

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

Name of Country: ESTONIA Date of profile: 19th of February 2009

No.	Item	Reference to and wherever possible text of the provisions; Wherever needed and possible, a translation into one of the OECD official languages would be welcome
1	Reference to the Arm's Length Principle	<p>Subsection 4 of Article 50 of Estonian Income Tax Act (Income tax on dividends and other profit distributions) stipulates the ALP rule – if the value of a transaction conducted between a resident legal person or a non-resident who has a permanent establishment in Estonia with associated persons differs from the value of similar transactions conducted between non-associated persons, the tax administrator may, upon determining the income tax, use the values of transactions applied by non-associated independent persons under similar conditions. Same provision applies also to permanent establishment of a non-resident legal person situated in Estonia.</p> <p>In the case specified in subsection mentioned above, income tax is charged either on the income which the taxpayer would have derived or the expense which the taxpayer would not have incurred if the value of the transaction conducted with the associated person had been such as applied by non-associated independent persons under similar conditions.</p>
2	Reference to the OECD Transfer Pricing Guidelines (if any)	<p>The OECD Transfer Pricing Guidelines (TPG) have no legal status within the Estonian tax system. However, they have been translated into Estonian and, according to Article 20 of the Regulation no. 53 drafted by MoF (in force since 1.01.2007), taxpayers and tax administrations are encouraged to use the OECD TPG for those situations not covered by the Regulation, as far as the guidance in the TPG is not in contradiction with the Regulation.</p>
3	Definition of related parties	<p>Income Tax Act contains an exhaustive list of related persons. The definition of the concept of related persons is contained in Article 8 of the Income Tax Act and according to that are persons deemed to be associated if:</p> <ol style="list-style-type: none"> 1) one person is the spouse, direct blood relative, sister or brother, descendant of a sister or brother, direct blood relative of the spouse, or a sister or brother of the spouse of the other person; 2) the persons are companies belonging to one group (as defined in § 6 of the Commercial Code); 3) one person owns more than 10 per cent of the share capital, total number of votes or rights to the profits of a legal person; 4) one person, together with other persons with whom the person is associated, owns more than 50 per cent of the share capital, total number of votes or rights to the profits of a legal person;

		<p>5) more than 50 per cent of the share capital, total number of votes or rights to the profits of legal persons belong to one and the same person;</p> <p>6) the persons own more than 25 per cent of the share capital, total number of votes or rights to the profits of one and the same legal person;</p> <p>7) all members of the management board or the bodies substituting for the management boards of legal persons are the same persons;</p> <p>8) a person is an employee of another person, the employee's spouse or a direct blood relative;</p> <p>9) a person is a member of the management or controlling body of a legal person, or the spouse or a direct blood relative of a member of the management or controlling body.</p> <p>Transfer pricing rules apply to transactions of resident legal persons, non-resident persons operating in Estonia through a permanent establishment and also transactions of sole proprietors with any related persons.</p>
4	Transfer pricing methods	<p>The Regulation no. 53 provides five methods – the CUP, cost-plus and resale price method as well as the profit split method and transactional net margin method (TNMM) – that are the same as those in the OECD Guidelines. There is no compulsory hierarchy or system for applying the methods. It is up to taxpayer which method he chooses, but the choice needs to be appropriate.</p>
5	Transfer pricing documentation requirements	<p>For implementation of transfer pricing rules a resident company is required to submit additional information on the transactions with associated persons, activity of companies belonging to the same group and structure of the group at the demand of a tax authority. The tax authority shall grant the company a term of at least sixty days for submitting such information (Subsection 7 of Article 50 of the Income Tax Act).</p> <p>The requirements for the information as well as the methods for determining the value of transactions are established by the Regulation no. 53.</p> <p>Additional documentation requirements for transactions between related persons are contained in Article 18 of the Regulation. These additional requirements are imposed on the following persons and situations:</p> <ul style="list-style-type: none"> • resident credit institutions, insurance companies and companies quoted on the stock market; • in case of transactions with related persons resident in low-tax jurisdictions; • resident companies and non-resident persons operating in Estonia through a permanent establishment which, when considered with related persons, meet at least one of the following conditions: (1) they hire at least 250 employees, (2) their turnover in the financial year preceding the transaction was at least EUR 50 million or

		<p>(3) their consolidated balance sheet total is at least EUR 43million¹.</p> <p>The detailed documentation consists of two parts, namely (1) the main file (i.e. documents which contain unified information about all the members of a group) and (2) documents which contain information about transactions of a particular taxpayer concluded with related persons².</p> <p>For other taxpayers document requirements are optional as recommendations.</p>
6	Specific transfer pricing audit procedures and / or specific transfer pricing penalties.	<p>There are no special transfer pricing audit procedures or transfer pricing penalties.</p> <p>The law provides for penalties in case of <u>understatement of tax</u>. The amount of penalties depends on the type of action – concerning the evasion of payment of taxes the punishment for legal person would be up to 200,000 EEK (Article 153¹ of the Taxation Act), concerning the tax fraud the punishment for legal person would be up to 500,000 EEK (Article 153² of the Taxation Act).</p> <p>In case of obstruction of activities of tax authority (failure to submit a tax return, documents, things or other information by the due date etc) the fine is up to 50,000 EEK (Article 154 of the Taxation Act). Intention submission of wrong information in tax return may also cause criminal proceedings where the fine is up to 250 million EEK (Article 44 of the Penal Code)</p>
7	Relevant regulations on Advance Pricing Arrangements	None
8	Link to relevant Government Internet sites	<p>Ministry of Finance of Estonia: http://www.fin.ee/?lang=en</p> <p>Estonian Tax and Customs Board: http://www.emta.ee/?lang=en</p>
9	Other relevant information	None

1 The requirements are based on the Commission recommendation concerning the definition of micro, small and medium-sized enterprises (2003/361/EC) of 6 May 2003.

2 The requirements are based on the Code of Conduct on transfer pricing documentation for associated enterprises in the EU (COM(2005)543) of 7 November 2005.

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.