



Transfer Pricing
Country Summary

Portugal

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1. Introduction

The current transfer pricing rules were introduced in Portugal through Law 30-G/2000, of December 29th to be applicable to tax years starting on or after 1 January 2002, and were complemented by Ministerial Order No 1446-C/2001, of December 21st.

More recently, under State Budget Law for 2021 (Law No 75-B/2020, of December 31st), transfer pricing rules were introduced in the Portuguese Personal Income Tax Code for capital gains and losses.¹

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Transfer Pricing legislation is laid down in Articles 63 and 138 of the Corporate Income Tax Code, approved by Decree-Law No 442-B/88 of 30 November 1988. These provisions include the core rules and principles related to transfer pricing and advance pricing agreements.

A new bill, Bill 119/2019, was presented in Portugal on September 18, 2019, that contains modifications to numerous tax rules, as Articles 63, 130 and 138 CITC and article 117 of the General Taxation Infringement Law, which included significant changes to previous transfer pricing legislation. The modifications have an influence on the usage of transfer pricing mechanisms, paperwork requirements, and Advance Pricing Agreements, among other things. On October 1, 2019, the new legislation went into force.²

Secondary legislation regulating transfer pricing includes:

- Ministerial Order No 1446-C/2001 of 21 December 2001, which contains, for example, detailed rules on: the arm's length principle; transfer pricing methodologies; cost contribution and intra-group services arrangements; and ancillary obligations.
- Ministerial Order No 620-A/2008 of 16 July 2008, which contains rules on the conclusion of advance pricing agreements.
- Article 77 of the General Tax Law, approved by Decree-Law No 398/98 of 17 December 1998, which provides that, to be justified, all transfer pricing adjustments made by the Portuguese tax authorities must comply with certain requirements.

Portugal has established precise transfer pricing legislation that essentially follows the principles of the Organisation for Economic Co-operation and Development (OECD) for tax years beginning on or after January 1, 2002.³

Portugal has signed 79 double tax treaties (DTTs), with 76 of them in force. Also, Portugal is a signatory to the Common Reporting Standard (CRS), which establishes a global standard for the automatic exchange of financial account information among tax authorities from other nations, under the supervision of the OECD.⁴

b) Definition of Related Party

It is considered that a special relationship exists between two entities when one has the power to exercise, directly or indirectly, significant management influence over the decisions of another, which happens, among other situations, when:

¹ [Transfer Pricing 2021 – Portugal | Global Practice Guides | Chambers and Partners](#)

² [pwc-tp-pt-amended-tp-leg.pdf](#)

³ [Transfer pricing in Portugal: overview | Practical Law \(thomsonreuters.com\)](#)

⁴ [Transfer pricing in Portugal: overview | Practical Law \(thomsonreuters.com\)](#)

- An entity and the respective capital owners, or spouses, ascendants or descendants of these, holding, directly or indirectly, no lower participation than 20% of the capital or voting rights;
- Entities in which the same capital holders, their respective spouses, ascendants or descendants hold, directly or indirectly, no lower participation than 20% of the capital or voting rights;
- An entity and the members of its governing bodies, or any administrative, direction, management or supervision bodies and their respective spouses, parents, children;
- Entities in which most members of the governing bodies, or members of any administrative, direction, management or supervision, are the same people or, being different people are connected to each other by marriage, that are legally recognized as marriage or kinship or straight;
- Entities linked by a subordination agreement, the joint working party or by equivalent effect;
- Companies in a controlling relationship, under Article 486 of the Commercial Companies Code;
- Entities whose legal relationship allows, by its terms and conditions, that a conditional management decision is made over the other, due to facts or circumstances unrelated to the business or professional relationship;
- A resident or non-resident entity with a permanent establishment situated in Portuguese territory and an entity subject to a more favorable tax regime resident in a country, territory or region part of the list approved by order of the Government member responsible for finance (as listed in the Ministerial Order 292/2011).

c) Nature of Transfer Pricing Documentation

The most important document in terms of transfer pricing is the public report for the Strategic Plan to Combat Fraud and Tax Evasion from 2015 to 2017. While there is a genuine attempt to apply transfer pricing rules and increase tax inspector training on transfer pricing concerns, there has been no discernible change in practice. The ability to use advance price agreements, for example, has been severely constrained.

