

# United States

## Transfer Pricing Country Profile

Updated October 2017

|                                     | SUMMARY  | REFERENCE                               |                                     |                                     |                                     |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |   |
|-------------------------------------|--|---|-------------------------------------|-------------------------------------|-------------------------------------|--------------|--------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|---|
| <b>The Arm's Length Principle</b>   |  |   |                                     |                                     |                                     |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |   |
| 1                                   | <p><b>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</b></p> <p><input checked="" type="checkbox"/> <b>Yes</b><br/><input type="checkbox"/> <b>No</b></p>  | Treas. Reg. § § 1.482-1 through 1.482-9 |                                     |                                     |                                     |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |   |
| 2                                   | <p><b>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</b></p> <p>Our transfer pricing regulations are consistent with the TPG. Neither our domestic legislation nor our regulations mention the TPG.</p>   | Treas. Reg. § § 1.482-1 through 1.482-9 |                                     |                                     |                                     |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |   |
| 3                                   | <p><b>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.</b></p> <p><input checked="" type="checkbox"/> <b>Yes</b><br/><input type="checkbox"/> <b>No</b></p>   | Treas. Reg. § 1.482-1(i)(5)             |                                     |                                     |                                     |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |   |
|                                     | <p>“<u>Controlled taxpayer</u> means any one of two or more taxpayers owned or controlled directly or indirectly by the same interests, and includes the taxpayer that owns or controls the other taxpayers.”</p>  |   |                                     |                                     |                                     |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |   |
| <b>Transfer Pricing Methods</b>     |  |   |                                     |                                     |                                     |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |   |
| 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><br/><input type="checkbox"/> <b>No</b></p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; text-align: center;"> <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> | 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"/> | Treas. Reg. § § 1.482-3(a), -4(a), -7g)(1), and -9(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"/> |              |                                |                                     |                                     |                                     |                                     |                                     |                                     |   |

|                               |   |   |  |
|-------------------------------|---|---|--|
|                               |   | Others include variations of the methods listed above as well as income, market cap, and acquisition price methods.   |  |
| 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>  | Treas. Reg. § 1.482-1(c)   |
|                               |   | Best method rule.   |  |
| 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 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 checked="" type="checkbox"/> Other (<i>if so, please explain</i>)</p> | Treas. Reg. § § 1.482-3(b)(5) and 1.482-9(c)(5)  |
|                               |   | We do not have specific guidance on commodity transactions, but the guidance in Treas. Reg. § § 1.482-3(b)(5) and 1.482-9(c)(5) is consistent with the guidance in TPG ¶ ¶ 2.18-2.22.   |  |
| <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"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p>   | Treas. Reg. § § 1.482-1(c)(2) and (d); -3(b)(2), (c)(3), and (d)(3); -4(c)(2); -5(c); -6(c)(2)(ii) and (3)(ii); and 1.482-9(c)(2), (d)(3), (e)(3), and (f)(2)(iii) |
|                               |   | An emphasis on comparability analysis pervades our regulations.   |  |
| 8                             | <b>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</b>  | <p><input type="checkbox"/> <b>Yes</b></p> <p><input checked="" type="checkbox"/> <b>No</b></p>   | Treas. Reg. § § 1.482-1(c) and (d)   |
|                               |   | The preference is for the best comparables, regardless of whether they are domestic or foreign.   |  |
| 9                             | <b>Does your tax administration use secret comparables for transfer pricing assessment purposes?</b>  | <p><input type="checkbox"/> <b>Yes</b></p> <p><input checked="" type="checkbox"/> <b>No</b></p>   |  |

|                             |  |   |  |
|-----------------------------|--|---|--|
| 10                          | <b>Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?</b>   | <input checked="" type="checkbox"/> <b>Yes</b><br><input type="checkbox"/> <b>No</b><br><br>Ranges or other statistical methods may be used to improve the reliability of the results.  | Treas. Reg. § § 1.482-1(e) and 1.482-7(g)(2)(ix)                                       |
| 11                          | <b>Are comparability adjustments required under your domestic legislation or regulations?</b>  | <input checked="" type="checkbox"/> <b>Yes</b><br><input type="checkbox"/> <b>No</b><br><br>Comparability adjustments must be made if they improve the reliability of the results with respect to material differences in the comparables.            | Treas. Reg. § 1.482-1(d)(2)  |
| <b>Intangible Property</b>  |  |   |  |
| 12                          | <b>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</b>        | <input checked="" type="checkbox"/> <b>Yes</b><br><input type="checkbox"/> <b>No</b>  | Treas. Reg. § 1.482-4  |
| 13                          | <b>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?</b> | <input checked="" type="checkbox"/> <b>Yes</b><br><input type="checkbox"/> <b>No</b><br><br>The HTVI concept corresponds to the “commensurate with income”, or “CWT”, and “periodic adjustment” concepts.   | Section 482 (second sentence); Treas. Reg. § § 1.482-4(f)(2) and (6) and 1.482-7(i)(6) |
| 14                          | <b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</b>         | <input checked="" type="checkbox"/> <b>Yes</b><br><input type="checkbox"/> <b>No</b><br><br>Rules relating to the tax treatment of intangibles are too numerous to attempt to list here, but one such rule of particular relevance is section 367(d). | Section 367(d) and Treas. Reg. § 1.367(d)-1T   |
| <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><br><input type="checkbox"/> <b>No</b>  | Treas. Reg. § 1.482-9  |

