

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

Name of Country: Slovak Republic Date of profile: October 2012

1. Reference to the Arm's Length Principle

Section 17 subsection 5 interconnected with section 18 of the Income Tax Act No. 595/2003 Coll. as amended (hereinafter the "ITA")

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

None, but OECD Transfer Pricing Guidelines (Chapters I – VIII with its annexes) were published in Financial Bulletin during years 1997 – 2002 and they are generally accepted as an administrative guidance.

3. Definition of related parties

Section 2 subsections (n), (o), (p), (r) of the ITA

4. Transfer pricing methods

Section 18 subsections 2 and 3 of the ITA

5. Transfer pricing documentation requirements

Taxpayers are obliged to provide documentation in accordance with section 18 subsections 1 of the ITA. The documentation must be submitted within 60 days upon the request of the Slovak tax authorities in case of a tax audit (section 18 subsections 6 of the ITA). Documentation is also required in case of:

- APA-s requests (section 18 subsections 4 of the ITA), and
- corresponding adjustments (section 17 subsection 6 of the ITA), and
- mutual agreement procedure (section 18 subsections 8 of the ITA).

The documentation could be submitted in the Slovak language or in other language which is allowed by the tax authority's approval.

Transfer pricing documentation requirements (including simplified requirements for smaller enterprises) was introduced on 1st January 2009 in *Guideline laying down the content of the documentation on the pricing method applied by the taxpayer under section 18(1) of the ITA*. It applied for the first time for the tax period that started after 31 December 2008.

The guidelines are based on the principles set out in the OECD Transfer Pricing Guidelines and the principles outlined in the Resolution of the European Council and of the representatives of the governments of the Member States on the Code of Conduct on transfer pricing documentation for associated enterprises in the EU. The guidelines were published in Financial Bulletin on official web site of Ministry of Finance of the Slovak Republic.

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

None. General rules of law are applied.

7. Relevant regulations on Advance Pricing Arrangements

Section 18 subsections 4 and 5 of the ITA:

Taxpayer may apply for the approval of the use of a transfer pricing method (not the whole APA, only approval of TP method) in written form by the tax administration. The method approved by the tax administration shall be used for no more than five tax periods. It can be prolonged for another five tax periods upon the written request of the taxpayer but only if the taxpayer proves that the approval 's conditions formerly taken into account did not change.

8. Link to relevant Government Internet sites

Ministry of Finance official web site:

<http://www.finance.gov.sk>

9. Other relevant information

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Note

1. Relevant provisions of domestic legislation referring to the Arm's Length Principle.

Section 17 subsection 5 of the ITA

The tax base of non-resident related party shall also include the difference between the prices agreed in business transactions of non-resident related parties (incl. Prices of services, loans and credits), and the prices applied between unrelated parties in comparable business transactions, as long as such a difference results in a reduction of the tax base. The difference above shall be determined in accordance with Section 18 of the ITA.

Section 18 subsections 1 of the ITA:

(1) ...The arm's length basis principle is based on a comparison of the terms, which were agreed in any business or financial transaction between non-resident related parties and the terms, which would have been agreed between unrelated parties in similar business or financial transactions, in comparable circumstances. The review of comparability of the terms is made by confronting in particular the businesses conducted by the parties, including, but not limited to, their production, assembly works, research and development, purchase and sale, etc., the scope of their business risks, the characteristics of the compared property or the service, the terms agreed between the parties to the transaction, the economic environment on the marketplace, and the business strategy. The terms shall be considered comparable if there is no difference at all or if an adjustment would compensate any such a difference....

2. Reference if any to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in domestic legislation or regulations.

None

3. Relevant legislation or regulations containing a definition of related parties or associated enterprises.

Section 2 (n), (o), (p) and (r) of the ITA:

For the purposes of this Act:

n) the term "related party" – shall mean a close party or another party, which is economically, personally, or otherwise interrelated with the first party,

o) the term "economic or personal interrelation" – shall mean a situation, in which one party participates in the ownership, control, or administration of another party, or shall mean a relation between parties, which are under the control or administration of the same party, or in which the same party has direct or indirect equity interest, while the participation in the:

1. *"ownership or control" shall mean any direct, indirect, or indirect derivative holding of more than 25% of the registered capital or the voting rights. Indirect holding shall be calculated by multiplying the percentages of direct holdings divided by one hundred, and by multiplying the result so obtained by one hundred. The indirect derivative holding shall be calculated by summing up the indirect holdings. The indirect*

derivative holding shall only be used to calculate the participation of a single party in the ownership or control of another party, where such a single party participates in the ownership or control of several parties, each of which holds a participation in the ownership or control of the same third party; if the indirect derivative holding exceeds 50%, then all the parties, which were included in the calculation thereof, shall be regarded as economically interrelated regardless of their actual interests,

2. *“administration” shall mean the relationship of members of statutory bodies or supervisory bodies of a company, or co-operatives, towards such a company, or cooperative,*

p) the term “other interrelation” – shall mean a relationship established exclusively for the purpose of reduction of the tax base or increase of tax loss,

r) the term “non-resident related party” – shall mean a situation, in which a resident individual or legal entity is interrelated with a non-resident individual or legal entity as provided in paragraph n) above; the above shall apply also to the relation between a taxpayer with unlimited tax liability and its permanent establishments abroad, and to the relationship between a taxpayer with limited tax liability and its permanent establishment in the territory of the Slovak Republic;

4. Relevant legislation or regulations containing guidance on transfer pricing methods including hierarchy among them if any.

