



cutting through complexity

Global Transfer Pricing Review

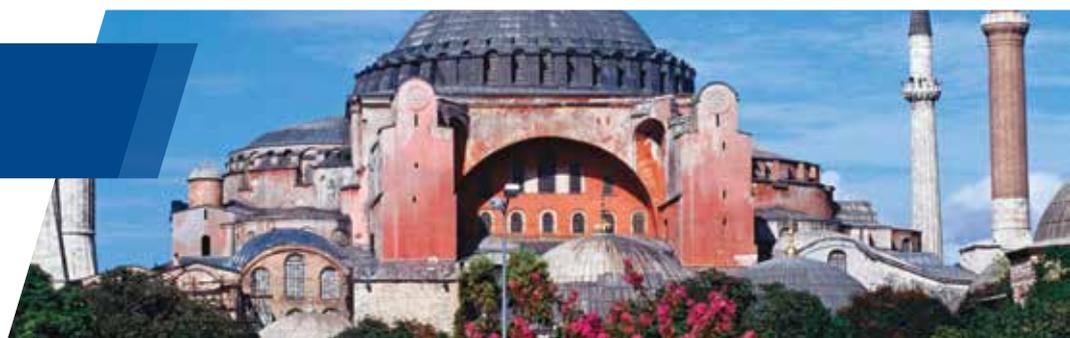
Turkey

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TAX



Turkey



KPMG observation

Turkey follows global trends, and the Turkish government is implementing new compliance rules, and opening many audits, in the area of transfer pricing. Since the beginning of 2007, transfer pricing has emerged as one of the main focus of inquiries by the Turkish tax authorities. During recent years, this focus on transfer pricing has intensified.

Management fees and royalties are the most frequent issues raised in these recent tax audits. In addition, if taxpayers have internal comparables, the Turkish tax authorities generally have been trying to use these prices as a comparable in tax audits even if the factors are not completely comparable. Therefore, taxpayers are advised to use internal comparables wherever possible, and, to include discussion of the selection or rejection of internal comparables along with the factors of comparability considered.

Regarding Base Erosion and Profit Shifting (BEPS) Action Plan and the United Nations (UN) Practical Transfer Pricing Manual for Developing Countries issued October 2012, the Turkish administration has not taken any action thus far. Since Turkey already has a 'substance over form' principle under its Tax Procedural Law, the application of BEPS may require only minor changes in transfer pricing rules in the future.

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

Revenue Administration, Ministry of Finance.

Citation for transfer pricing rules

- Article 13 of Corporate Tax Law No. 5520
- Transfer Pricing Communiqué No. 1–18 November 2007

- Transfer Pricing Communiqué No. 2 — 22 April 2008
- General Communiqué No. 3 — November 2008
- Decree 2007/12888 — 6 December 2007
- Decree 2008/13490 — 13 April 2008; and
- Circular TF-1/2008–1 — 24 April 2008.

A rule that was added to Article 13 states that the “disguised profit distribution through transfer pricing” provision would be applicable if there is a “treasury loss” with respect to the domestic intra-group transactions of a corporate taxpayer. The term “treasury loss” is defined as an under-declaration or late declaration of all types of taxes resulting from transfer prices that do not comply with the arm’s length principle. This rule was effective

as from 6 June 2008 and applied to 2008 and later tax returns.

Effective date of transfer pricing rules

1 January 2007.

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

Based on shareholding (an individual or a legal entity related to a shareholder) that provides a direct or indirect control over related parties including a transaction effected with a resident of a low-tax jurisdiction i.e. a resident located in a tax haven country. There are no thresholds for transfer pricing rules to apply between parties.

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

Five years starting from the close of related fiscal period (i.e. 31 December 2014 is the expiry period for the fiscal year 2009). Following the completion of fiscal period, no tax related adjustment/tax return preparation/use of standard tax attributes is allowed for taxpayers and it is binding for the tax administration as well, since it is not authorized to carry out tax audits on the accounts of taxpayers or make tax 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. All corporate taxpayers are required to complete and attach a transfer pricing form attached to their annual corporate income tax returns to be submitted with the corporate tax return.

