



cutting through complexity

Global Transfer Pricing Review

Switzerland

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TAX



Switzerland



KPMG observation

Switzerland is a member of the Organisation for Economic Co-operation and Development (OECD) and has accepted the OECD Guidelines without reservation. On 4 March 1997, the Federal Tax Administration issued a circular letter instructing the cantonal tax administrations to adhere to the OECD Guidelines when assessing multinational companies.

Recent experience with tax audits seems to indicate that the tax authorities are increasingly considering transfer pricing issues, as some have requested OECD-compliant transfer pricing documentation. However, the level of awareness is different from canton to canton.

The OECD's Base Erosion and Profit Shifting (BEPS) Action Plan provoked measurable reaction in Switzerland. In particular, actions to increase transparency and disclosure — such as the proposed Country-by-Country reporting — concern Swiss-based companies as well as Swiss authorities.

Significantly increased transparency is seen as the starting point to detecting base erosion and profit shifting, and as such, is generally welcomed by the Swiss authorities. However, there are practical questions around how to obtain all the information, in what form, and how to reconcile the pattern(s) the information shows with the actual business models and their commercial and economical rationales. The fact that Switzerland is widely seen as a destination for profit shifting further increases the threat of Switzerland being the immediate focus of many assessing tax authorities around the world.

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

Eidgenössische Steuerverwaltung (ESTV) [Federal Tax Administration] as well as the relevant cantonal tax authorities are the assessing authorities for direct corporate income taxes at all levels (federal, cantonal and communal).

Citation for transfer pricing rules

Not applicable.

Effective date of transfer pricing rules

Not applicable.

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

Not applicable.

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

Ten years from tax year-end. Changes to facts and figures as filed with the tax return are possible until the final assessment of the tax return by the assessing taxing authorities. Any changes after final assessment require a court decision or closing letter of a mutual agreement procedure (MAP).

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.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Failure to prepare or submit requested information in an enquiry of the assessing tax authority (i.e. information requested in addition to the normal tax return during the assessment) could lead to a formal tax audit and subsequently to a shift of the burden of proof on an assessment of the taxable income of the taxpayer.

Transfer pricing study overview

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

Yes. One of the official languages (depending on the canton): German, French, Italian, Rhaeto-Romanic. English is frequently accepted.

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. Generally, OECD compliant transfer pricing documentation is recommended.

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, 60 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.

Tax authorities expect to be provided with transfer pricing documentation within a reasonable time frame which can be negotiated to a certain extent, often up to 90 days.

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

Legal proceedings.

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

General tax penalties could be assessed. Furthermore, adjustments can be treated as a hidden profit distribution subject to 35 percent Swiss withholding tax (non-treaty) or the applicable treaty rate (portfolio rate, i.e. 15 percent) according to the relevant tax treaty.

To what extent are transfer pricing penalties enforced?

Not applicable.

What defenses are available with respect to penalties?

Although Switzerland does not have specific transfer pricing penalties, general tax penalties can be assessed in severe cases of non-arm's length arrangements, ultimately assessed as abusive or even fraudulent. In such cases, taxpayers are recommended to provide full disclosure of all available information to counter the assessment and avoid penalization.

What trends are being observed currently?

Increased scrutiny is observed with any structures and corresponding intra-group transactions involving offshore locations and entities. In particular, with respect to the financial services industry and intra-group financing transactions, there are increasing challenges to the 'correct' allocation of the profits. Lack of substance or requalification of the actual place of management of a foreign counterparty to the transactions concerned are often reported.

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, the Amadeus database is largely accepted and applied.

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?

Low.

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

Yes, some. Question is are the fees and the corresponding services provided commercially justified or would a third party not have requested such as not necessary for the tested party's business. In such case, not the mark-up and the cost are crucial but the arm's length price on the services provided as such.

Are management fees subject to withholding?

No.

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

Yes. Similar to management fees, if a royalty payment is not to be justified (completely) commercially, it can be refused and deductibility can be denied.

Are royalties subject to withholding?

No.

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

Yes, any adjustments need to be reflected in the financial statements (following the principle that tax accounting should be based on commercial accounting).

Other unique attributes?

None.

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 notice is provided to the taxpayer.

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?

No.

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?

No. The Swiss competent authority is frequently involved in bilateral APA negotiations and applies the APA program often and very successfully. Since 2008 there have been about 250 APAs involving Switzerland. More than half of them have been settled successfully, none failed or were rejected by the taxpayer.

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