

Transfer Pricing Country Profile
(to be posted on the OECD Internet site www.oecd.org/taxation)

Name of Country: KOREA Date of profile: 24 October 2011

1. Reference to the Arm's Length Principle

Paragraph 1 of Article 4 of the 'Coordination of International Tax Act (CITA)'.

2. Reference to the OECD Transfer Pricing Guidelines (if any)

None.

3. Definition of related parties

Paragraph 1(8) of Article 2 of the CITA.

The CITA recognizes "related parties" international business transactions under the following circumstances:

(Equity Ownership Test)

- where one transaction party directly or indirectly owns 50% or more the voting shares of the other transaction party; or,
- where a third party which directly or indirectly owns 50% or more of the voting shares of both transaction parties; or

(Substantial Control Test)

- where one transaction party substantially controls the business policy of the other transaction party or vice versa, and both transaction parties share the same interest by reason of capital contribution, and goods, service or loan transactions; or
- where a third party substantially controls the business policy of both transaction parties and both parties share the same interest by reason of capital contribution, and goods, service or loan transactions .

4. Transfer pricing methods

Article 5 of the CITA.

The CITA lists the following methods for applying the Arm's Length Principle(ALP): the comparable uncontrolled price method(CUP), the resale price method (RP), and the cost plus method (CPM), the profit split method (PS), the transactional net margin method (TNMM) and the other reasonable methods.

With the revision of CITA in 2010, there is no priority any more among the afore-mentioned methods. The Arms' length price shall be decided using the most appropriate and reasonable method in the specific circumstances of the case.

5. Transfer pricing documentation requirements

Generally, taxpayers engaged in controlled international transactions, when filing tax returns, should attach the details of the transactions, and the selection of the Arms' Length Pricing method and its rationale to the tax authorities. (Article 11 of CITA, Article 7 of Presidential Decree of CITA)

More specifically, when it comes to Arms' Length Pricing, Advance Pricing Arrangement and Cost Contribution Arrangement, tax authorities may require taxpayers to provide various relevant documentations including the computation method of the transaction price. (Article 11 of CITA)

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

No specific transfer pricing audit procedure.

Under Article 12 of the CITA, when taxpayers fail to provide relevant documentation requested by the tax authorities without any justification, the tax authorities may levy penalties.

7. Relevant regulations on Advance Pricing Arrangements

Article 6 of the CITA

If a taxpayer wishes to obtain an APA for transactions with its foreign related parties, then he or she should submit an application for an APA to the National Tax Service (NTS) by the end of the first fiscal year of the APA period concerned (Unilateral APA).

Once the NTS approves the application of a certain method for determining an ALP, both the NTS and the taxpayer are bound by the method agreed upon in the APA. The roll-back of a unilateral APA to the prior 3 years is permitted (Unilateral APAs had previously applied on a progressive basis only).

An applicant for an APA may withdraw his application for an APA or change the particulars of such an application until the NTS approves the APA.

In case where an APA is obtained, a taxpayer is required to file an annual report which shows the inter-company price which was determined by the method agreed upon under the APA within six months after the annual tax return due date.

A taxpayer who applies for an APA may request that the NTS invoke a Mutual Agreement Procedure (MAP) with the competent authorities of the country in which its related foreign party is a resident under the relevant tax treaty (Bilateral APA).

8. Link to relevant Government Internet sites

Ministry of Strategy and Finance: english.mosf.go.kr

Korean National Tax Service: www.nts.go.kr/eng/

9. Other relevant information

In the most recent revision of the Presidential Decree and Ministerial Regulation of the CITA, some supplements of the July 2010 update of the OECD TP Guidelines were reflected: Profit Split method, Transaction Net Margin Method, detailed process and factors of Comparability Analysis.