

# Estonia

## Transfer Pricing Country Profile

June 2023

		SUMMARY	REFERENCE
The Arm's Length Principle			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subsection 50 (4) of the <a href="#">Income Tax Act</a>
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	The 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 (Transfer Pricing Regulation) drafted by MoF (in force since 1.01.2007), taxpayers and tax administrations are encouraged to use the TPG for those situations not covered by the Transfer Pricing Regulation, as far as the guidance in the TPG is not in contradiction with it.	Article 20 of the <a href="#">Transfer Pricing Regulation</a>
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  The definition of the related parties is contained in Article 8 of the Income Tax Act and, according to that, parties are deemed to be associated if they have common business interest or if one party has dominant influence over another. This article also includes an illustrative list of associated persons:  (1) Persons are deemed to be associated if they have a common commercial interest or if one person has dominant influence over the other. The following persons are always deemed to be associated:  1) spouses, civil partners, direct or in-law relatives;  2) companies belonging to one group as defined in Article 6 of the Commercial Code;	Article 8 of the <a href="#">Income Tax Act</a>

		<p>3) a legal person and a natural person who owns more than 10% of the share capital, total number of votes or rights to the profits of the legal person;</p> <p>4) a legal person and a person who owns, together with other associated persons, more than 50% of the share capital, total number of votes or rights to the profits of the legal person;</p> <p>5) legal persons if more than 50% of their share capital, total number of votes or rights to the profits belongs to one and the same person or associated persons;</p> <p>6) persons who own more than 25% of the share capital, total number of votes or rights to the profits of one and the same legal person;</p> <p>7) legal persons whose management board members or bodies substituting the management board are the same persons;</p> <p>8) an employer and an employee, the employee's spouse, civil partner or direct blood relative;</p> <p>9) a legal person and a member of its management board or controlling body (Article 9), the spouse, civil partner 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 transactions of sole proprietors with any related persons.</p>													
Transfer Pricing Methods															
4	<p><b>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1"> <thead> <tr> <th>CUP</th><th>Resale Price</th><th>Cost Plus</th><th>TNMM</th><th>Profit Split</th><th>Other (If so, please describe)</th></tr> </thead> <tbody> <tr> <td><input checked="" type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input checked="" type="checkbox"/></td><td><input checked="" type="checkbox"/></td></tr> </tbody> </table> <p>If the circumstances related to the transaction do not allow for using the listed methods, another method may be used for determining the market value of the transfer price. Justifications must be given for such use of another method.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Article 11 of the <a href="#">Transfer Pricing Regulation</a>
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)										
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>										

5	<b>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</b>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p>	Subsection 11 (2) of the <a href="#">Transfer Pricing Regulation</a>
		The method providing the most reliable result shall be selected on the basis of the specifics of the inspected transaction, the reliability of the available data about comparable transactions, the justification of the assumptions, and the level of similarity of comparable transactions.	
6	<b>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</b>	<p><input checked="" type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p>	Subsection 12 (4) of the <a href="#">Transfer Pricing Regulation</a>
		Domestic legislation recognizes the comparable uncontrolled price method as most reliable if there is comparable information available or small differences could be adjusted.	
<b>Comparability Analysis</b>			
7	<b>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</b>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	Articles 3 and 20 of the <a href="#">Transfer Pricing Regulation</a>
		Article 3 of the Transfer Pricing Regulation lays the foundation for comparability analysis. According to Article 20, it is recommended to follow the TPG.	
8	<b>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</b>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	Subsection 3 (3) of the <a href="#">Transfer Pricing Regulation</a>
		Upon comparing transactions, data of transactions between the taxpayer and a non-associated person shall generally be preferred to the data of transactions between a third party and a non-associated person, and data in Estonian databases shall be preferred to data in databases of foreign states.	

