

Poland

Transfer Pricing Country Profile

Updated February 2018

		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	Art. 11 par. 1 of the Corporate Income Tax act (CIT act) http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19920210086/U/D19920086Lj.pdf Art. 25 par. 1 of the Personal Income Tax act (PIT act) http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19910800350/U/D19910350Lj.pdf
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	The OECD Transfer Pricing Guidelines are not part of the Polish law, however they are used as an explanatory instrument. Also in accordance with regulations contained in PIT and CIT act, Minister of Finance act on TP assessments procedure and Minister of Finance act on TP documentations take into account mainly OECD Transfer Pricing Guidelines.	
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 Domestic regulations provide definitions of related parties which are associated entities through level of shares held in capital (no less than 25%) or functions performed (executive or control functions) or family, employment, assets relations.	Art. 11 par. 1, 4, 5 and 5a of the CIT act Art. 25 par. 1, 4, 5 and 5a of the PIT act

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="680 354 1527 513"> <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 style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table> <p>Application of the five methods is obligatory for Tax Authorities. Taxpayers are allowed to use other methods.</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>Art. 11 par. 2 and 3 of the CIT act Art. 25 par. 2 and 3 of the PIT act Section 3 and 4, Minister of Finance act on TP assessments procedure</p> <p>http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20091601268/O/D20091268.pdf</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>There is collision of rules: a formal hierarchy of methods exist in CIT/PIT act, but act on TP assessments procedure states that comparability is deciding factor when assessing TP issues and when choosing of TP method (best method rule). Therefore only in certain situation when there is possibility of use both traditional methods and transactional profit methods; there is a preference for use of traditional methods.</p>	<p>Art. 12 par. 3 of the Minister of Finance act on TP assessments procedure</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 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)</p> <p>Commodities transactions are not regulated by Polish TP legislation therefore we use OECD guidelines 2.18-2.22 as interpretation of arm's length principle. See response in question 2.</p>													

Comparability Analysis

7	<p>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The Guidance on comparability analysis contained the OECD Transfer Pricing Guidelines is efficiently incorporated in section 2 of the Minister of Finance act on TP assessments procedure.</p>	<p>Art. 9a par. 2b point 1 letter d and art. 9a par. 2b point 2 of the CIT act</p> <p>Art. 25a par. 2b point 1 letter d and art. 25a par. 2b point 2 of the PIT act</p> <p>Section 2, Minister of Finance act on TP assessments procedure</p> <p>Art. 3 point 3 and 4 of the Minister of Finance act on TP documentations in terms of CIT http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20170001753/O/D20171753.pdf</p> <p>Art. 3 point 3 and 4 of the Minister of Finance act on TP documentations in terms of PIT http://dziennikustaw.gov.pl/du/2017/1752/1</p>
8	<p>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Benchmarking rules require taking into account domestic comparables as a first choice while preparing benchmarking study. It is a formal requirement when preparing TP documentation.</p>	<p>Art. 9a par. 2c of the CIT act</p> <p>Art. 25a par. 2c of the PIT act</p>
9	<p>Does your tax administration use secret comparables for transfer pricing assessment purposes?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</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 checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Polish TP regulations include only a general arm's length clause concerning arm's length principle. There is no formal restriction on using AL ranges. OECD guidelines as interpretation of arm's length principle apply.</p>	
11	<p>Are comparability adjustments required under your domestic legislation or regulations?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comparability adjustment are required only if they are necessary in particular facts and circumstances of the case.</p>	<p>Art. 3 point 4 letter e of the Minister of Finance act on TP documentations in terms of CIT</p> <p>Art. 3 point 4 letter e of the Minister of Finance act on TP documentations in terms of PIT</p>

Intangible Property

12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Section 2, Minister of Finance act on TP assessments procedure
		Polish domestic regulations contains only limited TP guidance concerning transactions involving intangibles incorporated from the OECD Transfer Pricing Guidelines in section 2 of the Minister of Finance act on TP assessments procedure.	
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	
		Because HTVI issues are not regulated by Polish TP legislation therefore we use OECD guidelines as interpretation of arm's length principle.	
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	Section 5, Minister of Finance act on TP assessments procedure
		Polish domestic regulations contains limited TP guidance concerning transactions involving intra-group services incorporated from the OECD Transfer Pricing Guidelines in section 5 of the Minister of Finance act on TP assessments procedure.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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	

Cost Contribution Agreements

18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Polish domestic regulations contains only highly limited TP guidance concerning transactions involving cost contribution agreements for the joint development of intangible property incorporated from the OECD Transfer Pricing Guidelines in art. 23 of the Minister of Finance act on TP assessments procedure. Also we have available APA for CCA.	Art.20a par. 2 of the Tax Ordinance http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19971370926/U/D19970926Lj.pdf Art. 23 of the Minister of Finance act on TP assessments procedure
----	--	--	--

