

Romania

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 Transactions between related parties must respect the Arm's Length Principle. The rule applies to both domestic and non-domestic transactions.	Tax Act , Section 11, para 4 (art 11 alin 4 cod fiscal) Ord 442/2016 - TP File
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	Romanian legislation incorporates guidance for the interpretation of the articles in the Tax Act concerning transfer pricing with reference to the OECD Transfer Pricing Guidelines (TPG). Also, in applying the Arm's Length Principle Romanian legislation has direct reference to the OECD TPG.	Tax Act , Section 11, para 4 (art 11 alin 4 Fiscal Code)
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 <i>26. affiliated persons - a person is affiliated with another person if the relationship between them is defined in at least one of the following cases:</i> <i>a) a natural person is affiliated with another natural person if such persons are spouse or relatives up to the third degree, inclusive;</i> <i>b) a natural person is affiliated with a legal person if the person owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% by value/number of the participation titles, or voting rights in the legal person, or effectively controls the legal person;</i> <i>c) a legal person is affiliated with another legal person if the person owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% by value/number of the participation titles, or voting rights in the legal person, or effectively controls the legal person;</i>	Tax Act , Section 7/26(art 7 pct 26 Fiscal Code)

d) a legal person is affiliated with another legal person if a (third) legal person owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% by value/number of the participation titles, or voting rights of both legal person, or effectively controls both legal person;

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 <input type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" data-bbox="689 502 1541 662"> <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 type="checkbox"/></td> </tr> </tbody> </table> <p>The Tax Act contains specific regulations regarding transfer pricing methods, about the 5 methods provided by OECD TPG. Also, there is a direct provision related to “any other method” provided by OECD TPG.</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 type="checkbox"/>	<p>Tax Act, Section 11, para 4(art 11 alin 4 Fiscal Code)</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 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 <input checked="" type="checkbox"/> Most appropriate method <input type="checkbox"/> Other (if so, please explain)</p> <p>Romanian legislation follows OECD TPG in applying the Arm’s Length Principle. Therefore, there is no hierarchy in choosing one method, the generally accepted standard is, as of 2010, the most appropriate method, as described in the OECD TPG..</p>	<p>Tax Act, Section 11, para 4(art 11 alin 4 Fiscal Code) point 4 of procedural norms.</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. <input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (if so, please explain) <input type="checkbox"/> Other (if so, please explain)</p>													

		Domestic legislation does not contain specific guidance on commodity transactions. However, Romania follows the OECD TPG in this respect.	
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	Tax Act , Section 11, para 4 (art 11 alin 4 Fiscal Code) point 5 of procedural norms.
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Art 8, Ord 442/2016
		The hierarchy presented in Romanian legislation is: National, European Union, Pan-European, International, in this order. However, it relates to the comparables of the tested party.	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Secret comparables cannot be used for transfer pricing assessment but can be used for transfer pricing risk assessment.	
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	Art 8, Ord 442/2016
		The use of arm's length range and statistical measure (e.g. interquartile range and median) are allowed under the Romanian legislation. Note: the use of statistical measures for determining arm's length remuneration is necessary when using some methods and not necessary for others.	
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		Domestic legislation in Romania follows the OECD 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	Tax Act , Section 11, para 4(art 11 alin 4 Fiscal Code) point 5(12) of procedural norms.
		Domestic legislation in Romania follows the OECD TPG. The Romanian law provision about the pricing of a controlled transaction is a condensed description of the OECD TPG rules, not being in fact a different content from the OECD TPG.	
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	
		Domestic legislation in Romania follows the OECD TPG. There are no specific rules regarding HTVI.	
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	
		Domestic legislation in Romania follows the OECD TPG.	
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	Tax Act , Section 11, para 4 (art 11 alin 4 Fiscal Code) point 5(9, 10, 13) of procedural norms.
		Domestic legislation in Romania follows the OECD TPG. The Romanian law provision about the pricing of intra-group services is a condensed description of the TPG rules, not being in fact a different content from the OECD TPG.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Domestic legislation in Romania follows the OECD TPG. There are no specific rules regarding low value-adding intra-group services.	
17	Are there any other rules outside transfer pricing rules that are relevant	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

	for the tax treatment of transactions involving services?	Domestic legislation in Romania follows the OECD TPG.	
Financial transactions			
18	[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Tax Act , Section 11, para 4(art 11 alin 4 Fiscal Code) point 5(11) of procedural norms.
		<p>Domestic legislation in Romania follows the OECD TPG. The Romanian law provision about the pricing of financial transactions is a condensed description of the OECD TPG rules, not being in fact a different content from the OECD TPG.</p>	
19	[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Tax Act , Section 40(1)-40(9), para 4(art 40(1)-40(9)alin 4 Fiscal Code) European Directive 2016/1.164/UE
		<p>Domestic legislation in Romania follows the OECD TPG.</p> <p>In addition, specific rules for interest deduction are applicable as for European Directive 2016/1.164/UE laying down rules against tax avoidance practices that directly affect the functioning of the internal market, as a consequence of BEPS Action 4.</p>	
Cost Contribution Agreements			
20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<p>Domestic legislation in Romania follows the OECD TPG. There are no specific rules regarding CCA's.</p>	

