

Spain

Transfer Pricing Country Profile

Updated October 2017

	SUMMARY	REFERENCE
The Arm's Length Principle		
1	<p>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Corporate Income Tax Act, Art. 18, paragraph 1 www.agenciatributaria.es/impuestosLey27/2014 The similar Internet link applies hereafter</p>
2	<p>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</p> <p>The OECD TPG are recognized by the Preamble of the Corporate Income Tax Act as a source of interpretation of the internal legislation and as far as the Guidelines do not conflict with the domestic regulations.</p>	<p>Preamble of the Corporate Income Tax Act, part III.1,e)</p>
3	<p>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.</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>a) An entity and the owners of its equity provided that the shareholder owns, at least, 25% of the entity. In that case, the definition also applies to the spouse, ascendants or descendants of a natural person shareholder.</p> <p>b) An entity and the members of its Board of Directors (BoD) or Administrators. The definition also applies to the spouse, ascendants or descendants of the member of the BoD or Administrator. The compensation of the member of the BoD or Administrator is out of the scope of the definition.</p> <p>c) Two entities of the same group.</p> <p>d) An entity and the members of the Board of Directors or Administrators of another entity of the same group.</p> <p>e) An entity and the spouse, ascendants or descendants of a natural person</p>	<p>Corporate Income Tax Act, Art.18, paragraph 2</p>

		<p>shareholder (+25%) of another entity of the same group.</p> <p>f) Two entities when one of them owns, indirectly, at least, 25% of the capital of the other.</p> <p>g) Two entities when the same natural person (or the spouse, ascendants or descendants) or the same entity owns, directly or indirectly, at least 25% of the capital of both of them.</p> <p>h) An entity resident in Spain and its permanent establishments in other jurisdiction</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 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 checked="" type="checkbox"/></td> </tr> </tbody> </table> <p>Other methods (not specified) and valuation techniques may be used when no one of the five recognized methods can be applied</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 checked="" type="checkbox"/>	Corporate Income Tax Act, Art.18, paragraph 4
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 checked="" 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> <hr/> <p>The most appropriate method rule applies regarding the five recognized methods. Other methods (not specified) and valuation techniques may be used only when no one of the five recognized methods can be applied.</p>	Corporate Income Tax Act, Art.18, paragraph 4												
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.</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 type="checkbox"/> Other (<i>if so, please explain</i>)</p>													

		Spain's domestic legislation does not contain specific guidance on commodity transactions. The TPG apply as a source of interpretation.	
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 The internal regulations (Please, see the specific Reference) follow the process outlined in Chapter III of the TPG.	Corporate Income Tax Regulations, Art. 17 www.agenciatributaria.es/impuestos Real Decreto 634/2015, de 10 de julio
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Based on several court decisions, the use of secret comparables is not allowed for transfer pricing assessment purposes.	
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 The internal regulations (Please, see the specific Reference) allow for the use of an arm's length range and statistical measures in specific circumstances, but there is not a requirement to do so.	Corporate Income Tax Regulations, Art. 17
11	Are comparability adjustments required under your domestic legislation or regulations?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Comparability adjustments are not necessarily required under internal regulations, but, in some cases, they may be necessary to account for differences between the situations being compared.	Corporate Income Tax Regulations, Art. 17

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	
		Spain's domestic legislation does not contain specific guidance on intangible transactions. As a source of interpretation the TPG are used.	
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	Corporate Income Tax Act, Art.18, paragraph 5
		Article 18, paragraph 5 refers to specific requirements applicable to intra-group services transactions, e.g., the benefits test, rational allocation of centralised services or the methods to be applied.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		As a source of interpretation, the work of the EU Joint Transfer Pricing Forum on low-value adding intra-group services and the OECD TPG may be used.	
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	Corporate Income Tax Act, Art.18, paragraph 7 Corporate Income Tax Regulations, Art. 18
		Article 18, paragraph 7 refers to specific requirements applicable to cost contribution agreements, e.g., the value of contributions should be properly related with the expected benefits, the members should participate in the intangibles, assets or services obtained through the CCA, the agreement should include provisions related to balancing payments, changes in the membership, withdrawal or termination.	

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 type="checkbox"/> Other (specify): 	
20	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>The Master file and the Local file relevant to each year should be at the disposal of the Tax Administration since the last day for submitting the tax return of that year. This information is provided to the Tax Administration only by specific request to the taxpayer.</p> <p>The CbC relevant to each year should be submitted to the Tax Administration no later than 12 months after the last day of the relevant fiscal year.</p> <p>Spain requires a specific transfer pricing requirement. It contains basic information for risk assessment, including the type and amount of the controlled transactions, the methods used, etc. It used to be part of the Corporate Income Tax return. As of 2016, the information has to be filled 11 months after the end of the tax year period.</p>	

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>The internal legislation (Please, see the specific Reference) provide for documentation related penalties in some circumstances (e.g. when the taxpayer does not provide the documentation to the Tax administration or the documentation is incomplete or false).</p> <p>In addition, the legislation also provide for penalties when a tax adjustment is made and some other conditions are met (i.e. the taxpayer does not provide the documentation to the Tax administration or the documentation is incomplete or false or when the transfer prices declared in the tax return are different from those of the documentation).</p>	Corporate Income Tax Act, Art.18, paragraph 13
22	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>There are some exemptions (e.g. transactions below 250.000 € or intra-group transactions if a tax consolidated regime is applied, do not need to be documented) and some measures of simplification for medium (with income not exceeding 45 million € a year) and small taxpayers (with income not exceeding 10 million € a year).</p>	Corporate Income Tax Regulations, Arts. 13,15 and 16
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 checked="" 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>	

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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Corporate Income Tax Act, Art.18, paragraph 6
		There is a safe harbour for pricing the relationship between professional partners (e.g., lawyers, doctors...) and a related entity in very specific circumstances.	
25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.		
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	
		The domestic legislation is silent regarding year-end adjustments. In relevant circumstances, they may be allowed.	
27	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Corporate Income Tax Act, Art.18, paragraph 11 Corporate Income Tax Regulations, Art. 20
		The domestic regulations provide relief if the taxpayer repatriates the funds.	
Other Relevant Information			
28	Other legislative aspects or administrative procedures regarding transfer pricing		
29	Other relevant information (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire)		