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# Global Transfer Pricing Review

Slovakia

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TAX



# Slovakia



## KPMG observation

Beginning with the introduction of mandatory transfer pricing documentation (for taxable periods starting from 2009), transfer pricing has become one of the top priorities for the Slovak tax authorities. The tax authorities have started to initiate transfer pricing audits and inspect transfer pricing arrangements in more detail than ever before. The tax authorities have built specialized transfer pricing teams and it is expected that the number of transfer pricing audits is going to increase.

## Transfer pricing study snapshot

### The purpose of a transfer pricing study

	Applicable	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

Daňový úrad (tax authorities).

### Citation for transfer pricing rules

Article 2 Letter n through r, Article 17 (5) through (7), and Article 18 of the Act No. 595/2003 Coll. on the Income Tax as amended.

Guidelines of the Ministry of Finance of the Slovak Republic No. MF/8288/2009-72 and MF/8120/2014-721 on details regarding the content for keeping documentation for the transfer pricing method applied by a taxpayer according to the Article 18 (1) of the Act No. 595/2003 Coll. on the Income Tax as amended.

### Effective date of transfer pricing rules

General transfer pricing rules have been applicable since the introduction of the first post-communist income tax legislation in the 1990s. An important amendment detailing the obligation to maintain transfer pricing documentation became effective on 1 January 2009.

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

More than 25 percent direct or indirect share of voting rights or registered capital, or personal relation (statutory bodies) or business relation solely for the purpose of decreasing tax base/ increasing tax loss.

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

Five years from the calendar year-end of the filing date. Seven years if the taxpayer carries forward tax losses according to income tax legislation effective from 1 January 2010. Maximum statute of limitations is 10 years. Ten years always applies if international tax treaties are involved.

## 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. Corporate taxpayers are required to disclose volumes of transactions with related parties in their annual tax return.

What types of transfer pricing information must be disclosed?

Terms of the following transactions concluded with foreign related parties have to be reported in the annual tax return of a corporate entity (all values stated in euros (EUR)):

- interest resulting from provision of loans or credits
- granting license rights
- provision of services
- transfer of tangible, intangible and financial assets; and
- transfer of inventory.

However, disclosure of details regarding individual transactions is not required in the annual tax return.

What are the consequences of failure to submit disclosures?

If the tax return is not complete, the tax authorities may ask for the completion of the respective information in the tax return after the tax return was filed.

## Transfer pricing study overview

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

Yes. Subject to agreement with tax authorities.

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

No. The content of the full scope transfer pricing documentation prepared by IFRS reporters should correspond with the requirements of the European Union (EU) Code of Conduct on Transfer Pricing Documentation, i.e. it must include a master file for the group of related parties and country specific documentation for the taxpayer. However, requirements of

EU Code of Conduct on Transfer Pricing Documentation are similar to those outlined in OECD Guidelines.

If certain conditions are met, the taxpayer may provide reduced-scope documentation.

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, 15 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.

According to Article 18 (6) of the Slovak Income Tax Act, transfer pricing documentation must be made available to the tax authorities within 15 days of request.

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

Most tax treaties which Slovakia has with other OECD countries contain mutual agreement procedures (MAPs) if the adjustment assessed by the tax authorities results, or is likely to result, in double taxation.

Furthermore, the EU Arbitration Convention provides mechanisms on how disputes between the authorities of the involved countries should be resolved.

The respective proceedings are rather lengthy and administratively cumbersome procedures with results being difficult to anticipate.

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

If a tax difference detrimental to the State budget is assessed as a result of non-compliance with the arm's length principle, a penalty in the amount of three times the base interest rate of the European Central Bank will be assessed. However, not less than 10 percent from the misstated tax would be levied.

To what extent are transfer pricing penalties enforced?

Always, if a misstatement of tax is identified.

What defenses are available with respect to penalties?

Penalties can be reduced only in extraordinary circumstances stipulated by the tax law.

In the case of penalties arising from additional tax assessments resulting from a tax audit, ordinary and extraordinary legal remedies are available for the taxpayer, including appeal, review beyond appellate proceedings, and renewal of proceedings. An action may be filed by the taxpayer with the court against the decision on tax assessment (confirmed by the appellate tax authorities) against which no ordinary legal remedy is allowed.

What trends are being observed currently?

The tax authorities are more frequently focusing on transfer pricing audits of all types of businesses, and exit taxation issues are starting to be discussed in Slovakia.

The tax authorities are more and more familiar with transfer pricing issues and the inspections are more efficient and sophisticated (e.g. tax authorities are preparing their own benchmark studies).

Tax inspections could be carried out by specialized teams with trained and skilled people, who can help the tax authorities in any region. Taxpayers are advised to prepare extended transfer pricing documentation (not just content specified for simplified documentation)

as tax authorities may additionally require supporting information/documents upon a potential inspection.

## Special considerations

### Are secret comparables used by tax authorities?

Under certain circumstances the tax authorities are allowed to determine tax according to aids at their disposal or procured without cooperation with the taxpayer. This may potentially involve comparables derived from the files of other taxpayers which are not publicly available. However, based on other law provisions, the tax authorities are required to clearly demonstrate what aids have been used to assess the specific tax difference.

### 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?

The tax authorities in Slovakia use the Amadeus database.

### 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.

Not applicable.

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

Regarding corporate income tax, the interaction of the tax authorities with the customs authorities is low. However, the responsibilities of both authorities can lead to a higher level of interaction in the area of VAT.

### 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, although the Slovak transfer pricing legislation does not specifically address a term year-end adjustment. In practice, year-end transfer pricing adjustments (reflected in the same taxable period as related transactions) in both directions are utilized. In general, it is expected that a year-end adjustment is described/ anticipated in relevant agreements covering intragroup transactions and specific formulae/ calculations are in place.

### Other unique attributes?

Not applicable.

## Tax treaty/double tax resolution

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

Extensive. The current double tax treaty network includes 65 tax treaties. New tax treaties are being negotiated.

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

Almost always.

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

No formal rules exist in this area. However, at the latest within four to 10 years after the respective taxable period.

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

Yes.

## Advance pricing agreements

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

Unilateral, bilateral, multilateral.

### Is there a filing fee for APAs?

Yes. As of 1 September 2014, an administrative fee applies for filing the APA request. The amount of the fee is different for unilateral (one percent of the value of the transaction, minimum EUR4,000 and maximum EUR30,000) and bilateral/multilateral APAs (two percent of the value of the transaction, minimum EUR5,000 and maximum

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

No.

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

Not applicable. Currently, APAs are not commonly requested in Slovakia.

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