



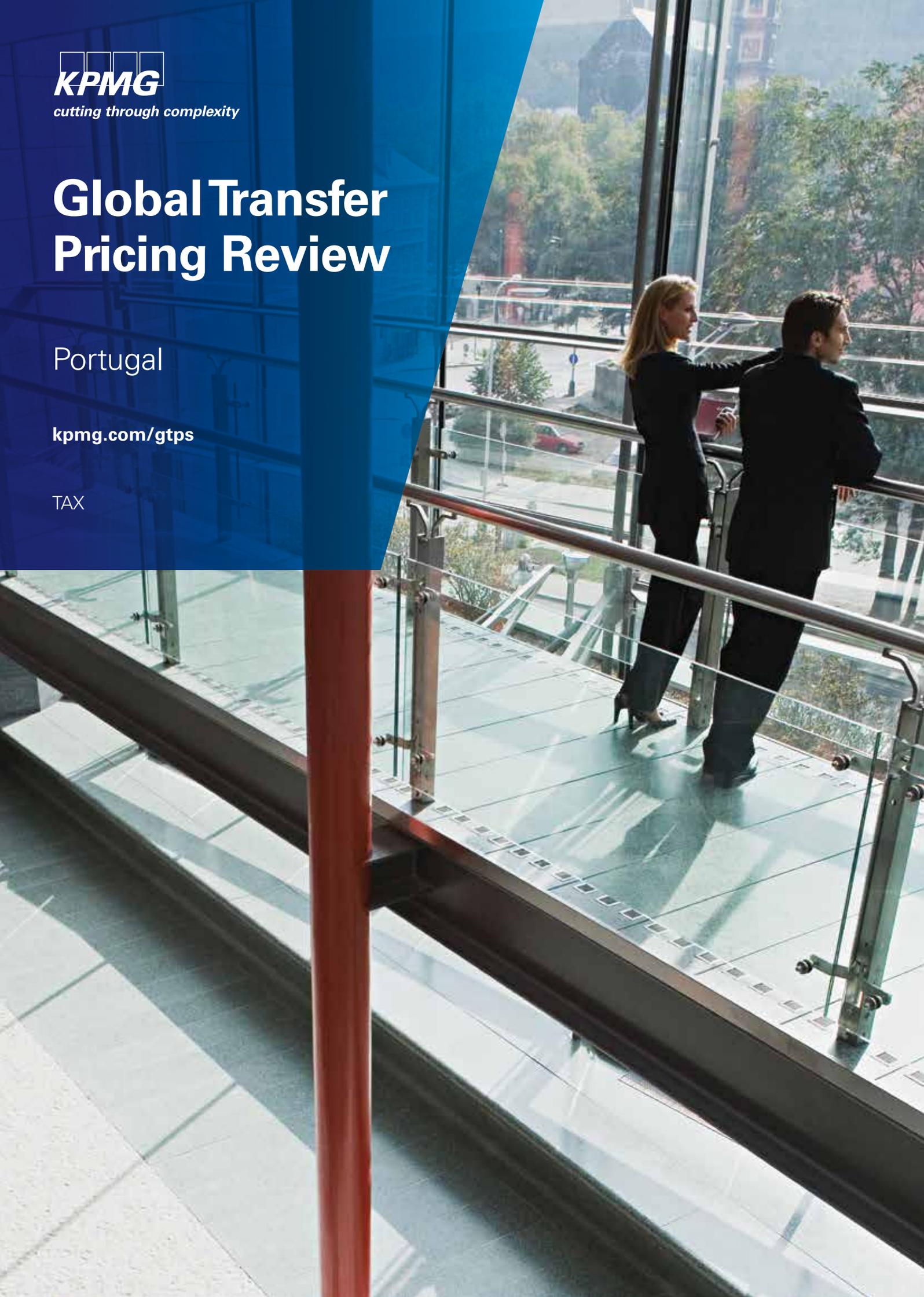
cutting through complexity

Global Transfer Pricing Review

Portugal

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TAX



Portugal



KPMG observation

The Portuguese transfer pricing legislation has been in force since 1 January 2002, covering both cross-border and domestic transactions. The original rules experienced some changes over the years, typically because of increasing scope. One of the most significant changes was the introduction in 2008 of an Advance Pricing Agreement (APA) provision.