The State Budget Law for 2016 adopted Action 13 of the OECD BEPS Action Plan on CbCr, but little progress has been made on Actions 8 to 10 of the BEPS Action Plan.

In 2020, all "major taxpayers" must provide transfer pricing paperwork to the Portuguese tax authority no later than the 15th day of the seventh month following the conclusion of the relevant tax year. This requirement for submitting transfer price paperwork becomes effective on October 1, 2019, and it applies to taxpayers with fiscal years starting on or after January 1, 2019.⁵

d) Tax Havens & Blacklists

Under Ministerial Order n. 150/2004 of 13 February, issued by the Portuguese Ministry of Finance and consequently updated, Portugal defines an official blacklist of countries and jurisdictions considered for legal and tax purposes as tax havens.

An updated examination of the European and national scenario is coming after several years of an unchanged Portuguese tax haven "black list". Portugal implemented a dual system that included the establishment of a closed list of "tax havens" that is periodically revised and updated by the government through a governmental Ordinance, as well as the establishment of a legal open clause that broadens the scope of the current tax havens regime. The Portuguese "black list," according to the information available on the issue, is one of the most extensive in the EU.⁶

⁵ [Portugal: Transfer pricing documentation requirements - KPMG United States \(home.kpmg\)](#)

⁶ [Paraisos Fiscais - THE PORTUGUESE TAX HAVENS BLACK LIST -2020 UPDATE 16.0-vf.pdf \(taxandlegalbyrff.com\)](#)

The decision to classify a country, state, or region as a "black listed" jurisdiction is unilateral, and the Portuguese Government can revise its status at any time, either spontaneously or in response to a request from the competent entity of that jurisdiction, indicating that it no longer meets the criteria used to classify a jurisdiction as a "tax heaven," namely:

- a) Corporate income tax (CIT) rate inferior to 60% of the Portuguese CIT rate or inexistence of an identical or similar tax;
- b) The rules for determining the tax base on which income tax is levied differ significantly from internationally accepted or practiced standards;
- c) The existence of special regimes or tax benefits that result in a substantial reduction in taxation; and
- d) Legislation or administrative practice that do not allow access and effective exchange of relevant information for tax purposes.

In addition to the aforementioned conditions, Portuguese legislation has introduced an open clause since 2017 that permits the Tax Administration to consider a country, territory, or region to be a "tax heaven" even though it is not on the "black list." A safeguard clause is included in the system for EU and EEA nations, as well as jurisdictions that have signed an exchange of information agreement with Portugal that fulfills EU requirements.⁷

e) Advance Pricing Agreement (APA)

As foreseen in the preamble to the transfer pricing legal ruling Portaria 1446-C/2001, in 2008 a new instrument was published for establishing the arm's length principle in controlled transactions through the publication of the Advance Pricing Agreements (APA) decree. This decree intends to provide a basis of legal security and certainty by fixing in advance the methods used for determining transfer pricing in respect of the arm's length principle, while ensuring the elimination of double taxation in the presence of bilateral or multilateral relations.

Detailed APA rules were introduced by the Ministerial Order 620-A/2008, which entered into force on July 16, 2008.

Some considerations:

- APA's can be Unilateral, Bilateral or Multilateral;
- The APA request or proposal should be sent to the PTA up to 180 days prior to the beginning of the first fiscal year covered by the agreement;
- The APA is valid for a maximum of three years with the possibility for renewal;
- The filing fee for an APA application is between €3,150 and €35,000, depending on taxpayer's average turnover. The fees are reduced by 50% for renewals or revisions of existing APA's.

