



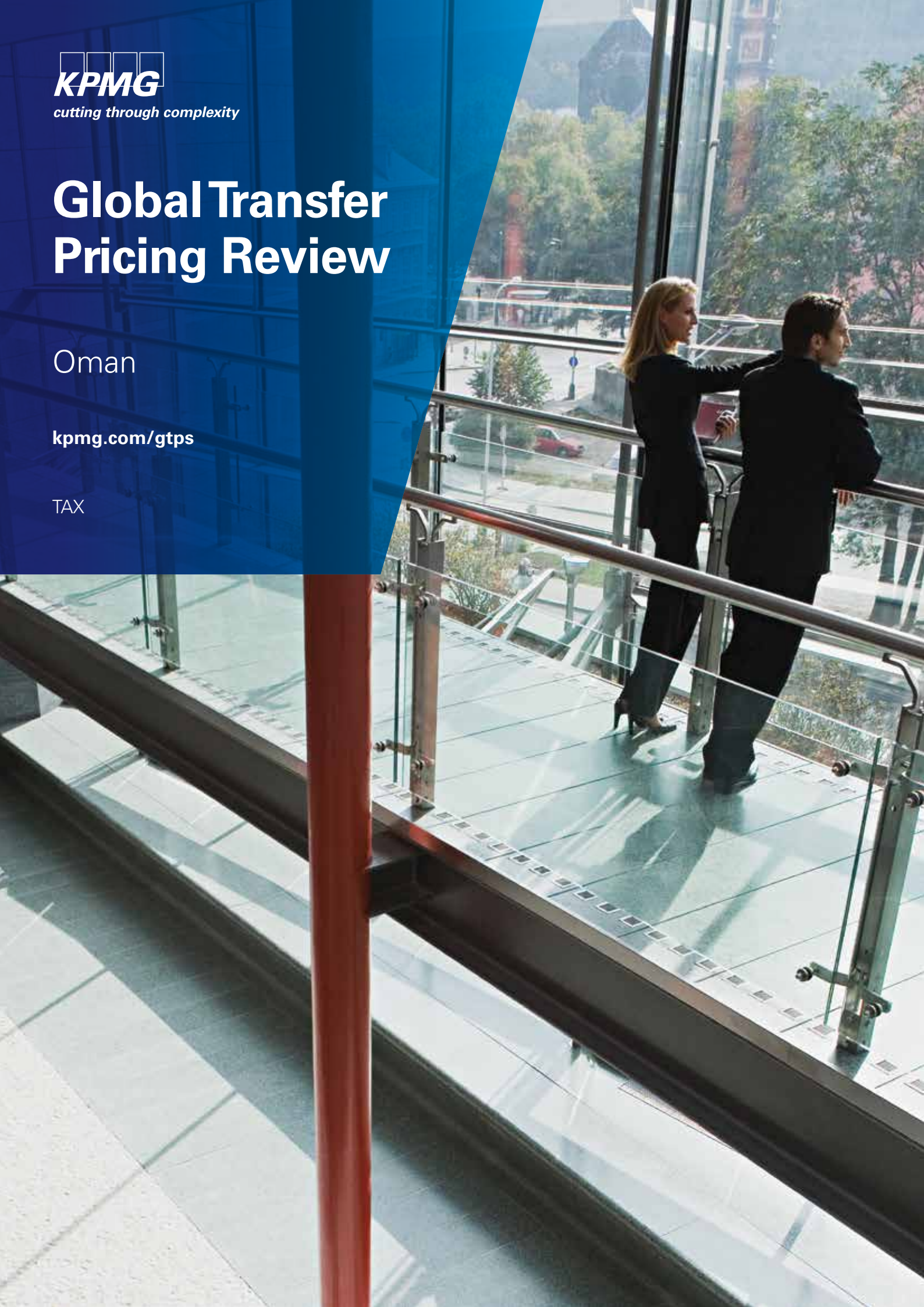
*cutting through complexity*

# Global Transfer Pricing Review

Oman

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TAX



# Oman



## KPMG observation

The Oman Tax Department is increasingly focusing on the pricing of related party transactions. In the context of tax law that includes only very broad, related party principles, this can present a challenge to a company in terms of demonstrating that the transactions have been concluded on an arm's length basis.

The Oman income tax law provides for a full tax assessment system. The Tax Department has five years from the end of the tax year in which the income tax return was submitted to raise enquiries. Typically, enquiries will be raised between three and five years from the date of filing, often with enquiries into multiple tax years issued at the same time.

