

Spain

Transfer Pricing Country Profile

July 2021

		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	Corporate Income Tax Act , Art.18.1 (Ley 27/2014, 27 November 2014)
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	The OECD TPG are recognized by the Preamble of the Corporate Income Tax Act as a source of interpretation of the internal legislation and as far as the Guidelines do not conflict with the domestic regulations.	Preamble of the Corporate Income Tax Act , part III.1,e)
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 a) <i>An entity and the owners of its equity provided that the shareholder owns, at least, 25% of the entity. In that case, the definition also applies to the spouse, ascendants or descendants of a natural person shareholder.</i> b) <i>An entity and the members of its Board of Directors (BoD) or Administrators. The definition also applies to the spouse, ascendants or descendants of the member of the BoD or Administrator. The compensation of the member of the BoD or Administrator is out of the scope of the definition.</i> c) <i>Two entities of the same group.</i> d) <i>An entity and the members of the Board of Directors or Administrators of another entity of the same group.</i> e) <i>Two entities when one of them owns, indirectly, at least, 25% of the capital of the other.</i> f) <i>Two entities when the same natural person (or the spouse, ascendants or descendants) or the same entity owns, directly or indirectly, at least 25% of the capital of both of them.</i>	Corporate Income Tax Act , Art.18, paragraph 2

g) *An entity resident in Spain and its permanent establishments in other jurisdictions.*

Transfer Pricing Methods

4	<p>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">CUP</th> <th style="text-align: center;">Resale Price</th> <th style="text-align: center;">Cost Plus</th> <th style="text-align: center;">TNMM</th> <th style="text-align: center;">Profit Split</th> <th style="text-align: center;">Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </tbody> </table> <p>Other methods (not specified) and valuation techniques, generally accepted, may be used when none of the five recognized methods can be applied, as long as they are in accordance with ALP.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	<input checked="" type="checkbox"/>	<p>Corporate Income Tax Act, Art.18, paragraph 4</p>					
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)										
<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	<p>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</p>	<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> <p>The most appropriate method rule applies regarding the five recognized methods. Other methods (not specified) and valuation techniques may be used only when none of the five recognized methods can be applied, as long as they are in accordance with ALP.</p>	<p>Corporate Income Tax Act, Art.18, paragraph 4</p>												
6	<p>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</p>	<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> <p>Spain's domestic legislation does not contain specific guidance on commodity transactions. The TPG apply as a source of interpretation.</p>													

Comparability Analysis

7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Corporate Income Tax Regulations , Art. 17 (Real Decreto 634/2015, de 10 de julio)
		The internal regulations (Please, see the specific Reference) follow the process outlined in Chapter III of the TPG.	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Based on several court decisions, the use of secret comparables is not allowed for transfer pricing assessment purposes.	
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	Corporate Income Tax Regulations , Art. 17.7
		The internal regulations (Please, see the specific Reference) allow for the use of an arm's length range and statistical measures in specific circumstances, but there is not a requirement to do so.	
11	Are comparability adjustments required under your domestic legislation or regulations?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Corporate Income Tax Regulations , Art. 17.4
		Comparability adjustments are not necessarily required under internal regulations, but, in some cases, they may be necessary to account for differences between the situations being compared.	

Intangible Property

12	Does your domestic legislation or regulations contain guidance specific to	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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	the pricing of controlled transactions involving intangibles?	Spain's domestic legislation does not contain specific guidance on intangible transactions. As a source of interpretation, the TPG are used.	
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	HTVI Implementation Questionnaire
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Intra-group Services			
15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Article 18, paragraph 5 refers to specific requirements applicable to intra-group services transactions, e.g., the benefits test, rational allocation of centralised services or the methods to be applied.	Corporate Income Tax Act , Art.18, paragraph 5
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No The simplified approach for low value-adding intra-group services has not been implemented. As a source of interpretation, the work of the EU Joint Transfer Pricing Forum on low-value adding intra-group services and the OECD TPG may be used (e.g., in order to understand what a low value-adding service is..	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Financial transactions

18	<p>[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
		<p>Spain's domestic legislation does not contain specific guidance on financial transactions. As a source of interpretation, the TPG are used.</p>	
19	<p>[NEW] 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</p> <p><input type="checkbox"/> No</p>	<p>Corporate Income Tax Act, Arts. 15.h), 15 bis and 16</p>
		<p>The following rules would apply to financial transactions:</p> <ul style="list-style-type: none"> • General limitation to the deductibility of financial expenses. CTA, Art. 16 includes a general limitation on the deduction of financial expenses according to Art. 4 of the Council Directive (EU) 2016/1164, of July 12, 2016 (ATAD 1) and it is consistent with standards set up on Action 4 final report of the OECD/G20 BEPS project. • Specific limitation to the deductibility of financial expenses in cases of leveraged intra-group sales of shares. CTA, Art. 15, letter h), establishes the non-deductible of financial expenses generated within a commercial group to carry out certain operations between entities belonging to the same group (i.e: acquisition of intragroup shares), unless the taxpayer proves the transaction is reasonable from an economic perspective. • No deductibility of financial expenses in the case of hybrid instruments or entities. CTA, Art. 15 bis contains anti-hybrid rules fulfilling transposition of Council Directive (EU) 2016/1164, of July 12, 2016, laying down rules against tax avoidance practices that directly affect the functioning of the internal market as amended by Council Directive (EU) 2017/952, of May 29, 2017 regarding hybrid mismatches with third countries. Provisions to neutralize hybrid mismatches contained in the aforementioned article are consistent with standards set up on Action 2 final report of the OECD/G20 BEPS project. 	

