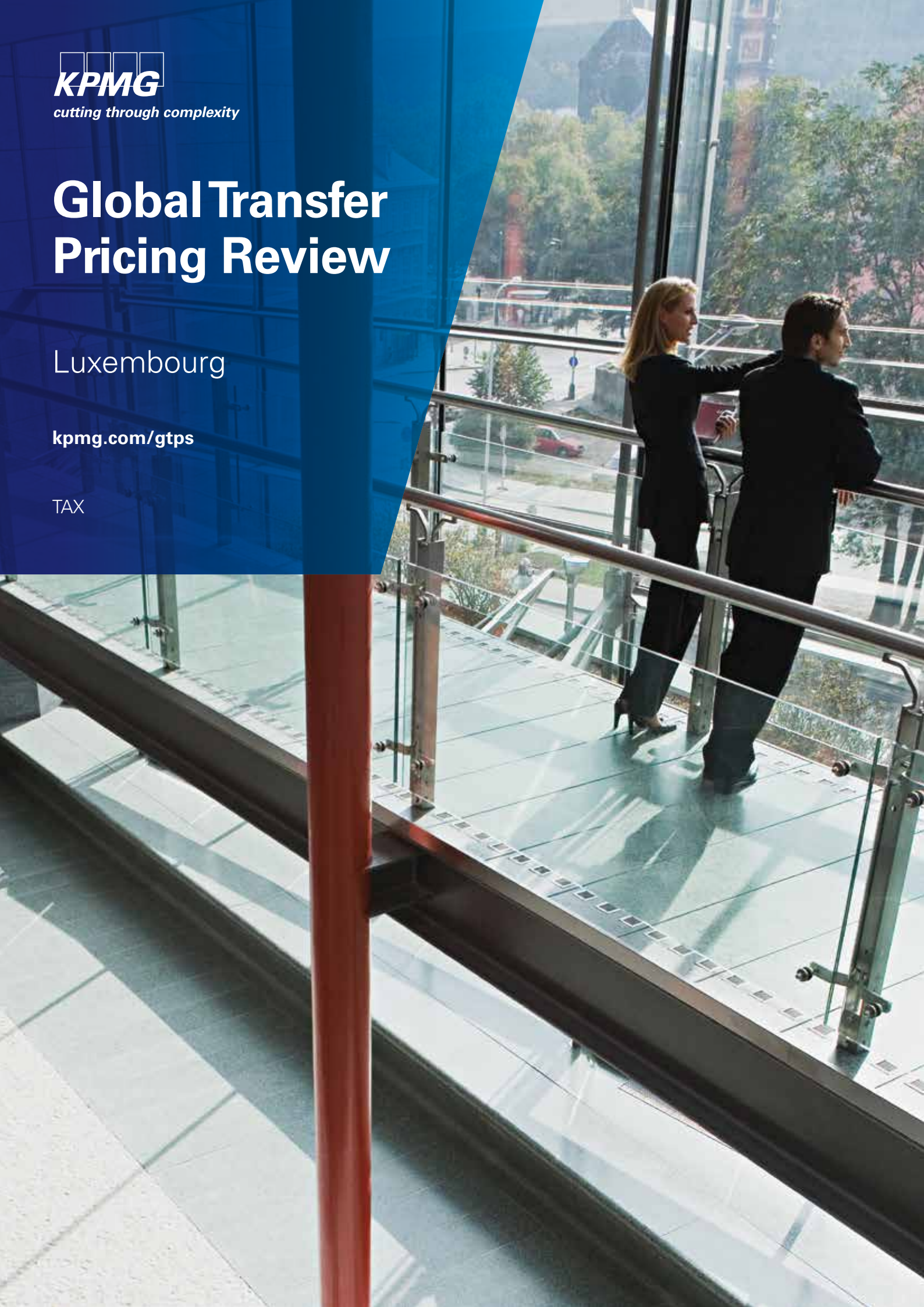
cutting through complexity

Global Transfer Pricing Review

Luxembourg

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TAX



Luxembourg



KPMG observation

Effective 1 January 2015, Article 56 of the Luxembourg Income Tax Law makes explicit reference to the (arm's length) conditions agreed between independent businesses as a standard for evaluating the conditions agreed between related parties for all transactions. The Article does not make a distinction between cross-border and domestic intra-group transactions. Hence all intra-group transactions' prices should be supported by transfer pricing documentation. Currently, the law is very general and taxpayers in Luxembourg is waiting for some circulars in the near future for more guidance.

In addition, and also effective 1 January 2015, §171 of the General Tax Law — which states that upon of request of the Luxembourg tax authorities a taxpayer has to prove the accuracy of their tax return — now explicitly encompasses transactions between associated enterprises.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Required to be contemporaneous
Legal requirements	●	
Protection from penalties	●	
Reduce risk of adjustment	●	●
Shifts burden of proof	●	●

Basic information

Tax authority name

Ministère des Finances.