Although there is no requirement to prepare formal transfer pricing documentation or to have documentation in place at the time of filing the income tax return, the length of the enquiry period, i.e. five years, may impact a company's ability to respond to enquiries, e.g. where the people with relevant knowledge have left the company and/or documents may have been lost or misplaced etc.

In the majority of cases where related party transactions occur, the Oman Tax Department will usually seek supporting information. This need not, necessarily, take the form of a full, formal transfer pricing report, provided the documentation that is submitted is adequate and appropriate to support the pricing adopted between the related parties. Even where a formal transfer pricing report is provided, the Tax Department will typically ask for other, contemporaneous evidence, to show that goods and services have actually been provided, and to what level, to support the level of related party charges in the taxpayer's books.

The Tax Department will typically make adjustments if supporting documentation is not provided or, despite some documentation being provided, they determine that transactions were not carried out at arm's length. A company would, therefore, be better placed to respond to enquiries if they were to prepare contemporaneous documentation, and hold this in readiness for the Tax Department's enquiries.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

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



## Basic information

### Tax authority name

Secretary General for Taxation, Ministry of Finance (generally referred to as the Tax Department).

### Citation for transfer pricing rules

Income Tax Law No 28 / 2009 — Part Four, Chapter Two, Section One: Cases of Avoidance between related individuals — Articles 125 to 128.

The Oman Income Tax Law includes related party provisions (not specifically referred to as “transfer pricing” provisions) under which the value of related party transactions can be ignored and taxable income can be calculated, instead, on the basis of an independent price.

The related party rules sit alongside wider reaching, anti-avoidance rules, which give power to the Tax Department to adjust a taxpayer’s taxable income where it is felt that the “principle objective” of any transaction (or the combined effect of two or more transactions) is the avoidance of tax.

### Effective date of transfer pricing rules

The current related party rules are included in Income Tax Law No. 28/2009, effective 1 January 2010.

Broadly similar related party rules were also included in the old Income Tax Law, the Law of Income Tax on Companies of 1981.

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

For the purpose of the related party provisions, persons will be treated as related if one party has control over the other or a third party has control over both of them.

Individuals will be treated as related if one person is a relative of the other, up to the third lineage, i.e. from grandparents through to grandchildren.

Control may be direct or indirect. Control will exist where a person has the right to exercise control over the activity and commercial matters of a company. In particular, this will be the case where a person:

- owns the greater part of the company’s capital or voting rights

- is entitled to the greater part of distributions by the company (where the company to distribute its total income); and
- is entitled to the greater part of the company’s assets on dissolution or cessation.

The ‘control’ test shall take into account entitlement to future rights, interests or authority, as well as:

- rights vested in another person in the capacity of representative
- rights that are required to be exercised by another person under directions; and
- rights held by relatives up to the third lineage (whether direct or indirect).

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

The Oman Income Tax Law provides for a full assessment system and the Tax Department have five years from the end of the tax year in which the income tax return is filed to raise enquiries into any aspect of the income tax return.

Where no income tax return has been filed, the period shall be extended to 10 years from the end of the tax year for which the return was due to be submitted.

The assessment period shall also be extended to 10 years in cases of deception or 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)?

Yes. The income tax return requires taxpayers to disclose details of related party transactions. There is no prescribed format for these disclosures and reference is typically made to the related party disclosures in the audited financial statements that are submitted with the income tax return.

### What types of transfer pricing information must be disclosed?

There is no prescribed format for the disclosures that are required with the income tax return and reference is typically made to the related party

disclosures in the audited financial statements that are submitted with the income tax return.

### What are the consequences of failure to submit disclosures?

There are no specific penalties relating to the related party disclosures required within the income tax return. As noted, there is no requirement to provide documentation, nor to provide confirmation that documentation has been prepared at the time of filing the return, correspondingly, no specific penalties exist either.

Failure to provide full disclosures of related party transactions within the income tax return would likely amount to deception and would allow the Tax Department to apply the extended 10 year assessment period.

## Transfer pricing study overview

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

Yes, English or Arabic. Objections to tax assessments, and higher appeals, must be filed in Arabic.

### 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. The Income Tax Law does not contain any guidance as to the format that related party documentation or evidence should take. That said, the Tax Department considers the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2010) (the OECD Guidelines) to provide a suitable basis for the pricing of related party transactions and we would, therefore, consider Chapter V to be a suitable basis, if any documentation were being prepared.

The Tax Department will generally ask for “supporting documentation” in generic terms and enquiries may be resolved without the need for formal documentation following the format set out in Chapter V. It may be sufficient to provide, for example, copies of intra-group agreements and the basis for the calculation of the price under enquiry.