Transfer Pricing Documentation

21	<p>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><i>If affirmative, please check all that apply:</i></p> <p><input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</p> <p><input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</p> <p><input type="checkbox"/> Other (specify):</p>	<p>Art 2-4, Ord 442/2016</p>
22	<p>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</p>	<p>All documents must be translated in the Romanian language.</p> <p>Master file/Local file</p> <p>Required for all taxpayers in case of a tax audit, only at the request from the tax auditors. master file and local file are mandatory for large taxpayers and must be prepared on yearly basis.</p> <ul style="list-style-type: none"> • Large taxpayers: <p>Must prepare a master file and a local file no later than 25 March of the following fiscal year. Where a request from the tax auditors has been issued, these files must be submitted within 10 calendar days from the request.</p> <ul style="list-style-type: none"> • Medium and small taxpayers: <p>Must prepare and submit the master and local files within 30-60 days from the tax audit request, with the possibility of prolonging for 30 more days.</p>	<p>Art 4, Ord 442/2016</p> <p>Ord 3609/2016 regarding the organization of the activity of administration of large taxpayers</p> <p>Ord 3610/2016 regarding the organization of the activity of administration of medium taxpayers</p> <p>The list of large taxpayers is published on the NAFA website and can be found at:</p> <p>The list of large taxpayers</p>
23	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Penalty of RON 2 000-3 500 for small and medium taxpayers and of RON 12 000-14 000 for large taxpayers (art 336 of Fiscal Procedural Code) for not providing or incomplete TP documentation.</p>	<p>Art 336 of Fiscal Procedure Code</p>

24	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	<p>Exemptions for TP documentation are provided only for materiality reasons, as follows</p> <p>For transactions below certain thresholds (50.000 euro for interests and services and EUR 100 000 for goods) there is an exemption for TP File documentation obligations.</p>	Art 2, Ord 442/2016
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 checked="" type="checkbox"/> Rulings</p> <p><input 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>):</p> <p>Multilateral Controls (e.g. simultaneous audits), Double tax treaties;</p> <hr/> <p>Unilateral, bilateral and multilateral APAs can be issued.</p> <p>Bilateral or multilateral APAs are issued only for transactions with taxpayers, residents of the countries that have concluded double taxation agreements with Romania, under the provisions of the Mutual Agreement Procedure article.</p> <p>The domestic legislation allowing the issuing of the APAs is Law no. 207/2015 regarding the Code of Fiscal Procedure, with subsequent amendments (art. 52) and Order of the President of the Romanian Tax Administration no. 3735/2015 regarding the approval for issuing or modifying an APA, as well as the content of the application for issuing or modifying an APA.</p> <p>Currently, the Romanian legislation is not allowing roll-back for APAs issued.</p> <p>For more information on Romania's administration of MAPs, please refer to Romania's MAP profile.</p>	<p>Art 52 - APA and SFIA Fiscal Procedure Code art.282 - Mutual agreement procedure – Law No 207/2015-on the Fiscal Procedure Code</p> <p>Romania's MAP Profile</p>

Safe Harbours and Other Simplification Measures

26	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Tax Act , Section 40(1)-40(9), para 4(art 40(1)-40(9)alin 4 cod fiscal) European Directive 2016/1.164/UE
		Specific rules for interest deduction are applicable as for European Directive 2016/1.164/UE laying down rules against tax avoidance practices that directly affect the functioning of the internal market, as a consequence of BEPS Action 4.	
27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

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	Section 2.4, Order No. 1802 of December 29, 2014 (OMFP 1802/2014)
		There is no specific legislative requirement to make year-end adjustments. However, this may be an appropriate action for a taxpayer to ensure that profit arising from related party transactions or arrangements meet what would be expected if arms-length conditions. These year-end adjustments should be also reflected in the taxpayer's financial statements(profit and loss statements), as a result of transaction(income/expense) evaluation, and should be reflected accordingly at the related party.	
29	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

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 <i>In how many tax treaties?</i> In all tax treaties signed by Romania. The Romanian legislation provides specific regulation providing that the profits attributable to a permanent establishment are the profits that the permanent	Link to official Romanian Tax Treaties Chapter III, art 36 and 37 of Fiscal code, and art 8 o Fiscal Code
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		establishment might be expected to make if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed through the permanent establishment and through other parts of the enterprise. These provisions are consistent with the Authorised OECD Approaches for the attribution of profits to PEs.	
		<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>