

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

Name of Country: SPAIN Date of profile: September, 2012

1. Reference to the Arm's Length Principle

Art.16.1 1° (CITLaw): The transactions between associated persons or entities should be assessed at their arm's length price, being this understood as the price which would have been agreed between unrelated parties in free market conditions.

To the effects of the Spanish Law, any mention made to "entity" shall be understood as entities liable to the Spanish corporation tax.

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

Preamble of the Law 36/2006 of 29 November. It mentions that the law should be interpreted according to the OECD Guidelines.

3. Definition of related parties

Art. 16.3(CITLaw). It is deemed to be associated:

- a) An entity and the owners of its equity (at least the 5% or 1% when the shares are carried out on official secondary securities regulated markets), or the spouse, ascendants or descendants.
- b) An entity and the member of its board of directors or their administrators (includes the fact administrators) or the spouse, ascendants or descendants.
- c) Two entities of the same group.
- d) An entity and the partners (or the spouse, ascendants or descendants) of an entity of the same group.
- e) An entity and the members of the board of directors of an entity of the same group or their administrators.
- f) Two entities where the second entity owns, indirectly, at least, 25% of the capital of the first one.
- g) Two entities when the same person (or the spouse, ascendants or descendants) or entity own, directly or indirectly, 25% of the equity.
- h) An entity resident in Spain and their permanent establishment situated in other country.
- i) An entity resident in other country and their PE situated in Spain.
- j) Two entities of the same group liable to tax under the cooperative group's regime.

4. Transfer pricing methods

Art.16.4 CITLaw states that to determine the AL price the following methods should be used:

- a) The comparable uncontrolled price (CUP) method;
- b) The cost plus method;
- c) The resale price method.

Where the methods mentioned before can not be applied in a proper manner because of the complexity of the transactions or the information available is considered not to be sufficient, the two profit methods could be apply:

- a) the profit split method, or
- b) the transactional net margin method.

5. Transfer pricing documentation requirements

Art. 16.2 CIT Law states that associated persons or entities should keep some documentation; the specific documents are specified in Corporate Income Tax Rules (as drafted in Royal Decree 1973/2008, of 3 November and in Royal Decree 897/2010, of 9 July).

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

Art. 16.9 CIT Law states the basic principles of a specific transfer pricing audit procedure to be developed on further regulations.

Art. 16.10 CIT Law states a new penalty regime based on two pillars:

- a) It will constitute serious tax penalty the failure to provide transfer pricing documentation or provide it in a severe incomplete manner and if the arm's length price states in the CIT assessment differs from that derived from the documentation;
- b) No penalty will be levied in the case the taxpayer has complied with the documentation requirements and has properly applied the criteria in the tax assessment even if there is an adjustment.

7. Relevant regulations on Advance Pricing Arrangements

Art. 16.7 CIT Law. The new regulation has slightly changed to extend the period of coverage to a maximum of four years plus the current tax period (the period which the APA is signed) and the one immediately preceding it making it to propose a period up to six years. Bilateral APAs are enhanced although unilateral APAs are admitted. Regulations will follow to develop basically the internal procedure

8. Link to relevant Government Internet sites

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9. Other relevant information

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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.