Currently, taxpayers can significantly reduce transfer pricing risk in Portugal through unilateral, bilateral or multilateral APAs. On the enforcement side, the tax authorities have increased transfer pricing audits across virtually all industries and transaction categories. Transfer pricing has been one of the Portuguese Government's top priorities to date. The Portuguese Government recently issued its strategic plan against fraud and tax evasion for 2015-2017, which will further increase the focus on transfer pricing.

Transfer pricing documentation is required in Portugal for taxpayers with net sales and other revenues equal or above 3 million euros (EUR). There are some tax forms that require specific transfer pricing information, including a statement of whether or not the taxpayer has adequate transfer pricing documentation at the time of filing the company's tax return.

After a discussion period during 2013, the Corporate Income Tax Reform was finally implemented with effect from 1 January 2014. This reform aims to significantly increase the competitiveness of Portugal for foreign investments and investors, therefore creating a number of challenges and opportunities from a Portuguese transfer pricing perspective.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous	Submission to tax authority required	Thresholds apply/exist
Legal requirements	●		●	●	●
Protection from penalties		●			
Reduce risk of adjustment	●		●	●	
Shifts burden of proof	●		●	●	●

Basic information

Tax authority name

Autoridade Tributária e Aduaneira (ATA).

Citation for transfer pricing rules

Article 63 of the IRC Code; Ministerial Order (Portaria) n. 1446-C/2001 of

21 December; and Ministerial Order (Portaria) n. 620-A/2008 of 16 July.

Effective date of transfer pricing rules

1 January 2002.

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

There is a special relationship when one entity has the power to exercise, directly or indirectly, a significant influence in the management of the other. As of 2014,

any of the following conditions would define the relationship as related party:

- one entity participates directly or indirectly in at least 20 percent of the share capital or voting rights of another entity (10 percent until 2013 — inclusively)
- both entities are at least 20 percent owned, directly or indirectly, by the same legal entity (10 percent until 2013 — inclusively)
- an entity and the members of its corporate bodies, or any administration, direction, management or supervising boards entities in which the majority of the board of directors are constituted by the same persons
- entities related under a subordination agreement
- entities that are in a control relationship under the article 486 of Commercial Companies Code
- entities whose legal relationship allows, by its terms and conditions, the control of the management decisions of the other, arising from facts outside the commercial or professional relationship itself; and
- transactions between a resident entity and entities resident in a clearly more favorable tax regime (as listed in Ministerial Order (Portaria) n.º 292/2011, 8 November).

Moreover it should be noted that transfer pricing rules apply not only to transactions established between a permanent establishment located in the Portuguese territory and its foreign headquarters or other foreign permanent establishments, but also to transactions established between resident entities in Portugal and all its permanent foreign establishments and among its permanent establishments.

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

Generally, four years from the last day of the tax year-end (in cases where tax losses exist, it may vary, depending of the year being considered).

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. All Portuguese corporate taxpayers need to provide disclosure on a yearly basis, transfer pricing information on their Annual Tax and Accounting Return (IES) to be submitted by the 15th day of the seven-month period following the tax year-end.

What types of transfer pricing information must be disclosed?

Taxpayers usually need to disclose the following information:

- amounts of related party transactions, per transaction category, domestic and cross-border transactions
- selection of the transfer pricing methods on cross border transactions
- declaration whether documentation requirements were compiled when filing the income tax return.

What are the consequences of failure to submit disclosures?

Specific penalties have been published to transfer pricing infringements in 2012. Late submission of the documentation is subject to a penalty of from EUR500 to EUR10,000 and the refusal of presentation is subject to a penalty up to EUR150,000.