Cost Contribution Agreements

20		<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	<p>Corporate Income Tax Act, Art.18, paragraph 7</p> <p>Corporate Income Tax Regulations, Art. 18</p>
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	Does your jurisdiction have legislation or regulations on cost contribution agreements?	Article 18, paragraph 7 refers to specific requirements applicable to cost contribution agreements, e.g., the value of contributions should be properly related to the expected benefits, the members should participate in the intangibles, assets or services obtained through the CCA, the agreement should include provisions related to balancing payments, changes in the membership, withdrawal or termination.	
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> <ul style="list-style-type: none"> <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 checked="" type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify): 	Corporate Income Tax Act , Art.18, paragraph 3 Corporate Income Tax Regulations , Arts. 13 to 16
22	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>The Master file and the Local file corresponding to a year should be at the disposal of the Tax Administration on the last day for submitting the tax return for that year. This information is provided to the Tax Administration only in case of a specific request to the taxpayer.</p> <p>The CbC corresponding to a year should be submitted to the Tax Administration no later than 12 months after the last day of the corresponding fiscal year.</p> <p>Spain requires a specific transfer pricing information requirement. It contains basic information for risk assessment, including the type and amount of the controlled transactions, the methods used, etc. The information has to be filed in the month following the 10 months after the end of the tax year period.</p>	Corporate Income Tax Act , Art.18, paragraph 3 Corporate Income Tax Regulations , Arts. 13 to 16
23	Does your legislation provide for specific transfer pricing penalties	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Corporate Income Tax Act , Art.18, paragraph 13

	and/or compliance incentives regarding transfer pricing documentation?	<p>The internal legislation (Please, see the specific Reference) provide for documentation-related penalties in some circumstances (e.g. when the taxpayer does not provide the documentation to the Tax administration or the documentation is incomplete or false).</p> <p>In addition, the legislation also provides a legal ground for penalties when a tax adjustment is made and some other conditions are met (i.e. the taxpayer does not provide the documentation to the Tax administration or the documentation is incomplete or false or when the transfer prices are declared in the tax return are different from those of the documentation).</p>	
24	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	<p>There are some exemptions (e.g. transactions below EUR 250 000 or intra-group transactions if a tax consolidated regime is applied, do not need to be documented) and some measures of simplification for medium (with income not exceeding EUR 45 million a year) and small taxpayers (with income not exceeding EUR 10 million a year).</p>	<p>Corporate Income Tax Act, Art.18, paragraph 13</p> <p>Corporate Income Tax Regulations, Arts. 13,15 and 16</p>
Administrative Approaches to Avoiding and Resolving Disputes			
25	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	<p>Please check those that apply:</p> <p><input type="checkbox"/> Rulings</p> <p><input checked="" type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input checked="" type="checkbox"/> Other (<i>please specify</i>): Multilateral Controls – Joint Audits</p>	<p>Corporate Income Tax Law Art. 18.9.</p> <p>Chapter VII of Corporate Income Tax Regulations.</p> <p>Real Decreto Legislativo 5/2004 , 1st Additional disposition</p> <p>MAP on Direct Tax Matters Regulation, approved by Royal Decree 1794/2008, 3rd November.</p> <p>Spain's MAP Profile</p>
		<p>The possibility to request an APA was established in 1995, under Law 43/1995, of 27 December on Corporations Tax and remains present in the current Corporate Income Tax Law</p> <p>The period of coverage may roll-back to the years immediately preceding the period in which the APA is signed if the domestic time limit has not expired and there has not been a firm tax assessment related to these years.</p>	

		<p>The related persons or enterprises may make a request before the controlled transactions take place.</p> <p>There are domestic rules for MAP.</p> <p>Detailed information is available at the OECD MAP profile of Spain.</p>	
Safe Harbours and Other Simplification Measures			
26	<p>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>In Spain, transfer pricing rules apply to certain transactions between some individuals and companies. There is a safe harbour for services provided by professional shareholders (e.g., lawyers, doctors) to their related entities when certain specific circumstances are met. The safe harbour is looking for simplicity in common low complex transactions between professionals and their entities, while avoiding that profits are accumulated in excess in those entities. (CTA, Art 18.6).</p>	<p>Corporate Income Tax Act, Art.18, paragraph 6</p>
27	<p>Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
Other Legislative Aspects or Administrative Procedures			
28	<p>Does your jurisdiction allow/require taxpayers to make year-end adjustments?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The domestic legislation is silent regarding year-end adjustments. In relevant circumstances, they may be allowed.</p>	
29	<p>Does your jurisdiction make secondary adjustments?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The domestic regulations provide relief if the taxpayer repatriates the funds.</p>	<p>Corporate Income Tax Act, Art.18, paragraph 11</p> <p>Corporate Income Tax Regulations, Art. 20</p>

Attribution of Profits to Permanent Establishments

30	[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input checked="" type="checkbox"/> Yes 2010 Approach when included in the relevant tax treaty. So far it has been included in one Tax treaty. The rest of the treaties follow the 2008 OECD MTC Article 7 and relevant commentaries.	
		<input type="checkbox"/> No	
31	[NEW] Does your jurisdiction follow also another approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Other Relevant Information

32	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
33	Other relevant information (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://oe.cd/transfer-pricing-country-profiles>