

Kosovo

Transfer Pricing Country Profile

August 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 Paragraph 2 of Article 28, Transfer Pricing, of Law No. 06/L-105.	Article 28, Transfer Pricing, of Law No. 06/L-105
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	<p>The application of the provisions of the domestic transfer pricing rules is consistent with the OECD Transfer Pricing Guidelines ("TPG"). Moreover, Administrative Instructions-MF Nr. 02/2017 for Transfer Pricing is prepared based on the OECD TPG.</p> <p>Article 30 of such Administrative Instruction states the reliance on the OECD TPG:</p> <p>"This Administrative Instruction is based on the OECD guidelines in the area of transfer pricing and any other guideline that may be issued in the future, as long as it is not regulated by local legislation."</p>	Administrative Instruction MF-No. 02/2017 on Transfer Pricing
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 Paragraph 1.18 of Article 3 of Law No. 06/L-105 defines related parties as follows: "1.18. Related persons - persons that have a special relationship that may materially influence the economic outcomes of transactions between them. Persons shall be considered to have a special relationship if: 1.18.1. they are officers or directors of one another's business; 1.18.2. they are legal partners in business;"	Paragraph 1.18, Article 3, Definitions, of Law No. 06/L-105 Paragraph 1.5, Article 3, Definitions, of Administrative Instruction MF-No. 02/2017 on Transfer Pricing

		<p>1.18.3. they are in an employer-employee relationship;</p> <p>1.18.4. one person holds or controls fifty percent (50%) or more of the shares or voting rights in the other legal entity;</p> <p>1.18.5. one person directly or indirectly controls the other person;</p> <p>1.18.6. both persons are directly or indirectly controlled by a third person;</p> <p>1.18.7. when these persons are relatives of the first, second or third line, as specified by the Law on Inheritance of Kosovo;</p> <p>1.18.8. when these persons are members of the same group of a multi-national company, meaning that each parent company, branch and sub-branch are related.”</p> <p>Paragraph 1.5 of Article 3 of the Administrative Instruction MF-No. 02/2017 on Transfer Pricing replicates the relevant conditions above.</p>	
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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="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 (<i>If so, please describe</i>)</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>Articles 17-21 of Administrative Instructions-MF Nr. 02/2017 have more details about what each method represents in accordance with OECD TPG.</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 type="checkbox"/>	<p>Article 16, Transfer pricing methods, of Administrative Instruction MF-No. 02/2017 on Transfer Pricing</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 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>Paragraph 4 of Article 28 of Law No. 06/L-105 states the following conditions for the selection of a transfer pricing method:</p> <p>“4. For the purpose of this Article, the open market value is determined based on most suitable comparable method, selected by taking into account the following</p>	<p>Paragraph 4, Article 28, Transfer Pricing, of Law No. 06/L-105</p> <p>Article 22, Selection of the transfer pricing method, of Administrative Instruction MF-No. 02/2017 on Transfer Pricing</p>
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		<p>criteria:</p> <p>4.1. respective strengths and weaknesses of recognized transfer price methods;</p> <p>4.2. the adequacy of a known transfer pricing method in the function of a controlled transaction nature, determined particularly via an analysis of functions performed by each taxpayer in the regulated transaction, taking into account the assets used and the risks assumed;</p> <p>4.3. availability of reliable information required for implementation of the chosen transfer price method and/or other methods; and</p> <p>4.4. degree of comparability between controlled and uncontrolled transactions, including the reliability of comparability adjustments, if any, that may be required to eliminate differences between them.”</p>	
6	If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.	<input 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 (<i>if so, please explain</i>) <input checked="" type="checkbox"/> Other (<i>if so, please explain</i>)	
		Kosovo has no specific guidance on commodity transactions.	
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 Kosovo follows the guidance on comparability analysis outlined in the OECD TPG.	Articles 7-15, Comparability analysis, of Administrative Instruction MF-No. 02/2017 on Transfer Pricing
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Paragraph 5 of Article 15 of Administrative Instruction MF-No. 02/2017 states the preference for domestic comparables as follows: “5. In the absence of domestic comparable uncontrolled transactions, the Tax Administration of Kosovo (“TAK”) recognizes the use of foreign comparable uncontrolled transactions provided that the influence of geographical differences is analyzed and other factors over financial indicator are examined according to	Article 15, Sources of comparable information, of Administrative Instruction MF-No. 02/2017 on Transfer Pricing