What types of transfer pricing information must be disclosed?

The information should include:

- the list of related parties that the taxpayer entered into the transaction with
- the amounts of related party transaction by transaction type (i.e. financing, services, goods etc.); and

- a summary of the transfer pricing methods used for the transactions.

What are the consequences of failure to submit disclosures?

The tax penalty for failure to prepare or submit the disclosures is a procedural irregularity penalty, which is immaterial. However, this failure may cause further tax audit and tax assessment by the tax authorities.

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?

No. There is no official binding requirement to follow OECD Guidelines. OECD Guidelines should only be used for reference purposes.

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. CUP method has priority over other methods. Turkish transfer pricing rules are not updated per to OECD Chapter II.

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.

See prior question.

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

The taxpayer may choose to apply to courts in its jurisdiction.

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

Yes. The tax penalty equals 100 percent of the additional taxes accrued. If the tax assessment is in recurring nature (taxpayer has been imposed to more than one tax assessment in five years time), the penalty equals to 150 percent of the additional taxes accrued.

To what extent are transfer pricing penalties enforced?

Where there is a penalty assessment after a tax audit for transfer pricing issues, these penalties are almost always enforced.

What defenses are available with respect to penalties?

Taxpayers can apply for settlement after a tax penalty is imposed. Generally 80 to 100 percent of the penalties are cancelled by virtue of settlement.

What trends are being observed currently?

The structural change in the tax audit organization of the Ministry of Finance has contributed to the increased number of transfer pricing audits. In July 2011, tax auditors were reorganized and merged under a single board, the Turkish Tax Inspection Board. Four subgroups were formed under this board, one of which was organized to perform transfer pricing investigations as a special department.

This formation shows that transfer pricing is regarded as a special field in tax audits and is organized accordingly. Recurring losses, royalties and intra-group service charges are the specific focus areas of transfer pricing audits.

Tax auditors tend to treat management fee charges as royalties and apply withholding taxes.

Special considerations

Are secret comparables used by tax authorities?

Yes, secret comparables are used by the tax authorities. Since there are not enough local comparables in the database, tax authorities choose to adopt secret comparables.

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

There is no requirement for using local databases. However, Tax authorities have a preference for local comparables. If a broader set is used, performing necessary adjustments including country specific adjustments is recommended. There are a limited number of local comparables in the Amadeus database, therefore, both local comparables and broader sets can be used.

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

Tax Authorities have Amadeus (Orbis) and Thomson Reuters.

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?

The two authorities are generally working separately.

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?

No.

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

Yes. Satisfying that the differences are explainable and supportable.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. Turkey has signed 80 income tax treaties to date, and these generally include mutual agreement procedures (MAPs) in Article 25 of the subject treaties.

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

Not effective.

When may a taxpayer submit an adjustment to competent authority?

A taxpayer must make a MAP application within the time period listed in the double tax treaty. However, if the double tax treaty does not provide a time period for filing a MAP application, then the period for making a MAP application will be determined by the tax laws of the country, which is one year for Turkey. MAP request can be made when the double taxation have been realized.

May a taxpayer go to competent authority before paying tax?

No.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. Effective 1 January 2015, the application fee for an APA is 50,202 Turkish lira (TRY) (approximately 19,000 US dollars (USD)). The fee for an APA application renewal is TRY40,162 (approximately USD15,400). The application and renewal fees are typically re-assessed at the beginning of each calendar year.

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?

Yes. Turkey's APA system is still in its early stages. The first unilateral APA was concluded in July 2011 and the other two agreements were signed as of December 2012. However, corporations in Turkey are becoming more aware of its advantages as APA is regarded as a major means of resolving transfer pricing disputes globally.

KPMG in Turkey

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Publication name: Global Transfer Pricing Review

Publication number: 132762-G

Publication date: October 2015