

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

Name of Country: Slovenia Date of profile: September 21, 2012

1. Reference to the Arm's Length Principle

Article 16 of Corporate Income Tax Act (Zakon o davku od dohodkov pravnih oseb, ZDDPO2; Official Gazette of the Republic of Slovenia, No 117/06, 56/08, 76/08, 5/09, 96/09, 110-09-ZDavP-2, 43/10, 59/11, 24/12 and 30/12; CIT2) describes the use of the ALP and provides methods to establish whether the conditions imposed in commercial or financial relations between related parties are consistent with the ALP (paragraphs 3, 4 and 5).

ALP concept is incorporated in CIT2 and also in:

- the Rules on Transfer Prices (RTP or Rules) – the RTP describes methods for determining transfer prices, determines the use of the most appropriate method and introduces the concept of comparability analysis;
- the Transfer Pricing Examination Manual (Priročnik za delo davčne inšpekcije na področju transfernih cen; Manual) and a variety of explanations of legislation from the Tax Administration of the Republic of Slovenia (DURS).

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

There is no direct reference to the OECD Transfer Pricing Guidelines; however the provisions of CIT-2 and regulation for transfer prices follow the OECD Transfer Pricing Guidelines.

3. Definition of related parties

Article 16 of CIT2 provides the definition of related parties in cross-border dealings of MNE (paragraphs 1 and 2).

According to CIT2 Article 16 a taxpayer – resident or non-resident – and a foreign legal entity or a foreign person without legal entity who is not a taxpayer are considered associated enterprises, when:

- the taxpayer directly or indirectly holds at least 25 percent of the value or number of shares or equity holdings, shares in managing or control and/or voting rights of a foreign person, or controls the foreign person on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances; or
- the foreign person directly or indirectly holds at least 25 percent of the value or number of shares or equity holdings, shares in managing or control and/or voting rights of the taxpayer, or controls the taxpayer on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances; or

- the same person at the same time directly or indirectly holds at least 25 percent of the value or number of shares or equity holdings, shares in managing or control and/or voting rights of the taxpayer and foreign person or of two taxpayers, or controls this persons on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances; or
- the same individuals or their family members directly or indirectly hold at least 25 percent of the value or number of shares or equity holdings, shares in managing or control and/or voting rights of the taxpayer and foreign person or of two residents or control them on the basis of a contract, or the transaction conditions differ from the conditions that have been or would have been agreed between non-associated enterprises under equal or comparable circumstances.

4. Transfer pricing methods

According to CIT2 Article 16 Paragraph 5 the comparable market prices shall be fixed by using one of the following methods or any combination of the following methods:

1. Comparable uncontrolled price method
2. Resale price method
3. Cost plus method
4. Profit split method and/or
5. Transactional net margin method.

On the basis of paragraph 6 of Article 16 the Minister of Finance issued the RTP, which regulates the implementation of Article 16 of CIT2 in detail. In Chapter 1 of RTP transfer pricing methods are described in detail and use of the most appropriate method and hierarchy of transfer pricing methods is determined.

5. Transfer pricing documentation requirements

Article 18 of CIT2 provides:

An associated taxpayer under Article 16 of CIT2 shall ensure and keep the data related to the associated enterprises, and the scope and type of transactions conducted with them, as well as data on establishing comparable market prices, within a time limit and in a manner used in compliance with the Act regulating tax procedure (Article 382 of Tax Procedure Act – TPA2).

According to Article 382 of TPA2 any taxpayer from Article 18 of CIT2 is obliged to ensure and keep transfer pricing documentation comprising of a “master file” of standardised information and a “country-specific” version of standardised documentation for each state in which the taxpayer has transactions with associated enterprises. The taxpayer shall simultaneously collect documentation on transfer pricing for an individual transaction (contemporaneous documentation). Documentation shall be prepared (collected) at the latest till submission of the tax return for the tax year to the tax authority. Documentation is not submitted to the tax authority together with the tax return, but the taxpayer keeps it and submits it upon request of the tax authority at the initiation of the audit procedure. If transactions in essence do not differ, the taxpayer may provide documentation for two or more transactions, and make

adjustments for any differences between these transactions if they exist. Taxpayer may keep documentation in electronic form.

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

Tax examination in Slovenia is performed according to the provisions of the Tax Procedure Act (TPA2). There is no significant difference between provisions for 'normal' tax examinations and transfer pricing examinations. There are some special provisions regarding the preparation, submission of transfer pricing documentation.

In cases of transfer pricing, the first paragraph of Article 397 of TPA2 provides that a fine of between EUR 3,200 and 30,000 (since 2011) should be imposed on a legal entity for an offence:

- who in contravention of the law does not make available to the tax authority data from records, databases, registers or other records that such person keeps, or does not enable the tax authority to view his own documentation or the documentation held by an associated enterprise (Article 40 of TPA2);
- who does not submit or does not submit in the prescribed manner or by the prescribed deadline the documentation on associated enterprises, the volume and type of business and on the formulation of transfer pricing (Article 382 of TPA2).

The responsible employee of a legal person who commits an infringement specified in the first paragraph of Article 397 of TPA2 is liable to a fine of between EUR 400 and 4,000.

7. Relevant regulations on Advance Pricing Arrangements

No APA regulations.

8. Link to relevant Government Internet sites

<http://www.mf.gov.si/en/>

<http://www.durs.gov.si/en/>

9. Other relevant information

Note

1. Relevant provisions of domestic legislation referring to the Arm's Length Principle.
2. Reference if any to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in domestic legislation or regulations.
3. Relevant legislation or regulations containing a definition of related parties or associated enterprises.
4. Relevant legislation or regulations containing guidance on transfer pricing methods including hierarchy among them if any.
5. Relevant regulations if any in relation to transfer pricing documentation requirements.
6. Relevant regulations if any on specific transfer pricing audit procedures and / or specific transfer pricing penalties.
7. Relevant regulations if any on Advance Pricing Arrangements.
8. Addresses of the Internet sites of the relevant authorities in charge of transfer pricing policy, its administration and Advance Pricing Arrangements.
9. Other relevant information, for instance having gone through a peer review, or having new transfer pricing regulations in preparation.