



Transfer Pricing  
**Country Summary**

**Belarus**

March 2023



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## 1. Introduction

In 2012, Belarus implemented transfer pricing restrictions (also known as "TP rules" or "transfer pricing rules"). Initially, Belarusian TP laws did not impose any responsibilities on taxpayers, such as the submission of notifications on regulated transactions or the production of TP documents. Such duties were first imposed beginning in 2016. As part of the thorough revision of the Tax Code of the Republic of Belarus in 2019, TP regulations were extensively updated and enhanced. The amended TP rules brought Belarusian tax policy more in line with the measures taken by the OECD, specifically the OECD Transfer Pricing Guidelines for Multinational Enterprises Enterprises and tax authorities.

## 2. Laws & Regulations

### a) References to OECD/EU/Local Rules

Belarus does not follow the OECD TP guidelines. It applies its own local rules. Art. 30-1 of Belarus's Tax Code contains TP rules.

### b) Definition of Related Party

Entities/persons are deemed related for transfer pricing purposes if and only if the following conditions are met:

- One person owns at least 20% of the shares (or value) or voting rights in the other person, while a third person owns at least 20% of the shares (or value) or voting rights in both entities, either directly or indirectly.
- In terms of their formal status, one person is subordinate to the other.
- one person is directly or indirectly controlled by the other; or
- Entities whose boards of directors or supervisory councils are made up of at least half of the same people or their spouses, close relatives, a guardian and a ward, a settler of trust, a trust manager, and a beneficiary.

### c) Nature of Transfer Pricing Documentation

Documentation is only to be submitted upon the request of the tax authorities. The tax authorities may request TP documentation no later than the 1<sup>st</sup> of June for the year the audit is taking place.

### d) Tax Havens & Blacklists

There is not a Tax Haven or Blacklist.

### e) Advance Pricing Agreement (APA)

According to the amended TP regulations, Advance Pricing Agreements ("APAs") with the Ministry of Taxes and Duties of Belarus became allowed in 2019.

The conclusion of APAs between tax authorities and taxpayers is a common practice in global TP practice. An APA is an agreement on how to determine prices for tax reasons and (or) how to use methodologies for calculating market pricing. The following taxpayers are eligible to enter into APAs with the Belarusian tax authorities:

- Significant taxpayers;
- Taxpayers who conducted controlled transactions in excess of BYN 2,000,000 per calendar year.

A key benefit of having an APA is that if the taxpayer behaves in accordance with the conditions of the APA, the taxpayer is protected against tax authorities' claims relating to regulated transactions. For a term of no more than three years, APAs may be negotiated in respect of one or more comparable regulated transactions. This term may be extended for a maximum of two years.

Belarus' Ministry of Taxes and Duties has three months to assess the taxpayer's application for the completion of the APA. This time frame can be extended to six months.

#### f) Audit Practice

Belarusian tax authorities verify compliance with the TP regulations by desk tax audits or other forms of tax audits (for example, field tax audits). If the tax authorities determine, based on the audit results, that the transaction price deviates from the market range of identical (similar) commodities (services, works), the tax authorities may decide to change the CIT basis and recalculate the CIT to be paid.

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

The following transactions are subject to transfer price regulation (according to Article 88 of the TC):

- Real estate and housing bond sales and acquisitions with linked firms or taxpayers benefitting from favourable tax regimes;
- Foreign trade (export and import) transactions with linked businesses that total more than BYN 400,000 (BYN 2 million for enterprises designated as significant taxpayers under the TC) every year;
- Domestic trade transactions with related businesses (including transactions through intermediaries) that exceed BYN 400,000 (BYN 2 million for enterprises identified as significant taxpayers under the TC) each year cumulatively;
- Foreign commerce (export and import) transactions with inhabitants of tax havens that surpass BYN 400,000 per year cumulatively (including transactions through intermediaries)
- Foreign trade transactions involving strategic products that surpass BYN 2 million each year cumulatively, according to a government-approved list.

#### b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

#### c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

#### d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible

and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

#### e) Choice of Transfer Pricing Method

Belarus' Tax Code defines five standard TP approaches. Since January 1, 2019, the use of these approaches has been much closer to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. The TP criteria no longer include a stringent consistency constraint in picking the right TP technique. Therefore, the applicable methods are CUP, RPM, CPM, TNMM, PSM.

#### f) Economic Analysis – Benchmark Study

Benchmark studies are to be conducted in order to determine whether intra-companies transactions are

#### g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept.

#### h) Financial Statements

Financial statements need to be made annually and are ought to incorporate the data on related parties, sorts of exchanges performed with related parties during the detailing time frame, their sums, opening and shutting adjusts connected with such exchanges, and so on.

#### i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold** (Yes/No)	Local Language (Yes/No)*(If “No”, it can be filed in English)
<b>Corporate Income Tax</b>	File	Local GAAP	The deadline is on a quarterly basis.	N/A	Yes	Yes
<b>Master File</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local File</b>	Prepare	Local GAAP	June, 30 <sup>th</sup>	N/A	Yes	Yes

<b>CbCR</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Form</b>	File	Local GAAP	10 <sup>th</sup> of each month.	N/A	N/A	Yes
<b>Annual Accounts</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Segmented P&amp;L</b>	N/A	N/A	N/A	N/A	N/A	N/A
* Belarus has not signed the MCAA agreement for the filing of CbCr.						
** Belarus does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.						

#### j) Mandatory Language

Documentation in Belarus must be submitted in either Belarussian or Russian.

#### k) Notification Requirement

Taxpayers may provide documentation within 5 or 10 days after the respective submission notice of the tax authorities.

#### l) Record Keeping

There is no specific record keeping requirement with respect to TP documentation. Nonetheless, it must be noted that in accordance with the statute of limitations, records must be kept for a period of 5 years.

#### m) Penalties and Interest Charges

Currently, Belarusian law does not provide for any unique liability for the

Failing to inform the tax authorities about restricted transactions, as well as failure to furnish the tax authorities with Justification of Prices or Documentation We feel that in such a circumstance, the tax authorities might impose broad responsibility for failing to produce necessary information or documentation. As a result, the taxpayer may face administrative obligation in the form of a fine of no more than 20 basic units (app. USD 220). If the tax authorities demonstrate that the prices used in the monitored transactions are not correct, in accordance with market practices, the taxpayer may face the following penalties:

- a 40% administrative charge on the outstanding amount.
- late payment interest calculated based on unpaid CIT.