		the appropriate transfer pricing method and, where appropriate, a comparability adjustment is carried out.”	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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 Kosovo Tax Administration uses statistical tools such as the interquartile range: 1. In cases where the financial indicator derived from the controlled transaction is outside the market range, TAK may conduct an adjustment to the taxable profit of taxpayers to equate the financial indicator to the median of the market range, unless the TAK or the taxpayer proves that the circumstances of the case ensure an adjustment to a different point in the market range. 2. When for TAK the comparability of indicators according to the market principle is limited by lack of data, TAK could narrow the quartiles range of the available data, excluding twenty-five per cent (25%) of lower values and twenty-five per cent (25%) of higher values than those available.	Article 27, Transfer Pricing Adjustment, of Administrative Instruction MF-No. 02/2017 on Transfer Pricing
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No According to Article 14 of Administrative Instruction MF-No. 02/2017: “1. Comparability Adjustment Actions for the purposes of Article 7 paragraph 1.2 of this Administrative Instruction are considered only if they are expected to increase the reliability of the results, taking into account: 1.1. materiality of the difference for which an adjustment is being considered; 1.2. the quality of the data subject to adjustment; 1.3. the purpose of the adjustment; and 1.4. the reliability of the approach used to make the adjustment. Comparability adjustment actions may include, but are not limited to: 2.1. ensuring accounting consistency, such as adjustments designed to eliminate differences that may arise from differing accounting practices	Article 14, Comparability Adjustment Actions, of Administrative Instruction MF-No. 02/2017 on Transfer Pricing

		<p>between the controlled and uncontrolled transaction;</p> <p>2.2. differences in capital, functions, assets and risks;</p> <p>2.3. the difference in current terms; and</p> <p>2.4. differences between geographic markets.”</p>	
Intangible Property			
12	<p>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Article 25 of Administrative Instruction MF-No. 02/2017 states the following:</p> <p>“1. Implementation of the open market value of the controlled transactions, including licensing, sales or other transfers of intangible property, will take into account the perspective of the transferor of the property, the price at which the comparable independent party would transfer the property. From the perspective of the recipient, comparable independent parties will be willing to pay that price or not, depending on the amount and how useful the property is for the business of the recipient.</p> <p>2. In evaluating comparability in line with Articles 7 to 13 of this Administrative Instruction for a transaction involving the licensing, sale or other transfer of immovable property, special attention should be paid to any important factor for comparability of controlled and uncontrolled transactions, including:</p> <p style="padding-left: 40px;">2.1. the expected gains from intangible assets;</p> <p style="padding-left: 40px;">2.2. any geographical limitation on the exercise of intangible property rights;</p> <p style="padding-left: 40px;">2.3. exclusive or non-exclusive character of the rights transferred; and</p> <p style="padding-left: 40px;">2.4. if the recipient has the right to participate in the further development of intangible property by the transferor.”</p>	<p>Article 25, Transactions involving intangibles, of Administrative Instruction MF-No. 02/2017 on Transfer Pricing</p>
13	<p>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
14	<p>Are there any other rules outside transfer pricing rules that are relevant</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	

	for the tax treatment of transactions involving intangibles?		
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	<p>Article 24, Service transactions, of Administrative Instruction MF-No. 02/2017 on Transfer Pricing</p>
		<p>According to Article 24 of the Administrative Instruction MF-No. 02/2017:</p> <p>“1. A payment for a controlled transaction for the provision or receipt of a service is considered in line with the arm’s length principle if:</p> <ol style="list-style-type: none"> 1.1. is paid for a service that is actually provided; 1.2. the service provides or is expected to provide an economic value to improve the market position of the recipient; 1.3. is paid for a service that an independent party in comparable circumstances would have been willing to pay for if carried out by an independent third party or would have carried out themselves; and 1.4. its value corresponds to the value of which it should have been agreed between independent parties for comparable services under comparable circumstances. <p>2. It shall not be deemed that there is a service within the group for activities undertaken by a group member that simply duplicates the service that another group member performs for himself or is being carried out for that group member by a third party. An exception would be when duplication occurs when the service is simply temporary when a multinational company is being reorganized to centralize its management functions and to reduce the risk of a wrong business decision.</p> <p>3. In cases when it is possible to identify the specific services provided by one party to another, it is necessary to verify whether the service is paid in line with the open market value for each specific service.</p> <p>4. In cases when specific services are provided by one party to various related parties and it is not possible to identify the specific services provided to each related party, the total remuneration for the service is split between related parties that benefitted or are expected to benefit from the service, under reasonable splitting criteria.</p> <p>5. For the purposes of this Article, the splitting criteria are considered reasonable</p>	

