



Transfer Pricing

Bulgaria

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Obligatory transfer pricing documentation proposed

The Ministry of Finance initiated a public consultation on a bill to amend the Tax and Social Security Procedures Code.

The bill proposes the implementation of obligatory transfer pricing documentation for certain entities and certain transactions depending on balance sheet data of companies and materiality of transactions.

Entities with a balance sheet value of assets exceeding BGN 8 million (EUR 4 million) and net sales revenue exceeding BGN 16 million (EUR 8 million) will be required to prepare transfer pricing documentation on transactions with goods (exceeding BGN 400,000), services (exceeding BGN 200,000), intangible assets (exceeding BGN 200,000) and financial assets (exceeding BGN 200,000). Transfer pricing documentation will also need to cover loan transactions exceeding BGN 2 million or interest payments exceeding BGN 100,000.

The public consultation will end on 5 December 2018, after which the bill, as amended, is scheduled to be delivered to the parliament for voting.

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Laws in effect

Arm's length principle

Transactions are required to be made in line with the arm's length principle. This means that transactions between related companies must be made under similar terms and conditions as would have been agreed between unrelated companies. The OECD Guidelines are generally followed.

Transfer pricing methods

The following methods are applicable:

- the comparable uncontrolled price method, CUP
- the resale price method
- the cost plus method
- the profit split method and
- the transactional net margin method.

CUP is preferred, followed by the resale and the cost plus method. Unless none of these can be applied, the profit based methods are allowed.

Definition of related companies

The tax legislation provides a broad definition of related companies and a list of circumstances constituting control of a company.

For example, related companies are:

- two companies, of which one participates in the management of the other company
- two companies, both controlled by a third company or
- two companies, of which one is commercially representative of the other
- two companies, of which one holds 5% of the voting shares of the other company.

Transfer pricing rules also apply to all transactions with a company located in a tax regime with a corporate tax rate that is at least 60% lower than the Bulgarian tax rate, if the company is not located in an EU member state.

Reporting requirements

Bulgarian residents must disclose the annual turnover of transactions with related parties in an appendix to the annual tax return.

Documentation requirements

The National Revenue Agency, NRA, issued in 2010 Transfer Pricing Documentation Guidelines, which is part of their Transfer Pricing Audit Manual. It is to clarify the documentation requirements, which is in line with both the OECD Transfer Pricing Guidelines and the Code of Conduct for Transfer Pricing Documentation. Despite the fact that the new Transfer Pricing Documentation Guidelines are not a part of the binding law, NRA reserves the right to challenge the data prepared by the taxpayer in the course of a tax audit. Considering the fact that the burden of proof concerning transfer pricing policy is on the taxpayer, compliance with the new transfer pricing guidelines may minimise the tax risk involved.

The documentation should include a master file and a country-specific file. The master file should provide information about the multinational group while the country-specific file should provide information regarding the following.

- The transactions the Bulgarian entity is involved in.
- A description of its functions and risks in the supply chain.
- A description of transfer pricing methodology and the reasons for its selection.
- A benchmarking analysis providing evidence that the prices have been determined in accordance to the arm's length principle.

The documentation requirements depend on the size of the company and the value of the transactions. In general, simplified documentation requirements apply to small and medium enterprises. If requested, transfer pricing documentation must be delivered to the tax authority within 14 days.

General documentation rules apply to transfer pricing. However, if documentation is not sufficient, the tax authority may freely choose a transfer pricing method when analysing transactions with related companies. Sufficient documentation must provide information about the nature of the transactions, a description of how the company has chosen the transfer pricing method and documents to prove that the method has resulted in a price in accordance to the arm's length principle.

Cost sharing

General tax rules apply to cost contribution arrangements, CCAs. To be accepted, a CCA should specify the companies involved in the arrangement, the expected results of the activities and include a description of each participant's contribution and information on how the allocation of benefits has been calculated. To be deductible, the costs must correspond to relevant benefits.

Interaction between customs valuation and transfer pricing

Bulgaria applies directly the customs legislation and the Common Customs Tariff of the EU. There is an interaction between the tax administration and the Customs authority. The tax administration is obliged to inform the Customs to adjust the customs value of imported goods and respectively the amount of the custom's duty if the price of imported goods has been adjusted during a tax audit.

Dispute resolution

The fine for not disclosing the annual turnover of transactions with related parties is between EUR 50 and EUR 500.

If the taxable base is adjusted as a result of a tax audit, an additional interest rate is levied on the amount until payment. The difference between the agreed transfer prices and the market price may be considered as a hidden profit distribution, which may lead to a penalty equal to 20% of the respective difference. The administrative penalty for defining the taxable income incorrectly in the tax return is between EUR 250 and EUR 1 500.

The limitation for transfer pricing adjustments by the tax authorities is five years, counted from the year after filing the tax return.

Currently, there are no procedures in Bulgaria for obtaining an Advance pricing agreements, APA. It is possible to obtain a written opinion from the tax authorities on a case-by-case basis, but such opinion are not binding.

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