Our advice to taxpayers, though, would always be to prepare some, minimum documentation and benchmarking, to give the best defense against enquiries.

**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.**

No. The Tax Department may consider Chapter II of the OECD Guidelines as providing a suitable basis for the pricing of related party transactions, but the Tax Department will not be bound by the OECD Guidelines.

## 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?**

No.

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

A company normally has 30 days to respond to requests from the Tax Department for information, although a time extension may be granted, if required.

The Tax Department's questions will likely enquire into the taxpayer's related party pricing in more general terms, rather than specifically requesting formal transfer pricing documentation.

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

If a related party pricing adjustment is included in the Tax Department's final assessment, the taxpayer can file a formal Objection.

If the matter is not resolved through Objection, an Appeal can be made to the Tax Committee and, ultimately, a further appeal can be made to the Commercial Court.

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

The due date for payment of any additional tax is specified on the Tax Department's Assessment Order. Failure to pay by the date specified will attract additional tax at one percent per month on the unpaid amount (or balance thereof) until settled.

**To what extent are transfer pricing penalties enforced?**

Transfer pricing adjustments form part of the overall assessment of a company's tax position for a particular year. Any additional penalty tax resulting from non-payment is normally enforced.

**What defenses are available with respect to penalties?**

The Secretary General for Taxation has the power to grant exemption, in full or in part, from the additional penalty tax.

**What trends are being observed currently?**

The Tax Department is very active in requesting taxpayers to provide documentary evidence to support their related party transactions.

The Tax Department has a backlog of unassessed tax years and it is not uncommon for taxpayers to have three, four, or five years' income tax returns that have not yet been assessed. There is now a drive, within the Tax Department, to clear these open tax years and assessments are being accelerated, with several years' assessments being dealt with at the same time, to bring things up to date.

Taxpayers are, therefore, being asked to provide supporting documentation for multiple years. If documentation was not prepared at the time of completing the tax return, this imposes a significant burden on the company and, if adequate documentation cannot be provided, they may find themselves disadvantaged by the Tax Department's final assessment.

## Special considerations

**Are secret comparables used by tax authorities?**

Yes, the Tax Department maintains its own databases and comparative information.

**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?**

No.

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

The Tax Department may take account of the margins achieved by other, local businesses which they consider to be comparable to the taxpayer's business, which may not be determined by reference to commonly accepted databases.

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

There is a good level of interaction with the Customs authority. The Income Tax Law gives specific powers to the Tax Department to request information and documentation from a wide range of ministries and other public establishments and public juristic persons, and it uses this power regularly during the assessment process.

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

Yes, some. The deductibility of management fees (and other related party charges) is subject to the overarching principle that fees are reasonable by reference to the services provided to the taxpayer and to the services being necessary to the business of the taxpayer.

### Are management fees subject to withholding?

Yes.

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

Yes. The deductibility of royalties (and other related party charges) is subject to the overarching principle that fees are reasonable by reference to the rights provided to the taxpayer, and to the rights (to which the royalty payments relate) being necessary to the business of the taxpayer.

### Are royalties subject to withholding?

Yes.

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

No. In some, exceptional cases, the Tax Department may accept a tax return where the taxable income has been calculated on the basis of a 'deemed profit' margin. This is discouraged by the Tax Department and the Tax Department may push for 'deemed profit' margins which discourage this method.

### Other unique attributes?

None.

## Tax treaty/double tax resolution

### What is the extent of the double tax treaty network?

Oman has approximately 30 double tax treaties in force.

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

In our experience, very few (if any) cases have been escalated to the level of the competent authority and it remains to be seen how effective the mutual agreement procedure would be in obtaining double tax relief.

### When may a taxpayer submit an adjustment to competent authority?

We would expect to rely on the time limits included in the relevant tax treaty and to approach the Tax Department, prior to making any formal application, to discuss the process.

### May a taxpayer go to competent authority before paying tax?

This would have to be agreed with the Tax Department at the time of discussing the application process.

## Advance pricing agreements

### What APA options are available, if any?

None.

### Is there a filing fee for APAs?

Not applicable. There is no formal APA mechanism in place. In certain cases, the Tax Department may be prepared to provide an informal (non-binding) agreement as to the basis for pricing certain related party transactions.

### 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. The Tax Department is only willing to provide informal (non-binding) agreements, and such agreements are not sufficiently common to establish any sort of 'practice' of the Tax Department.

### KPMG in Oman

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