		<p>when they are based on a variable or variables which:</p> <p>5.1. consider the nature of the services, the circumstances in which they are offered and the benefits received or expected to be received by the parties to whom the service was intended;</p> <p>5.2. are exclusively related with uncontrolled transactions more than with the controlled transactions; and</p> <p>5.3. are capable of being measured in a reliable and reasonable manner.”</p>	
16	<p>Do you have any simplified approach for low value-adding intra-group services?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Kosovo follows the OECD TPG in this respect and allows a mark-up of 7% for low value-adding intra-group transactions.</p>	<p>Paragraph 6, Article 24, Service transactions, of Administrative Instruction MF-No. 02/2017 on Transfer Pricing</p>
17	<p>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
<p>Financial Transactions</p>			
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>Kosovo Tax administration does not have specific rules on financial transactions, but the TP rules, as provided by the Kosovo tax legislation, are applied and interpreted in line with the principles and guidelines of the OECD, as updated.</p>	
19	<p>[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?(e.g. whether your jurisdiction has implemented the measures in BEPS Action 4 to limit interest deductions and other financial payments or any similar rules)</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</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
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 <p><i>If affirmative, please check all that apply:</i></p> <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 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): <p><u>Specific Transfer pricing returns</u></p> <p>Article 28, Controlled Transactions Notice, of Administrative Instruction MF-No. 02/2017 states the following:</p> <p>“1. Taxpayers involved in controlled transactions, including loan surpluses, which in the reporting period exceed the total amount of EUR 300 000 are required to complete and submit to the tax administration the form for notifying annual controlled transactions (attached in Annex no. 2 of this Administrative Instruction). In determining the total transactions, income and expenses cannot be counter weighted.”</p> <p>The deadline for submission of the form for notice of annual controlled transaction is the date set for the submission of the annual tax return (31 March) and this form should be submitted annually.</p>
22	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>Relevant provisions of Article 29 of Administrative Instruction MF-No. 02/2017 include:</p> <p>“1. Taxpayers involved in controlled transactions are required to prepare and submit sufficient information and analysis to verify that the terms of the controlled transactions are in line with the arm’s length principle.</p>

Article 29, Transfer pricing documentation, of [Administrative Instruction MF-No. 02/2017 on Transfer Pricing](#)

Article 28, Controlled Transactions Notice, of [Administrative Instruction MF-No. 02/2017 on Transfer Pricing](#)

Article 29, Transfer pricing documentation, of [Administrative Instruction MF-No. 02/2017 on Transfer Pricing](#)

		<p>[...]</p> <p>3. Transfer pricing documentation must be made available to TAK upon request, within thirty (30) days of receiving the request.</p> <p>[...]</p> <p>8. Taxpayers with controlled transactions under the amount of EUR 300 000 are considered to meet the requirements for transfer pricing documentation, even in the case of using foreign comparable transactions. Series of foreign comparable uncontrolled transactions are updated only once every three reporting periods, provided that there were no material changes in the controlled transactions, comparable uncontrolled transactions or relevant foreign economic circumstances.</p> <p>9. When business operating conditions remain the same, database searches for comparable external transactions that are part of the transfer pricing documentation should be updated every three years.</p> <p>[...]</p> <p>11. The transfer pricing documentation must be submitted in one of the official languages in Kosovo (Albanian, Serbian), except in special cases (in agreement with TAK) the transfer pricing documentation may be submitted in English, either electronically or in physical form.”</p>	
23	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Kosovo legislation does not have specific transfer pricing penalties, all penalties that apply to other taxpayers will apply to related taxpayers too. A penalty regarding transfer pricing documentation depends on the turnover of the business, in accordance with Article 53 on Failure to Submit, Create or Provide Records of Law No. 03/L-222 on Tax Administration and Procedures.</p> <p>“Notice of controlled transactions” is considered as information statement and in accordance with domestic legislation a penalty of EUR 125 would apply if its not submitted on time or if it is submitted with mistakes.</p>	<p>Law No. 03/L-222 on Tax Administration and Procedures</p>

24	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	There are no exemptions. All taxpayers with controlled transactions, without any threshold, are considered to meet the requirements for transfer pricing documentation.	
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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 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> <hr/> <p>Within the framework of the Double Tax Agreement (“DTA”), there is Article 25 on Mutual Agreement Procedure (“MAP”) where taxpayers can choose issues or disputes that arise from taxation that is not in accordance with provisions of the DTA. Regarding this, taxpayers can make a request for MAP that must be followed to handle such a case. The MAP is harmonized with the OECD Standards.</p>	<u>Double Income and Capital Tax Elimination Agreements (DTA)</u>
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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?	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
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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 In all cases, when after performing a comparability analysis, the taxpayer finds out that his result is not within a market range, the taxpayer is allowed to make a year-end adjustment and should inform the tax administration of all relevant information of the adjustment.	
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> Kosovo is implementing the AOA in tax treaties. Currently, Kosovo has 20 DTAs in total, 8 of these DTAs contain the new Article 7 of the OECD Model Tax Convention and the remaining DTAs contain the old 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> Where the tax treaty contains the old version of Article 7 of the OECD Model Tax Convention, the provisions of such Article or its equivalent apply. <input type="checkbox"/> No	Double Income and Capital Tax Elimination Agreements (DTA)

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>)	Kosovo Tax Administration is preapring the new Administrative Instruction for Transfer Pricing, which will include guidance on Financial Transactions.	

For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>