9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Subsection 18 (4) of the <a href="#">Transfer Pricing Regulation</a>
		The comparable data necessary to determine the market value of the transfer price must be available to both the tax authorities and the taxpayer.	
10	Does your legislation allow or require the use of an arm’s length range and/or statistical measure for determining arm’s length remuneration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  The transfer price shall be considered conformant to the market value if it is within the price range determined on the basis of the comparison data. If the transfer price is outside such price range, the tax administrator shall have the right to correct the transaction price in such a way that the result is within the price range. If the determined price range of market values is very wide, the analysis shall be repeated with more specific data or with other methods.  Price range shall mean a series of results in interquartile range determined with the same method of determining the transfer price using different comparable data or with different methods of determining the transfer price.	Subsections 11 (8) and 2 (6) of the <a href="#">Transfer Pricing Regulation</a>
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  Comparability adjustments principles in the Transfer Pricing Regulation are applied based on the TPG.	
Intangible Property			
12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  Domestic Transfer Pricing Regulation follows the main principles of the TPG on intangibles. Among other things, the list of the comparability characteristics for intangibles covers expectation of future profit from the assets, stage of development and useful life of the assets, if the assets are accompanied by rights to enhancements and updates, as well as uniqueness and value of the assets.	Article 5 of the <a href="#">Transfer Pricing Regulation</a>

13	<b>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>  Domestic Transfer Pricing Regulation follows the main principles of the TPG on intangibles and although there are no special measures regarding HTVI the principles on the TPG are being followed.	Article 20 of the <a href="#">Transfer Pricing Regulation HTVI Implementation Questionnaire</a>
14	<b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
<b>Intra-Group Services</b>			
15	<b>Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>  Domestic Transfer Pricing Regulation follows the main principles of the TPG on services.	Article 6 of the <a href="#">Transfer Pricing Regulation</a>
16	<b>Do you have any simplified approach for low value-adding intra-group services?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>  Transfer Pricing Regulation contains a simplified approach (which is in line with Section D of Chapter VII of the TPG) for low value-added intra-group services.	Article 6 of the <a href="#">Transfer Pricing Regulation</a>
17	<b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	

## Financial Transactions

18	<p><b>[NEW]</b> Does your domestic legislation or regulations provide guidance specific to financial transactions?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Transfer Pricing Regulation contains specific comparability characteristics for financial transactions as well as documentation requirements related thereto that should be in line with the TPG.</p>	<p>Subsection 3 (8) and Article 18 of the <a href="#">Transfer Pricing Regulation</a></p>
19	<p><b>[NEW]</b> Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Given the peculiarities of the Estonian income tax system (taxation of profits in its distribution), no limit on the deduction of interest can be imposed in Estonia.</p> <p>Instead, to prevent undermining the tax base and shifting profits through excessive interest payments, the residual borrowing costs, similar to other non-business costs, is taxed (exceptions apply).</p> <p>Loans granted to employees with an interest rate below the market conditions, except if the interest at the moment of the payment thereof is at least twice the interest rate last published pursuant to subsection 94 (2) of the Law of Obligations Act, are considered as fringe benefits and taxed accordingly.</p> <p>Loan granted to parent company or subsidiary of the same parent company could be regarded under certain circumstances as hidden profit distribution triggering 20% CIT. Additionally, granting, repayment and interest received of aforementioned loan should be declared.</p>	<p>Articles 50<sup>2</sup>, 54 (3), 54<sup>2</sup> of the Income Tax Act; Clause 48 (4) 6) of the <a href="#">Income Tax Act</a></p>

Cost Contribution Agreements			
20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes  <input type="checkbox"/> No	Article 17 of the <a href="#">Transfer Pricing Regulation</a>
		The Transfer Pricing Regulation follows the same criteria as outlined in the TPG.	
Transfer Pricing Documentation			
21	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  <i>If affirmative, please check all that apply:</i>  <input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG* <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify):  (*) Taxpayer's file equivalent to the Local file consistent with Annex II to Chapter V of the TPG.	Article 18 of the <a href="#">Transfer Pricing Regulation</a>  Article 20 <sup>3</sup> of the <a href="#">Tax Information Exchange Act</a>
22	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	The tax authority shall give the company a term of at least sixty days for submitting the transfer pricing documentation. The tax authority may request a translation of the documents into the Estonian language, if the documents have been prepared in a foreign language by assigning a reasonable timeline for submitting the translation.	Subsection 50 (7) of the <a href="#">Income Tax Act</a>  Subsection 18 (9) of the <a href="#">Transfer Pricing Regulation</a>