Citation for transfer pricing rules

Luxembourg Income Tax Code; General Tax Law, Article 56, Article 97 (1), Article 164; paragraph 5 and 6 StAG. Circular LIR 164/2 of 28.01.11. Circular LIR 164/2 bis of 08.04.11.

Effective date of transfer pricing rules

28 January 2011 for intra-group financing activities only and 1 January 2015 for every intra-group transaction.

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

Transactions between related parties, whether directly or indirectly, which do not comply with the arm's length principle (Article 56 LIR) and such transactions with direct or indirect

shareholders or persons close to them (Article 164 LIR).

Threshold as defined by Article 9(1) of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention for associated enterprises.

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

Five years from the issuance of the tax assessment by the tax authorities (10 years in the case of fraud).

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. However, it is recommended to enclose proper transfer pricing documentation to the corporate tax return for every significant intra-group transaction.

What types of transfer pricing information must be disclosed?

Disclosures related to transactions of special interest to the tax authority or related to specific computations/tax treatment must be made in the corporate tax return in order to evidence that the pricing and/or tax treatment previously agreed is respected. These disclosures are not listed per se in any specific regulation and are mainly based on the Luxembourg administrative practice. In any case, where an Advance Pricing Agreement (APA) has been submitted to the tax authorities, a transfer pricing study must be enclosed.

In addition, as from 1 January 2015, a new subparagraph under §171 of the General Tax Law, which states that upon request of the Luxembourg tax authorities the taxpayer has to prove the correctness of his tax return, makes it clear that this obligation also applies to transaction between associated enterprises.

What are the consequences of failure to submit disclosures?

Where no APA has been concluded and/or where no transfer pricing documentation has been enclosed, the burden of proof lies in the hands of the taxpayer. In this context, the Luxembourg tax authorities may consider readjusting the remuneration of the company, potentially leading to an increase of the taxable basis and, thus, of the overall tax charge of the company.

In particular, intra-group financing activities are subject to a risk of exchange of information with the country of residence of the borrower and hence a potential non-application of the benefit of the double tax treaties with resultant withholding tax issues.

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 filed in English, German and French.

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. The Luxembourg tax authorities apply the 2010 version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. When the revised Chapter V (i.e. encompassing the BEPS work) will come into force, in principle, the Luxembourg tax authorities should apply it.

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, 28 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.

Normal Administrative Tax Office (ATO) practice is to expect documentation within 28 days of request.

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

No specific transfer pricing rules. General law applies.

The dispute resolution process regarding transfer pricing is part of the general tax law of Luxembourg. In this context, if a taxpayer does not agree with the tax adjustment proposed by the Luxembourg tax authorities, he can first make a claim which must be filed with the Director of the Tax Administration within three months from the receipt of the tax notice. The tax authorities have 6 months to reply. In case of negative answer (or deemed negative answer after 6 month), the taxpayer may appeal for reversal (main application against the decision of the Director of the Tax Administration) before the Administrative Court within a maximum period of 3 months, through a lawyer or an accountant. If no response is received within 6 months, the taxpayer may appeal to the Administrative Tribunal, without any time limit to comply in this case. Finally, the appeal of the decision of the Administrative Tribunal (if any) must be filed with the Administrative Court within 40 days of notification of the judgment.

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

Yes. General tax penalties only, 25 percent of the tax avoided for transfer pricing adjustments and 50 percent of the tax avoided where the primary purpose was to pay minimal or no tax.

To what extent are transfer pricing penalties enforced?

Rarely.

What defenses are available with respect to penalties?

Transfer pricing documentation.

What trends are being observed currently?

More and more transfer pricing documentation requests.

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.

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.

No.

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

None.

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

No. The Luxembourg tax authorities may make a tax adjustment of the management fees if they consider they are beyond the arm's length principle.

Are management fees subject to withholding?

No.

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

No. The Luxembourg tax authorities may make a tax adjustment of the management fees if they consider they are beyond the arm's length principle.

Are royalties subject to withholding?

No.

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

Yes, (upward and downward) adjustments in the corporate tax returns in order to restate market conditions that would not have been commercially respected.

Other unique attributes?

Not applicable.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

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

Almost always.

When may a taxpayer submit an adjustment to competent authority?

After an adjustment is proposed to the taxpayer.

May a taxpayer go to competent authority before paying tax?

Permitted.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes, applicable from 1 January 2015. The filing fee ranges between 3,000 euros (EUR) to EUR10,000 and is payable by the taxpayer to the Luxembourg tax authorities.

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

Yes.

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

No. Until 1 January 2015, the APAs could be filed with the tax authorities without constraint. However, since this date, the filing fee is hampering many taxpayers to proceed with an APA.

KPMG in Luxembourg

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