



Transfer Pricing Country Profile

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

Name of Country: Portugal

Date of profile: 31/03/2009

1	Reference to the Arm's Length Principle	<p>Paragraph 1 of Article 58 of Corporate Income Tax Code states that “<i>as far as it concerns business transactions including, in particular, one or more transactions on goods, rights or services, as well as financing operations between a taxable person and any other entity, liable for IRC or not, with which there is a special relationship, there shall be agreed upon, accepted or used terms or conditions substantially similar to those which would usually be agreed upon, accepted or used between independent entities in comparable transactions</i>”.</p> <p>See also paragraph 1 of article 1 of Portaria 1446-C/2001, of 21st of December.</p>
2	Reference to the OECD Transfer Pricing Guidelines (if any)	<p>The preamble of the Ministerial Order (<i>Portaria</i>) n.º 1446-C/2001, of 21st of December refers that the OECD Transfer Pricing Guidelines should be followed in a supplementary way, particularly in what concerns complex technical issues or in case of omissions in the domestic transfer pricing regime.</p>
3	Definition of related parties	<p>Paragraph 4 of article 58 of Corporate Income Tax Code states that “<i>There shall be deemed to be a special relationship between two entities where one of them has the power to exert, directly or indirectly, a significant impact on the management decisions of the other; this shall be deemed to occur, namely, between:</i></p> <ul style="list-style-type: none"><i>a) An entity and the owners of its equity, or the spouses, ascendants or descendants thereof, holding, directly or indirectly, a participation not lower than 10 per cent of the equity or voting rights;</i><i>b) Entities in which the same equity owners, respective spouses, ascendants or descendants hold, directly or indirectly, a participation not lower than 10 per cent of the equity or voting rights;</i><i>c) An entity and the members of its corporate bodies, or any administration, direction, management or supervising boards, as well as their spouses, ascendants or descendants;</i>



	<p>d) <i>Entities the majority of whose members of the corporate boards or of the administration, direction, management or supervising boards are the same persons or, in case of different persons, are related with each other by marriage, common law marriage or direct parentage;</i></p> <p>e) <i>Entities related under a subordination agreement, a parity group or any other agreement of a similar nature;</i></p> <p>f) <i>Enterprises having a controlling position in accordance with the terms governing such position in legal texts stating the obligation to produce consolidated accounts;</i></p> <p>g) <i>Entities between which, owing to the business, financial, professional or juridical relations directly or indirectly established or used between them, there is a dependent situation in the exercise of their activity, in particular in any one of the following situations:</i></p> <p>(1) <i>The exercise of its activity by one of them substantially depends on the right to use intellectual or industrial property rights or know-how held by the other;</i></p> <p>(2) <i>The supplying of raw material or the access to sales channels for goods, merchandise or services by one enterprises is substantially dependent on the other;</i></p> <p>(3) <i>A substantial part of the activity carried out by one enterprise can only take place together with the other or depends on decisions taken by the latter;</i></p> <p>(4) <i>The right to settle prices or conditions of a similar economic effect in relation to goods or services transacted, supplied or purchased by one of the enterprises is held by the other under the terms of a juridical act;</i></p> <p>(5) <i>Under the terms and conditions of their commercial or juridical relations, one may influence the managing decisions of the other owing to facts or circumstances strange to the commercial or professional relationship itself.</i></p> <p>h) <i>A resident entity or a non-resident entity with a permanent establishment situated in the Portuguese territory and an entity subject to a more favourable tax regime, resident in a country, territory or region listed in the Portaria approved by the Minister of State and Finance?'</i></p>
--	--



4	Transfer pricing methods	<p>Paragraph 3 of article 58 of Corporate Income Tax Code states that “<i>the methods to be used are as follows:</i></p> <p>a) <i>The Comparable Uncontrolled Price (CUP) method, the Resale Price method or the Cost Plus method;</i></p> <p>b) <i>Whenever those methods as mentioned in the previous sub-paragraph can not be applied or, otherwise they shall not allow for the most reliable measure of terms and conditions which would usually be agreed upon, accepted or used by independent entities, there shall apply the Profit Split method, the Transactional Net Margin method or any other?</i>”.</p> <p>According to article 4 of Portaria 1446-C/2001, of 21st of December, the taxpayer shall adopt the most appropriate method, which is defined as the method which is likely to provide the highest degree of comparability.</p>
5	Transfer pricing documentation requirements	<p>The main ancillary obligation - for a taxable person with net sales and other income in the previous fiscal year which is less than 3 million euro - is to set up and maintain a tax documentation file, which justifies the transfer pricing policy adopted and supports the comparability analysis carried out.</p> <p>That tax documentation file must include namely the description of the special relationship situation; the description of the economic activity exercised by the taxable person and by the related entities; detailed identification of the goods, rights and services which are the object of the controlled transactions as well as the terms and conditions settled; the description of the duties performed, assets used and risks assumed by the intervenient entities; technical studies focusing on the core business areas; the internal guidelines concerning the transfer pricing policy; the contracts and other legal acts settled with related and independent entities; the explanation of the adopted method or methods, as well as of the reasons that justifies the choice; information on the comparable data used and on the analysis carried out in order to evaluate the degree of comparability with the transactions carried out by independent entities; strategies and business policies, which may affect</p>



		<p>the transfer pricing determination or the imputation of transactions profits or losses; any other information, data or documents considered relevant for the determination of the arm's length price, for the comparability of transactions or for the adjustments carried out.</p> <p>In what concerns Cost Contribution Arrangements and Intra-group Services, specific information and documentation are required.</p> <p>See articles 13 to 16 of Portaria 1446-C/2001, of 21st of December.</p>
6	Specific transfer pricing audit procedures and / or specific transfer pricing penalties.	<p>Specific transfer pricing penalties have not been defined by the Portuguese law</p>
7	Relevant regulations on Advance Pricing Arrangements	<p>Article 128.º-A of the Corporate Income Tax Code and the Ministerial Order (<i>Portaria</i>) n.º 620-A/2008, of 16 July- which came into force on 17 July 2008 – regulate the process for entering into an Advance Pricing Agreement.</p>
8	Link to relevant Government Internet sites	<p>www.min-financas.pt ; portaldasfinancas.gov.pt ; www.e-financas.gov.pt</p>
9	Other relevant information	