

New Zealand

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	Sections YD 5, YD 5B, GB 2 and GC 6-14 of the Income Tax Act 2007
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	Guidance in the application and interpretation of New Zealand's transfer pricing rules. A reference to the guidance is included in domestic legislation.	Tax Information Bulletin (ird.govt.nz)
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 New Zealand's transfer pricing rules apply to cross-border arrangements between associated persons, based on 50% or greater common shareholding or effective control. Section GB 2 can extend the application of sections GC 7-10 to non-associated parties where there is a collateral arrangement (such as a market-sharing arrangement, an arrangement to enter into a particular market, a back-to-back supply arrangement or an income-sharing arrangement).	Subparts YA and YB of the Income Tax Act 2007 , in particular section YB 2(1)
Transfer Pricing Methods			
4	Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If affirmative, please check those provided for in your legislation:	Sections GC 13(1) and (2) of the Income Tax Act 2007

		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	Which criterion is used in your jurisdiction for the application of transfer pricing methods?	Please check all that apply: <input type="checkbox"/> Hierarchy of methods <input checked="" type="checkbox"/> Most appropriate method <input type="checkbox"/> Other (if so, please explain)						Section GC 13(3) of the Income Tax Act 2007
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 (if so, please explain) <input checked="" type="checkbox"/> Other (if so, please explain)						
		No specific guidance in domestic legislation or regulations.						
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						Section GC 13(3) of the Income Tax Act 2007
		Under section GC 13(3), the choice and application of a transfer pricing method must be made having regard to the degree of comparability between the uncontrolled transactions used for comparison and the controlled transactions of the taxpayer. New Zealand also follows the detailed guidance in Chapter III of the OECD 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	<p>Does your tax administration use secret comparables for transfer pricing assessment purposes?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>It is legally possible, the domestic legislation provides for the use of secret comparables, but in practice, secret comparables are not used.</p>	
10	<p>Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Rather than requiring the use of an arm's length range and/or statistical measures, New Zealand focuses on the reliability of a comparable or comparables. Where a range comprises results of relatively equal and highly reliable comparables, then any point in the range can be regarded as arm's length.</p>	
11	<p>Are comparability adjustments required under your domestic legislation or regulations?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The use of comparability adjustments is justified to the extent that comparability is improved to arrive at arm's length pricing.</p>	<p>Section GC 13 of the Income Tax Act 2007</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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>New Zealand follows the OECD TPG.</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 <input checked="" type="checkbox"/> No</p> <p>New Zealand follows the OECD TPG.</p>	<p>HTVI Implementation Questionnaire</p>
14	<p>Are there any other rules outside transfer pricing rules that are relevant</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	

	for the tax treatment of transactions involving intangibles?	<p>A general summary is as follows:</p> <ol style="list-style-type: none"> 1. Royalty expenditure must meet the requirements of the normal deductibility rules. 2. Expenditure on research and development that is regarded as a general expense for accounting purposes is generally deductible for tax purposes; profits from the sale of assets created from R&D are not generally taxed. 3. Expenditure on intangible property (such as certain capitalised development expenditure) may be depreciated if the property has a finite useful life that can be estimated with a reasonable degree of certainty on the date of its creation or acquisition. 4. Amounts derived from the sale of patent applications or rights are taxable. 5. The disposal of goodwill is not subject to income tax and the purchaser is not entitled to a tax deduction for goodwill. 	
Intra-group Services			
15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		New Zealand follows the OECD TPG.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Simplification measures for transfer pricing (ird.govt.nz)
		New Zealand follows the OECD LVAIGS simplification measure. New Zealand initially applied a threshold for this measure of NZ \$1m but this threshold does not apply from 1 April 2021.	
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 <input type="checkbox"/> No	
		Service charges must meet the requirements of the normal deductibility rules.	
Financial transactions			
18		<input type="checkbox"/> Yes	