|                                       |  |   |  |
|---------------------------------------|--|---|--|
| 16                                    | Do you have any simplified approach for low value-adding intra-group services?   | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No<br><br>Services cost method.   | Treas. Reg. § 1.482-9(b)   |
| 17                                    | Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services? | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No<br><br>Rules relating to the tax treatment of services are too numerous to attempt to list here.   |  |
| <b>Cost Contribution Agreements</b>   |  |   |  |
| 18                                    | Does your jurisdiction have legislation or regulations on cost contribution agreements?  | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No<br><br>Cost sharing arrangements.  | Treas. Reg. § 1.482-7  |
| <b>Transfer Pricing Documentation</b> |  |   |  |
| 19                                    | Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?                                 | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No<br><br><i>If affirmative, please check all that apply:</i> <ul style="list-style-type: none"> <li><input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</li> <li><input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</li> <li><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</li> <li><input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</li> <li><input checked="" type="checkbox"/> Other (specify): Certain documentation requirements are voluntary (but necessary to ensure penalty protection); while certain special requirements become mandatory if a taxpayer chooses to avail itself of certain regulatory protections. In addition, certain information relevant to controlled transactions must be reported on Form 5472 information returns and provided upon request.</li> </ul> | CbC reporting: Treas. Reg. § 1.6038-4, Form 8975 and Schedule A (Form 8975)<br><br>Special requirements: Treas. Reg. § 1.482-7(k) and 1.482-9(b)(6) and (7)(ii)(C) |

|   |  |  |   |
|---|--|--|---|
| 20  | <b>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</b> | For penalty protection, documentation must be in existence when the return is filed, and must be provided to the IRS within 30 days after it is requested.   | Treas. Reg. § 1.6662-6(d)(2)(iii)(A)            |
| 21  | <b>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</b>                      | <input checked="" type="checkbox"/> <b>Yes</b><br><input type="checkbox"/> <b>No</b>   | 6662(e)(3)                                      |
|   |  | Documentation is necessary for penalty protection.   |   |
| 22  | <b>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</b>   |  |   |
| <b>Administrative Approaches to Avoiding and Resolving Disputes</b> |  |  |   |
| 23  | <b>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</b>  | Please check those that apply:<br><input type="checkbox"/> Rulings<br><input checked="" type="checkbox"/> Enhanced engagement programs<br><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)<br><input checked="" type="checkbox"/> Unilateral APAs<br><input checked="" type="checkbox"/> Bilateral APAs<br><input checked="" type="checkbox"/> Multilateral APAs<br><input checked="" type="checkbox"/> Mutual Agreement Procedures<br><input type="checkbox"/> Other ( <i>please specify</i> ): | Rev. Procs. 2015-40 and 2015-41                 |
| <b>Safe Harbours and Other Simplification Measures</b>              |  |  |   |
| 24  | <b>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</b>                                | <input checked="" type="checkbox"/> <b>Yes</b><br><input type="checkbox"/> <b>No</b>   | Treas. Reg. § 1.482-2(a)(2)(iii) and 1.482-9(b) |
|   |  | Certain loans (referred to as a “safe haven interest rate” in the regulation) and low-value-added services (not referred to in “safe harbour” terms).  |   |

|   |  |  |  |
|---|--|--|--|
| 25  | Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.                               |  |  |
| <b>Other Legislative Aspects or Administrative Procedures</b> |  |  |  |
| 26  | Does your jurisdiction allow/require taxpayers to make year-end adjustments?   | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No<br><br>Such adjustments are permitted subject to the limitation in Treas. Reg. § 1.482-1(a)(3). |  |
| 27  | Does your jurisdiction make secondary adjustments?   | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No<br><br>Referred to as “conforming adjustments”.   | Treas. Reg. § 1.482-1(g)(3) and Rev. Proc. 99-32 |
| <b>Other Relevant Information</b>                             |  |  |  |
| 28  | Other legislative aspects or administrative procedures regarding transfer pricing  |  |  |
| 29  | Other relevant information (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire) |  |  |