



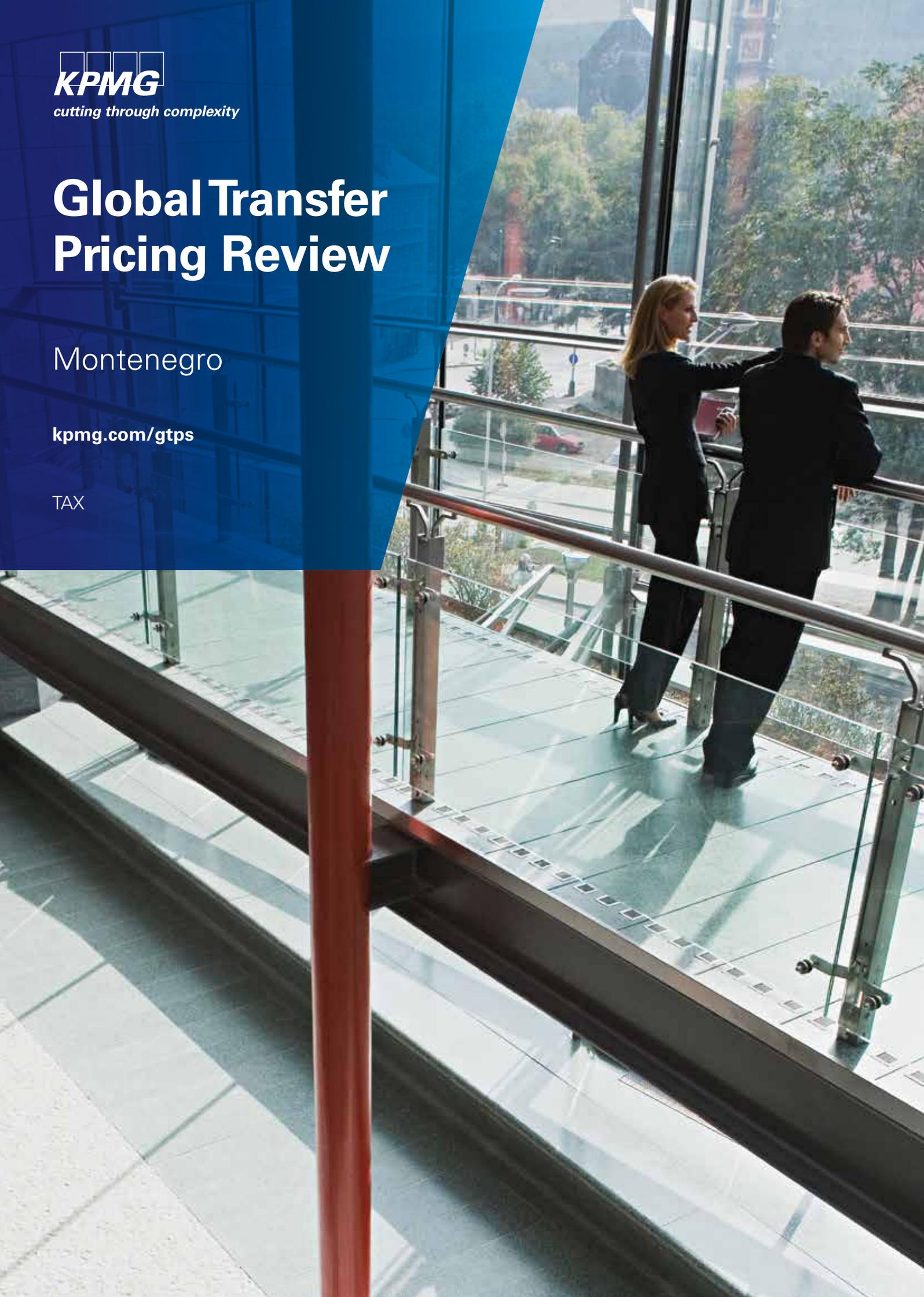
cutting through complexity

Global Transfer Pricing Review

Montenegro

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TAX



Montenegro

KPMG observation

Transfer pricing rules have existed for more than a decade in the 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. Nevertheless, in setting or supporting intercompany prices, taxpayers should consider the transfer pricing rules stipulated in the CIT Law since the tax authorities may change their current practice retroactively.

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

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 five 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 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 submit disclosures?

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

Transfer pricing study overview

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

No.

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

Not applicable. 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

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

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.

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.

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 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, what dispute resolution options are available?

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 defenses 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 (nine 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.

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

Not applicable.

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

No practice exist in relation to benchmarking.

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

No. 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.

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?

No.

Other unique attributes?

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 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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