

Republic of Korea

Transfer Pricing Country Profile

Updated April 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	Article 4 (1) of the Act on Adjustment of International Taxes("AAIT") https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	Domestic law does not contain reference to TPG. Notwithstanding, the TPG are used as a reference in making and implementing transfer pricing related policies.	
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 The term "special relationship" means any relationship described below, and the specific criteria therefore shall be prescribed by Presidential Decree: (a) A relationship in which either party to a transaction owns directly or indirectly at least 50 percent of the voting stocks (including the equity shares; hereinafter the same shall apply) of the other party; (b) A relationship between both parties to a transaction where a third party owns directly or indirectly at least 50 percent of their respective voting stocks; (c) A relationship in which the parties to a transaction have a common interest through an investment in capital, trade in goods or services, grant of a loan, etc. and either party to the transaction has the power to substantially determine the business policy of the other party; (d) A relationship between both parties to a transaction where the parties have a common interest through an investment in capital, trade in goods or services, grant of a loan, etc. and a third party has the power to substantially determine the business policies of both parties;	Article 2(1) 8 of AAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG Article 2 of Enforcement Decree of the AAIT("EDAAIT") https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG

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" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="padding: 5px;">CUP</th> <th style="padding: 5px;">Resale Price</th> <th style="padding: 5px;">Cost Plus</th> <th style="padding: 5px;">TNMM</th> <th style="padding: 5px;">Profit Split</th> <th style="padding: 5px;">Other (If so, please describe)</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> <td style="padding: 5px;"><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"/>	<p>Article 5(1) of AAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG</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 checked="" type="checkbox"/>										
		<p>Other methods deemed reasonable in light of the substance and practice of trade, other than the computation method prescribed above.</p> <p>In computing the ALP for service transaction for payment guarantee between a resident and a foreign related party, any of the following methods shall apply;1. Method of computing the arm's length price based on the expected risks of, and expenses to be incurred by, the guarantor;</p> <p>2. Method of computing the arm's length price based on the expected benefits of the principal debtor;</p> <p>3. Method of computing the arm's length price based on the expected risks of, and expenses to be incurred by, the guarantor and the expected benefits of the principal debtor.</p>	<p>Article 5(1) 6 of AAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG</p> <p>Article 4(3) of EDAAIT Article 6-2(3) of EDAAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG</p>												
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>Article 5(1) of AAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG</p>												
		<p>The most appropriate and reliable method should be adopted among the methods above considering all relevant factors and circumstances.</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.</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>	
		Domestic law does not provide specific guidance on commodity transactions.	
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>Domestic law basically consistent with Chapter III of the TPG.</p>	<p>Article 5 and 6 of EDAAIT</p> <p>https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG</p>
8	<p>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Regardless of whether they are domestic or foreign, our preference is choosing the best comparables.</p>	<p>Article 5(2) of EDAAIT</p> <p>https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG</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>In computing an arm's length price under Article 5 of the AAIT, the scope of arm's length prices may be computed on the basis of two or more trades between the unrelated parties.</p>	<p>Article 6(4) of EDAAIT</p> <p>https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG</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>According to Art.6 (2) of EDAAIT, comparability adjustments are required where there are material differences in the factors of comparability analysis.</p>	<p>Article 6(2) of EDAAIT</p> <p>https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG</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	Article 6 (6) of EDAAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG
		There is no specific guidance in domestic law with regard to the pricing of controlled transactions involving intangibles. It briefly defines the factors to be considered when computing ALP of the intangibles.	
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	
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	Article 6-2 of EDAAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG
		Where the price for a transaction of between a resident and a foreign related party is the one for the transaction of service that meets specific requirements, such a price shall be deemed the arm's length price and recognizable as a loss.	
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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Article 6-2 of AAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG
		<p>Where a resident enters into an agreement with a foreign related party on the sharing of the cost, expenses, risks (hereafter in this Article referred to as “cost”) to jointly develop or secure intangible property (hereafter referred to as “joint development” in this Article) and performs such joint development in accordance with the agreement, the tax authority may adjust the cost share of the resident based on the arm’s length cost share to determine or rectify the tax base and tax amount of the resident, if the cost share of the resident is less or more than the arm’s length cost share.</p>	

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 type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify): 	Article 11(2) of AAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG
20	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>TP documentation shall be filed within 12 months from the last day of the month during which the fiscal year (provided in Art.6 of the Corporate Tax Act) ends.</p> <p>Languages:</p> <ul style="list-style-type: none"> (1) Master file may be initially submitted in English but must be submitted in Korean within one month of the submission of the English MF (2) Local file has to be submitted in Korean (3) CBCR should be submitted both in Korean and English 	Article 11(1), (2), (3) of AAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG Article 21-2 (5), (6) of EDAAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG

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 <input type="checkbox"/> No</p> <p>A taxpayer who fails to submit or falsely submits MF, LF and CBCR shall be subject to an administrative fine which is 30 million won for each report.</p>	<p>Article 12(1) 1 of AAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG</p> <p>Article 51(1) 1-2 of EDAAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG</p>
22	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>Domestic and foreign corporations with permanent establishments in Korea are exempted from TP documentation (MF, LF) obligations, in cases where (1) the total transaction volume is less than 50 billion won, or (2) net sales are less than 100 billion won.</p> <p>MNEs are exempted from TP documentation (CBCR) obligations, in cases where the total consolidated revenue for the preceding fiscal year is less than one trillion won.</p>	<p>Article 21-2 (1), (3) of EDAAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG</p>
Administrative Approaches to Avoiding and Resolving Disputes			
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>Article 6 of AAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG</p> <p>Article 11-2 of EDAAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG</p> <p>Article 22 of AAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG</p>
Safe Harbours and Other Simplification Measures			
24	<p>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>With respect to international intercompany loans, taxpayers can adopt the rates issued by the MOSF (Ministry of Strategy and finance) as arm's length interest rates determined by the Ministry by taking into account the prevailing interest in international financial market.</p>	<p>Article 6 (7) of EDAAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG</p>

25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	No	
Other Legislative Aspects or Administrative Procedures			
26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Article 7 (2) of EDAAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG
		Where an actual trade price differs from the arm's length price computed by applying the method of computing the arm's length price, a resident may file a return on the tax base and tax amount adjusted by deeming the arm's length price to be a trade price, and apply for a rectification thereof within deadlines, along with a written report on trade price adjustment.	
27	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Article 9 of AAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42278&lang=ENG
		Where it is not verified that the amount to be included in gains has been returned by a foreign related party to a domestic corporation for the purposes of Article 4 or 6-2 of AAIT, such amount shall be adjusted as a dividend to or an investment in the foreign related party.	Article 15 and 16 of EDAAIT https://elaw.klri.re.kr/kor_service/lawView.do?hseq=35965&lang=ENG
Other Relevant Information			
28	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
29	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	