	[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input checked="" type="checkbox"/> No New Zealand follows the OECD TPG.	
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 A general summary is as follows: <ol style="list-style-type: none"> 1. Interest expenditure must meet the requirements of the normal deductibility rules. 2. Interest deductions are subject to the thin capitalisation regime. 3. New Zealand has implemented interest limitation rules, also referred to as Restricted Transfer Pricing for Cross-border Related Borrowing. 	Tax Information Bulletin (ird.govt.nz) , especially pages 99-129 on New Zealand's BEPS Interest Limitation Rules.
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 <i>If affirmative, please check all that apply:</i> <ul style="list-style-type: none"> <input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input 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): 	Section 22 of the Tax Administration Act 1994 (Tax Administration Act 1994 No 166 (as at 01 April 2021), Public Act Contents – New Zealand Legislation)

22	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	There is no explicit statutory requirement in New Zealand to prepare and maintain transfer pricing documentation, but it is considered prudent to do so in order to demonstrate compliance with the arm's length principle. New Zealand Inland Revenue has also endorsed publicly the OECD recommendations as to the preparation of master files and local files for taxpayers with material transfer pricing risks.	
23	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No General tax penalties may apply where an adjustment is made by Inland Revenue, normally 20% to 40% of the tax shortfall. Determination of the penalties focuses on culpability and the level of co-operation by the taxpayer.	
24	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	N/A	
Administrative Approaches to Avoiding and Resolving Disputes			
25	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	Please check those that apply: <input checked="" type="checkbox"/> Rulings <input checked="" type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (APA) <input checked="" type="checkbox"/> Unilateral APAs <input checked="" type="checkbox"/> Bilateral APAs <input checked="" type="checkbox"/> Multilateral APAs <input checked="" type="checkbox"/> Mutual Agreement Procedures <input type="checkbox"/> Other (<i>please specify</i>): Further information on New Zealand's APA programme can be found at Advance pricing agreements (ird.govt.nz) . (Note, in New Zealand a Unilateral APA is a	New Zealand's MAP Profile

		Ruling). Further information on New Zealand's MAP programme can be found at Mutual agreement procedure (MAP) (ird.govt.nz) .	
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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No N/A	
27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Administrative practices for LVAIGS (in accordance with OECD TPG); interest rates for small value loans (principal not exceeding NZ\$10m in total per year); and small wholesale distributors (turnover under NZ\$30m per year).	Simplification measures for transfer pricing (ird.govt.nz)
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 Year-end adjustments may be made to ensure that transfer prices and resulting taxable income are consistent with the arm's length principle.	Sections GC7 & 8 of the Income Tax Act 2007
29	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No A primary adjustment made by Inland Revenue may give rise to a deemed dividend and the potential application of non-resident withholding tax.	
Attribution of Profits to Permanent Establishments			
30		<input type="checkbox"/> Yes <i>In how many tax treaties?</i>	

	[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<p><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></p> <p><input checked="" type="checkbox"/> No</p> <p><i>In how many tax treaties?</i></p> <p>All. New Zealand has a specific reservation in respect of the AOA and has not adopted it in any treaties.</p>	
31	[NEW] Does your jurisdiction follow also another approach?	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Given New Zealand's specific reservation we follow the OECD Commentary for Article 7 as it read immediately before 22 July 2010, taking into account our reservations and observations.</p>	
Other Relevant Information			
32	Other legislative aspects or administrative procedures regarding transfer pricing	The burden of proof for transfer pricing adjustments was previously on the Commissioner of Inland Revenue, it has now been shifted to the taxpayer from income years beginning on or after 1 July 2018.	Tax Information Bulletin (ird.govt.nz) , page 12.
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>)	The reference to the OECD TPG in New Zealand's domestic legislation is to the 2017 TPG. New Zealand has endorsed and follows the guidance in Chapter X of the OECD TPG, which was published subsequent to the 2017 version of the TPG.	