Since 2014, the possibility of taxpayers entering into unilateral APA with the PTA was introduced.

f) Audit Practice

Cooperation is a main element in the connection between tax inspector and taxpayer in the Portuguese legislative framework for tax inspections, implying that it is consistent within a regulatory context. Tax inspectors, on the other hand, continue to be perceived as a coercive authority rather than a collaborator. Our practitioner model depicts the various dynamics that can be expected during a tax investigation, beginning

⁷ [Paraisos Fiscais - THE PORTUGUESE TAX HAVENS BLACK LIST -2020 UPDATE 16.0-vf.pdf \(taxandlegalbyrff.com\)](#)

with the tax inspector's perception of the taxpayer's motivational postures at various stages of the investigation and ending with a responsive regulation approach that increases the probability of redressment.⁸

Concerning the tax audit process, taxpayers are audited by the PTA based on several criteria, as detailed in a specific document prepared by the PTA. The PTA must notify the taxpayers of the preliminary conclusions reached in cases where these may lead to tax assessment acts unfavourable to the taxpayers, further to which taxpayers may present their argumentation. The PTA must then prepare a final report of the tax audit performed, identifying the facts detected.

Tax audits may be initiated within the statute of limitations and concluded within six months. A prorogation of the deadline to one year may apply under certain conditions (e.g. complexity of the facts involved, necessity to make use of mechanisms of mutual assistance on tax matters, additional/new information being provided by the taxpayer).

The PTA releases, on a periodical basis, a list of taxpayers that, due to the nature of their activities, their turnover, or other criteria, are subject to regular monitorisation. There is also a specific department for large taxpayers.⁹

3. Transfer Pricing Documentation

a) Level of Documentation

Under the terms of Article 63 No 7 of the Corporate Income Tax Code, taxpayers must declare in their annual accounting and tax return (*Informação Empresarial Simplificada*, IES), to be filed by the 15th of the seventh month following the end of the relevant tax year, if they performed, in the relevant tax period, any transaction carried out with a related entity, plus, whenever such transactions were effectively carried out, the following information:

- identification of the relevant related entities;
- identification and declaration of the amount and type of transactions carried out with each related entity;
- identification of the transfer pricing methods adopted, including any changes introduced to such methods;
- amount of the adjustments within the determination of the taxable profit due to the non-compliance with the arm's-length principle;
- confirm the timely preparation of the transfer pricing documentation and if it remains available.

As per Article 63 No 6 of the Corporate Income Tax Code, in order to justify that the terms and conditions of transactions carried out with related entities complied with the arm's-length principle, taxpayers must keep organised, under the terms foreseen for the tax documentation process, the documentation concerning the transfer pricing policy adopted, which must be kept for a ten years period and must be provided to the Portuguese tax authorities as per their request.

As per Articles 13 and 14 of Ministerial Order No 1446-C/2001, taxpayers with an annual turnover of EUR3,000,000.00 or higher in the previous tax year must specifically keep a transfer pricing file with all the relevant information and documentation concerning the following aspects:

- description and characterisation of the special relations situation;
- characterisation of the activity carried out by the taxpayer and by the related entities with which such taxpayer carries out transactions, indication of the nature and amounts of the transactions with each

⁸ [Tax audits as a path to tax compliance in Portugal | SpringerLink](#)

⁹ [Portugal - Corporate - Tax administration \(pwc.com\)](#)

entity in the last three years, and availability of the financial statements of the related entity if necessary;