Transfer pricing study overview

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

Documentation must be in Portuguese. Documents in foreign languages must be translated into Portuguese before presented to tax authorities, although this requirement.

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.

Portuguese transfer pricing rules follow 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.

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, 10 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.

As a rule 10 working days.

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

Administrative claim, hierarchical appeal, arbitral court, competent authority and mutual agreement procedures.

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

Transfer pricing adjustments are regulated by the general tax penalty regime. If an adjustment is sustained, general penalties may be assessed from EUR750 to EUR45,000.

Compensatory interest is accrued at four percent monthly rate for late payment.

To what extent are transfer pricing penalties enforced?

With the expected increase of transfer pricing audits, a broader enforcement of transfer pricing penalties is also expected as foreseen in the Law.

The Strategic Plan Against Fraud and Tax Evasion 2015-2017 foresees the reinforcement of tax inspections regarding transfer pricing.

What defenses are available with respect to penalties?

Negligent behavior and cooperation will impact the penalty value.

What trends are being observed currently?

Given the current economic scenario in Portugal, the tax authorities are concentrating efforts on transfer pricing audits, as transfer pricing adjustments tend to result in larger tax assessments and tax collection.

Recent audits have focused more on adjusting operating losses (disregarding the effect of the global economic crisis), payment for intra-group services, financial transactions, IP transactions, as well as business restructuring processes.

The Portuguese Government has recently launched a strategic plan against fraud and tax evasion for 2015-2017 which lists a series of measures that aim to ensure a fairer distribution of the tax efforts and punish in a more effective way the intentional practices of tax failure. These measures that will be implemented in 2015, foresee some changes in transfer pricing, namely:

- the use of APAs more frequently as a means to increase tax certainty and predictability
- enforcement of the transfer pricing regime in terms of VAT in cases where there are transactions between related parties are subject to different deduction regimes
- assessment of the transfer pricing policy specifically in cross-border transactions and the payments made to related parties located in countries with a more favorable tax regime
- the increase in the number of ATA technicians assigned to the transfer pricing department, as well as to

the analysis of complex tax issues such as transfer pricing, international taxation and the application of anti-abuse rules.

This plan is likely to increase transfer pricing audits.

Special considerations

Are secret comparables used by tax authorities?

No. As a rule secret comparables are not allowed. Nevertheless, tax authorities may use them in practice to benchmark a taxpayer's return in relation to its peers.

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

Yes. Local comparables (Portuguese and to a certain extent Spanish) are preferred, but others may be allowed whenever these are not available.

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

The Tax Authorities use both the SABI (with Iberian companies) and the Amadeus (with European companies) databases. The preference is for Portuguese (or Iberian) independent comparables, regardless of the database. Other databases may be used (and accepted by the ATA) for specific categories of transactions or industries (e.g. Royaltystat, Orbis, and, Bloomberg).

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.

As a rule, tax authorities tend to select the median values of the benchmarking results.

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

Low, although increasing. The taxpayer is sometimes required to deliver its transfer pricing documentation under customs tax inspections.

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. Positive transfer pricing adjustments are foreseen in the law. Negative transfer pricing adjustments are not permitted after the year-end. There could be VAT or customs implications, which should also be carefully evaluated on a case-by-case basis.

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?

Yes, as a rule.

When may a taxpayer submit an adjustment to competent authority?

After having been notified of an additional tax assessment.

May a taxpayer go to competent authority before paying tax?

Permitted by providing a guarantee or a similar measure.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The submission of the request in respect of the preliminary phase is free of charge. The submission of the proposal implies the payment of a fee that may vary between approximately EUR3,150 and EUR35,000, depending on the revenue of the taxpayer. Renewals or reviews of APAs require a filing fee, calculated in a similar way, but with a discount of 50 percent of the initial fee.

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. From a Portuguese transfer pricing perspective APAs are run in a very efficient timing. However, in cases of bilateral and multilateral APA final results will depend on the counterpart.

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