		The country-by-county report should be submitted to the tax authority by 31 December of the calendar year following the financial year that is a reporting year.	Subsection 205 (1) of the <a href="#">Tax Information Exchange Act</a>
23	<b>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  There are no special transfer pricing penalties. The law provides for penalties in case of concealment of tax liability and increase of claim for refund without basis. Failure to submit information to a tax authority intentionally or submission of false information if the tax or withholding obligation is decreased thereby or the claim for refund is increased is punishable by a fine of up to EUR 32 000 (Article 153 <sup>1</sup> of the Taxation Act). In case of obstruction of activities of the tax authority (failure to submit a tax return, other document or thing by the due date, failure to register with a tax authority, failure to comply with the requirements for the keeping of records or failure to comply with an order of a tax authority) the fine is up to EUR 3 200 (Article 154 of the Taxation Act). Intentional submission of wrong information in tax return may also cause criminal proceedings where the fine is up to EUR 16 million (Article 44 of the Penal Code).	Articles 153 <sup>1</sup> and 154 of the <a href="#">Taxation Act</a> Subsection 44 (8) of the <a href="#">Penal Code</a>
24	<b>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</b>	Documenting the transfer prices shall follow the general requirements for documenting economic transactions. The additional requirements for documentation as provided for in Article 18 of the Transfer Pricing Regulation shall be applied only: 1) to a resident credit institution, insurance undertaking and business association registered in a securities market; 2) if one transaction party is a person situated in a non-cooperative jurisdiction for tax purposes; 3) to a resident business association having 250 or more employees including associated persons, or having together with associated persons a turnover of EUR 50 million or more in the financial year preceding the transaction, or having together with associated persons a balance sheet total of EUR 43 million or more; 4) to a non-resident being active in Estonia via a permanent establishment and having 250 or more employees including associated persons or having together with associated persons a turnover of EUR 50 million or more in the financial year preceding the transaction, or having a consolidated balance sheet total of EUR 43 million or more.	Subsection 18 (1) of the <a href="#">Transfer Pricing Regulation</a>



## Administrative Approaches to Avoiding and Resolving Disputes

25	<b>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</b>	<p>Please check those that apply:</p> <p><input type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p>	<p>Article 87 of the <a href="#">Administrative Procedure Act</a></p> <p>Article 19 of the <a href="#">Transfer Pricing Regulation</a></p> <p><a href="#">Estonia's MAP Profile</a></p>
		<p>Currently, there are no provisions enabling taxpayers to negotiate APAs with the tax authorities.</p> <p>Disputes are generally resolved between taxpayers and the tax authorities. If they fail to reach an agreement, the taxpayer has the right to turn to administrative court.</p> <p>Cross-border disputes may also be subject to MAPs.</p> <p>For further information, please refer to Estonia's MAP Profile.</p>	

## Safe Harbours and Other Simplification Measures

26	<b>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</b>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
		There are no simplification measures besides the one for low-value adding intra-group services dealt with in question 16.	
27	<b>Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.</b>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	

### Other Legislative Aspects or Administrative Procedures

28	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Article 20 of the <a href="#">Transfer Pricing Regulation</a>
29	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  The guidance in the TPG is followed to make secondary adjustments.	Articles 19-20 of the <a href="#">Transfer Pricing Regulation</a>

### Attribution of Profits to Permanent Establishments

30	<b>[NEW]</b> Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input checked="" type="checkbox"/> Yes <i>In how many tax treaties?</i> Out of 62 tax treaties in force, 3 tax treaties contain the new version of Article 7. <i>If yes, how do you implement it in cases, where the old tax treaties do not contain the new version of Article 7 (OECD MTC 2010 and later)</i> In cases where the old tax treaties do not contain the new version of Article 7, Estonia would interpret the double tax treaty dynamically and apply the AOA as agreed in the OECD PE Report 2010, if the contrary is not requested by the taxpayer. <input checked="" type="checkbox"/> No <i>In how many tax treaties?</i> See above.	<a href="#">Tax treaties concluded by Estonia</a>
31	<b>[NEW]</b> Does your jurisdiction follow also another approach?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subsection 6 (5) of the <a href="#">Income Tax Act</a>

		Estonia has a well-established principle in the income and corporate taxation that the taxpayer should not be in a less favourable position because of a tax treaty than he is when only the domestic law is applied.	
Other Relevant Information			
32	<b>Other legislative aspects or administrative procedures regarding transfer pricing</b>	N/A	
33	<b>Other relevant information</b> (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i> )	N/A	

For more information, please visit: <https://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profiles.htm>