- detailed identification of the assets, rights and services corresponding to the object of related-party transactions, including the terms and conditions settled whenever such information cannot be extracted from the contracts;
- description of the functions performed, assets used and risks borne, both by the taxpayer and the related entities with which the related-party transactions were carried out;
- technical studies related to essential business areas, including investment, financing, research and development, market, restructuring and reorganisation of the activities, as well as forecasts and budgets related to the global activity and to the activity by segment or product;
- guidelines related to the application of the transfer pricing policy, including methods to be used, procedures for collection of information (in particular internal and external comparable data), analysis for the evaluation of comparability level between transactions and of cost and profit margin policies adopted;
- agreements and any legal acts performed both with related parties and with independent parties, including any amendments and historical information on its compliance;
- explanation on the method(s) adopted for the determination of the arm's-length price with respect to each transaction, including a justification for the selection of the most appropriate method;
- information on the comparables data used;
- details on the analysis performed to evaluate the comparability level between related party transactions and independent transactions and between the entities carrying out such transactions, including functional and financial analysis, and any adjustments performed in order to eliminate the existing differences;
- any other information, data or documents deemed relevant for the determination of the arm's-length price, operation comparability and adjustments performed.

Article 16 of the Ministerial Order No 1446-C/2001 foresees specific documentation to be included in the file with respect to cost-sharing agreements and intra-group services agreements.¹⁰

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.

¹⁰ [Transfer Pricing 2021 - Portugal | Global Practice Guides | Chambers and Partners](#)

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

The transfer pricing methods specified by the Portuguese transfer pricing regime are the same as in the OECD Guidelines: CUP, resale price, cost plus, profit split and Transactional Net Margin Method. Portuguese tax authorities expect the most reliable method to be applied, although more than one method may be applied to confirm the application of a primary method. Transaction-based methods are preferred over profit-based methods. Other methods may be applied when one of the specified methods cannot be applied, or when they do not result in the most reliable arm's length measure.

In Portugal there is a hierarchy in which method should be used, namely the best-method rules applies in Portugal. This implies that a taxpayer is expected to use the method or methods most suitable to each case, thus explaining not only the reason why a certain method is considered as the most appropriate to test whether or not the controlled transactions comply with the transfer pricing rules, but also why other methods are rejected.

f) Economic Analysis – Benchmark Study

There is a preference for local comparables and if not so, Iberian comparables; if these prove scarce, European comparables may be accepted.¹¹

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

In light of the recent international developments in the area (namely, regarding base erosion and profit shifting – BEPS), Law 119/2019, of September 18th introduced new changes to the transfer pricing and penalties regimes (in particular, Articles 63, 130 and 138 of the Corporate Income Tax Code and Article 117 of the General Tax Infringement Law), to apply as from 1 October 2019. This new law has reinforced that the terms and conditions of all commercial or financial transactions carried out between related parties (both resident and non-resident) must comply with the arm's-length principle, including the following transactions: (i) business restructurings; (ii) renegotiations/terminations of intragroup agreements; (iii) sales/transfers of assets; (iv) transfers of rights to intangibles; and (v) compensation for loss of profits or damages.

In addition, the following relevant changes were introduced:

- elimination of any hierarchy on the application of the transfer pricing methods specifically provided for in the Portuguese tax law;
- taxpayers are allowed to adopt methods other than those set out in the transfer pricing rules, in case of transactions with specific characteristics or where there is a lack of information on comparable transactions between independent parties;
- the transfer pricing rules are now aligned with the new reporting obligations specified in Ministerial Order No 35/2019 (in particular appendix H to the new annual information return regarding transfer pricing information);
- "Large taxpayers" are required to prepare and submit transfer pricing documentation to the Portuguese tax authorities by the 15th of the seventh month after the end of the tax year;

¹¹ [ey-worldwide-transfer-pricing-guide-10-september-2020 \(2\).pdf \(sharepoint.com\)](#), p 517.

- advance pricing agreements (unilateral or bilateral) are valid for up to four years (instead of three years), and its terms and conditions are exchanged with other countries under our country's tax cooperation agreements; and
- the penalty applicable to failures to timely submit transfer pricing documentation and the country-by-country report (from EUR1,000 up to EUR20,000 for legal entities and from EUR500 up to EUR10,000 for individuals, plus 5% for each day in arrears) was extended to failures to timely submit the report.