Section 18 subsections 1, 2 and 3 of the ITA

(1) *The difference referred to in Section 17 subsection 5 above shall be determined using any of the methods based on comparison of prices. If none of the methods based on comparison of prices may be reliably used, methods based on comparison of profits or a mutual combination thereof shall be used, or, as appropriate, other methods, which are not described in subsections 2 or 3 below. Only such methods may be used, the use of which complies with the arm’s length principle....*

(2) *The following are the methods based on a comparison of prices:*

a) *Comparable uncontrolled price method consisting of a comparison of the price of a transfer of property or service agreed between non-resident related parties, and the fair market price agreed between unrelated parties. If there is any difference between the two prices, the price agreed between non-resident related parties shall be replaced by the fair market price, which would be used by unrelated parties in comparable business or financial transactions at similar terms,*

b) *Resale price method, whereby the price of the transfer of the assets purchased by a non-resident related party is converted to the fair market price using the price, at which the non-resident related party resells the assets to an unrelated party, after deducting the trading margin, which is usually applied by comparable independent resellers,*

c) *Costs plus method, whereby the fair market price is determined with reference to actual direct and indirect costs of the assets or service transferred between non-resident related parties, increased by the trading margin applied by the same supplier vis-à-vis unrelated parties, or by a trading margin, which would be applied by an unrelated party in a comparable transaction on comparable terms.*

(3) *The following are the methods based on a comparison of profits:*

a) *Profit split method, which is based on such a split of the anticipated profit generated by non-resident related parties, which would be expected from unrelated parties engaged in a joint venture, while respecting the arm's length principle;*

b) *Traditional net margin method used to determine a profit margin in a business or financial transaction between non-resident related parties in relation to costs, revenues or a different basis, which is then compared with a profit margin, used vis-à-vis unrelated parties.*

5. Relevant regulations if any in relation to transfer pricing documentation requirements.

Section 18 subsections 1, 6, 7, and 8 of the ITA:

(1)...The taxpayer is obligated to keep documentation about used transfer pricing method. Content of the requisite documentation will be determined by the Slovak Ministry of Finance.

(6) ... During a tax auditing the tax authority is entitled to require from the taxpayer to submit the documentation pursuant to subsection 1 above. The term for submitting the documentation by the taxpayer to tax authority is 60 days from the day in which the tax authority's requirement was delivered. The taxpayer submits the documentation in state language; however the tax authority based on the taxpayer application could allow the submitting of documentation in other language.

(7) The taxpayer is obliged to keep the documentation pursuant to subsection 1 above in accordance with the specific legislation.

(8) The taxpayer submits the documentation pursuant to subsection 1 above to the tax authority or ministry together with the application, if he applies for:

a) The adjustment of the tax base pursuant to section 17 subsection 6,

b) The beginning of Mutual Agreement Procedure according to:

1. Relevant article of the Double Tax Treaty in connection with the elimination of profit double taxation of the associated enterprises,

2. Convention 90/436/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

Guideline laying down the content of the documentation on the pricing method applied by the taxpayer under section 18(1) of the ITA

English version can be found on the official website of Ministry of Finance of the Slovak Republic (<http://www.finance.gov.sk/en/Default.aspx?CatID=288>).

6. Relevant regulations if any on specific transfer pricing audit procedures and / or specific transfer pricing penalties.

None

7. Relevant regulations if any on Advance Pricing Arrangements.

(4) A taxpayer may file with the tax administration a written request asking for the approval of the use of a specific method referred to in subsections 2 or 3 above. The request shall be annexed by documentation pursuant to subsection 1 above. The approval decision taken by tax administration, about the use of the appropriate method, shall be applied no more than for five tax periods. Upon the written request of the taxpayer filed minimum 30 days before expiration date of former approval decision, if the taxpayer proves, that the approval 's conditions formerly taken into account did not change, the tax administration can take the approval decision for the use of same method for not more than next five tax periods.

(5) The tax administration:

- a) will cancel transfer pricing method approval, if it was issued on the inaccurate and false data basis given by taxpayer*
- b) will cancel or change transfer pricing method approval, when the approval's conditions changed and taxpayer did not request the change of the approval*
- c) can cancel or change transfer pricing method approval, while taxpayer requests it and proves change of approval 's conditions.*

8. Addresses of the Internet sites of the relevant authorities in charge of transfer pricing policy, its administration and Advance Pricing Arrangements.

Ministry of Finance official web site:

<http://www.finance.gov.sk>

Financial Directorate, Taxation Section:

<http://www.financnasprava.sk/sk/sekcia-danova.html>

9. Other relevant information, for instance having gone through a peer review, or having new transfer pricing regulations in preparation.