Transfer Pricing Documentation

19	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 checked="" type="checkbox"/> Other (specify): Statement on preparing TP documentation - when filing annual tax return taxpayer or person acting on behalf of taxpayer-legal entity is obliged to attach a statement that TP documentation is at the date prepared and complete. This requirement was originally designed as a disciplinary measure to bolster taxpayers' willingness to prepare <i>lege artis</i> documentation (historically TP documentations were of poor quality, often lacking information). Person enclosing a statement can be hold accountable if TP documentation is not fulfilling all of the legal requirements. 	Art. 9a of the CIT act Art. 25a of the PIT act Minister of Finance act on TP documentations in terms of CIT Minister of Finance act on TP documentations in terms of PIT Act on exchange of tax information with other countries Minister of Development and Finance act concerning the detailed scope of CbC report
20	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	TP documentation should be prepared no later than the date of filing tax return to tax administration. TP documentation must be provided in Polish language. Domestic regulations divide TP documentation requirements depending on taxpayer's revenue or costs basis, thus taxpayers are obligated to provide: <ul style="list-style-type: none"> - local file (above 2 million euro), - local file with benchmarking study (above 10 million euro), - both local file with benchmarking and master file (above 20 million euro). 	Art. 9a CIT act Art. 25a PIT act Minister of Finance act on TP documentations in terms of CIT Minister of Finance act on TP documentations in terms of PIT

Taxpayers are obligated to make a statement on preparing TP documentation at the tax office until the deadline set for the submission of the annual tax return. Also see response in question 21.

Generally filing obligation is imposed on Parent Entity of the MNE group with the principal place of business or management on the territory of the Republic of Poland. CbC report is provided to the Head of the National Revenue Administration, via electronic communication means within 12 months following the last day of the Reporting Financial Year (art. 83(1) of act on exchange of tax information with other countries).

Constituent Entity which is not Parent Entity, that has its permanent place of business or management on the territory of the Republic of Poland or has the permanent place of business or management outside the territory of the Republic of Poland, but carries out its business through a foreign permanent establishment, submits CbC report, if:

- 1) Parent Entity of this MNE Group is not required to forward the Information on the MNE Group for this reporting financial year in the jurisdiction or territory where it has its principal place of business or management; or
- 2) the jurisdiction or the territory where the Parent Entity of such MNE Group has its principal place of business or management, is a party to the international agreement ratified by the Republic of Poland providing grounds for the exchange of tax information, but it did not conclude, within 12 months following the last day of this Reporting Financial Year, a qualifying CbC agreement between competent authorities where the Republic of Poland is a party, or
- 3) the jurisdiction or the territory where the Parent Entity of such MNE Group has its principal place of business or management, has suspended the automatic exchange of information on MNE Groups for reasons other than permitted under the provisions of a qualifying CbC agreement between competent authorities, or recurrently failed to comply with the automatic reporting to the Republic of Poland of information in its possession on MNE Groups comprising entities with the principal place of business or management on the territory of the Republic of Poland, or carrying out their business through a foreign permanent establishment on the territory of the Republic of Poland, and such Constituent Entity has been notified thereof ((art. 84(1) of act on exchange of tax information with other countries).

In case of local filing described above Poland has also provisions which foresees surrogate filing option (art. 84(2) of act on exchange of tax information with other countries).

The definition of “MNE group” refers to a group that recorded a consolidated group revenue for the previous financial year exceeding the threshold value of EUR 750.000.000 (art. 82 point 1 of act on exchange of tax information with other countries).

[Act on exchange of tax information with other countries](#)

[Minister of Development and Finance act concerning the detailed scope of CbC report](#)

21	<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>50% penalty rate will apply in situation when taxable income (or loss) is assessed by tax audit and taxpayer did not present TP documentation. Moreover, not submitted on time or false statements on preparing TP documentation and unreliable TP documentation are penalised by Fiscal Criminal Law.</p> <p>Moreover if the CbC reporting entity fails to comply with the reporting requirements, so</p> <ol style="list-style-type: none"> 1) did not file CbC report 2) did file CbC report but it's incomplete 3) did not file notification <p>is subject to a fine of up to 1 mln PLN. (art. 90 of act on exchange of tax information with other countries).</p>	<p>Art. 30d par. 1 of the PIT act</p> <p>Art. 19 par. 4 of the CIT act</p> <p>Art. 54 par. 1, art. 80 par. 1 and par. 3 and art. 80d of the Fiscal Criminal Code act</p> <p>http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19990830930/U/D19990930Lj.pdf</p> <p>Act on exchange of tax information with other countries</p>
22	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>Transaction covered by an APA is excluded from documentation requirements.</p>	<p>Art. 9a par. 2e of the CIT act</p> <p>Art. 25a par. 2e of the PIT act</p>
<p>Administrative Approaches to Avoiding and Resolving Disputes</p>			
23	<p>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</p>	<p>Please check those that apply:</p> <p><input 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 type="checkbox"/> Other (<i>please specify</i>):</p>	<p>Section 2A, Tax Ordinance act</p> <p>Double Tax Treaties</p> <p>EU Arbitration Convention (90/436/EEC)</p> <p>Section 7, Minister of Finance act on TP assessments procedure</p>

Safe Harbours and Other Simplification Measures

24	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	
24	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	N/A	

Other Legislative Aspects or Administrative Procedures

25	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		Because year-end adjustment issues are not regulated by Polish TP legislation therefore we use OECD guidelines as interpretation of arm's length principle.	
26	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Other Relevant Information

27	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
28	Other relevant information (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire)	N/A	