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. This 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)
Corporate Income Tax	File	N/A	The CIT return should be filed on or before May 31 st (last day of the fifth month following tax year-end)	N/A	N/A	Yes
Master File	Prepare	OECD Guidelines	Within 12 months after the last day of the respective financial year	Yes	Yes	Yes
Local File	Prepare	OECD Guidelines	Transfer pricing documentation must be prepared by the 15 th day of the seventh month after the end of the fiscal year	Yes	Yes	Yes
CbCR	File	OECD Guidelines	No later than 12 months after the taxpayer's financial year-end	Yes	Yes	Yes

Annual Accounts	File	Electronic	15 th day of the 7 th month following the term of the relevant financial year ¹²	N/A	N/A	Yes
*Portugal signed the MCAA agreement for the filing of CbCR.						
* Portugal 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

As a rule, the supporting documentation to transfer pricing information must be in the Portuguese language. The Portuguese transfer pricing regulations require that the documents in foreign languages must be translated into Portuguese before being presented to the tax authorities. However, the translation requirement can be dispensed from on request. However, for the documentation submitted in English the PTA not always requests translation.

k) Notification Requirement

On 11 December 2017, the Portuguese government issued Order 367/2017 approving a new reporting model: Communication of the Identification of the Declarant Entity - Financial and Tax Declaration by Country (Model 54). This new tax declaration, which represents a notification for CbC reporting purposes, must be submitted electronically for tax periods beginning on or after 1 January 2016.¹³

The identification of the reporting entity and the jurisdiction of the reporting entity must be reported to the tax authorities (CIRC article 121-A(4)). The notification is required on May 31 of the next tax year for taxpayers with a calendar year-end tax period. The notification is required at the end of the fifth month following the end of the tax year for taxpayers with non-calendar year-end tax periods. The notification must be sent electronically using Form 54 on the website of the Portuguese tax authorities (www.portaldasfinancas.gov.pt) (Modelo 54).¹⁴

l) Record Keeping

Transfer pricing documentation must be preserved, as all tax and accounting documentation, for a period of 10 (although the statute of limitation is generically of four years).¹⁵

Failure to keep accounting records or tax-related books: from EUR450 to EUR22,500.

m) Penalties and Interest Charges

Failure to comply with documentation requirements may result in a possible shift of the burden of proof from the tax authorities to the taxpayer and the application of secret comparables.

¹² [rules-and-requirements-on-submitting-annual-accounts-for-companies-registered-in-portugal-and-consequences-of-late-filing.pdf \(ga-p.com\)](#)

¹³ [Transfer pricing in Portugal: overview | Practical Law \(thomsonreuters.com\)](#)

¹⁴ [Document - Portugal - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD](#), para. 13.2.4.

¹⁵ [Portugal transfer pricing | Grant Thornton insights \(gtit-dxc.com\)](#)

Non-submission of the TP documentation and the lack of presentation of the CbC report is punishable with a fine ranging between EUR500 and EUR20,000, plus 5% of daily interest for each late day in delivering the relevant document.

In addition, the General Regime on Tax Infractions (RGIT) addresses penalties for the following situations:

- The taxpayer stated in the IES that the TP documentation was prepared and, despite being notified by the tax authorities to submit it, it was late in its delivery. The penalty related to late delivery can reach EUR20,000 per year and per company.
- The taxpayer does not state in the IES that the TP documentation was prepared, but was notified by the tax authorities to submit it. The penalty for noncompliance related to an omission or lack of evidence in the IES can reach EUR45,000 per year and per company.
- The taxpayer stated in the IES that the TP documentation was prepared, and it was notified by the tax authorities to submit it, but the documentation was not prepared. The penalty for noncompliance related to improper fulfilment can reach EUR75,000 per year and per company.
- The taxpayer stated in the IES that the TP documentation was prepared, but refused to submit it to the tax authorities (when duly requested). The penalty for noncompliance related to the refusal to submit TP documentation can reach EUR150,000 per year and per company.