



Transfer Pricing  
**Country Summary**

**Russia**

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## 1. Introduction

Even though Russia is not a member of the OECD, the transfer pricing rules are based on the OECD Transfer Pricing Guidelines. The legislation regulating transfer pricing documentation is in place since 1 January 2012 and has been amended in 2017 to reflect BEPS Action Plan 13 documentation requirements (Art. 105.15 Tax Code of the Russian Federation “documentation for tax control purposes”).

## 2. Laws & Regulations

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

The Transfer pricing (“TP”) rules are fixed in the Russian Tax Code (Part 1). Furthermore, the Ministry of Finance and the Federal Tax Service (“FTS”) have issued a significant number of clarifying letters on particular matters regarding transfer pricing issues.

The transfer pricing regulation has been approved in 2011 by the Russian Parliament and became effective as of 1 January 2012. The main changes brought by the new law regards the specification and development of the Transfer Pricing rules that were very general and broad in previous legislation. The new rules namely introduce limits of the list of transactions that can be controlled by FTS to the transactions between related parties and the transactions that are treated as such, the expansion of the list of entities that can be deemed as related parties for tax purposes, the abolishment of the 20% safe harbor and the introduction of an arm’s length range. A formal reporting and certain transfer pricing documentation requirements have been introduced and special transfer pricing audits and penalties apply in case of non-compliance. The TP regulation introduces APAs, for companies qualifying as ‘large’ tax payers.

### b) Definition of Related Party

With regard to the TP rules, the Russian tax authorities exercise control over:

- All cross-border transactions with related parties irrespective of the amount of the transaction;
- Cross border transactions with non-related parties if the amount of income/ expenses exceeds RUR 60 million, including:
- Foreign trade transactions involving commodities traded on a global exchange markets;
- Transactions between entities, if one of these entities is resident or is registered in countries (territories) mentioned in the of Russian Financial Ministry’s “black list” (off- shore territories, which can be used unlawfully to optimize a party’s tax position).

Qualify as related parties the following cases:

- Organizations, if one organization directly and/or indirectly is a participant in the other organization and the share of such participation comprises over 25%;
- A natural person and an organization, if such natural person directly and/or indirectly is a participant in such organization and the share of such participation comprises over 25%;
- Organizations, if one and the same person directly and/or indirectly is a participant such organizations and the share of such participation in each organization comprises over 25%;
- An organization (including a natural person jointly with his relatives) which has the power to appoint (elect) the single-member executive body of this organization, or to appoint (elect) not less than 50% of the composition of this organization’s collegiate executive body or board of directors (supervisory council);
- Organizations whose single-member executive bodies or not less than 50% of the composition of whose collegiate executive body or board of directors (supervisory council) are appointed or elected by a decision of one and the same person (or a natural person jointly with his relatives);

- Organizations in which over 50% of the composition of the collegiate executive body or board of directors (supervisory council) are comprised by one and the same natural persons jointly with their relatives;
- An organization and a person exercising the powers of its single-member executive body;
- Organizations, in which the powers of the single-member executive body are exercised by one and the same person;
- Organizations and/or natural persons, if the share of direct participation of every previous person in every subsequent organization comprises over 50%;
- Natural persons, if one natural person is subordinate to another natural person by virtue of his official position;
- Natural person, his spouse, parents (including adoptive parents), children (including adopted children), full and half brothers and sisters, his guardian (trustee) and ward.
- The transactions of domestic affiliated entities are controlled when their volume exceeds: 3 billion Russian Rubles ("RUB") a year in 2012; 2 billion RUB a year in 2013; and 1 billion RUB a year in 2014 and in subsequent years.

### c) Nature of Transfer Pricing Documentation

The foundations of Russian transfer pricing regulations are based on the OECD Guidelines. Yet, the OECD Guidelines are not binding in law and Russian law takes precedence over OECD Guidelines in case of conflict.

### d) Tax Havens & Blacklists

Order No. 108n of the Russian Ministry of Finance (November 13, 2017) provides a blacklist of low tax jurisdictions. Where a foreign company incorporated in one of the mentioned blacklisted countries is involved in a transaction, it shall be deemed a controlled transaction if the amount of income from such transactions exceeds 60 million rubbles (paragraph 3 as amended by Federal Law of 17.02.2021 N 6-FZ).

Article 105.14 of the Tax Code of the Russian Federation paragraph 1 refers to Order No. 108n of the Russian Ministry of Finance (November 13, 2017) provides a blacklist of low tax jurisdictions.

### e) Advance Pricing Agreement (APA)

Large taxpayers are entitled to enter into an advance pricing agreement. A "large taxpayer" is defined by FTS as a company having the following characteristics:

- total amount of annual federal taxes of at least RUB 75 million;
- total annual revenue of at least RUB 1 billion; and
- total assets of at least RUB 100 million

Foreign companies (including those having permanent establishments or offices in Russia) may not conclude APAs. The APAs are valid for a period of three years, with the possibility of a two-year extension.

### f) Audit Practice

The FTS may conduct a TP audit no later than within 2 years from when a Notification of Controlled Transactions is given, and this means that the tax authority may oversee all transactions for the 3 years before the year of the tax audit. The TP tax audit lasts for 6 months but this may be extended to 12 months.

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

Russia adopted the requirements of BEPS Action 13 of the OECD. The requirements apply as of financial years starting on or after November 28, 2017. This three-tiered approach to transfer pricing documentation requires:

(i) a master file (pursuant to Annex I to Chapter V of the TP Guidelines) containing standardised information on organization structure, description of business, intangibles and intercompany financial activities that is relevant for all MNE group members;

(ii) a local file (pursuant to Annex II to Chapter V of the TP Guidelines) referring specifically to material transactions of the local taxpayer such as information on business units exceeding the crossborder transactions threshold, and general information on the company;

(iii) a Country-by-Country Report (pursuant to Annex III to Chapter V of the TP Guidelines) containing certain information relating to the global allocation of the MNE's income and taxes paid together with the list of all constituent entities of the MNE group included in each aggregation per tax jurisdiction.

The Tax administration 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.

#### 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

As of 2013, the Russian tax authority uses the methods outlines in the OECD Guidelines:

- identical or similar goods/ comparable uncontrolled price method (CUP);
- re-sale price method (RPM);
- cost plus method (CPM);
- transactional net margin/comparable profitability method (TNMM);

- profit split method (PSM).

The first method that must be applied is the comparable uncontrolled price method. In cases where it is not possible to apply the CUP method (e.g. in the absence of comparables) and also when it is impossible to determine appropriate prices because of the absence or the inaccessibility of information sources to determine a market price, the other methods are applicable.

#### f) Economic Analysis – Benchmark Study

In the case where a benchmark study is conducted regarding local Russian companies, it is recommended to use data obtained from Russian databases such as Spark or Ruslana (Ministry of Finance of Russian Federation and Federal Tax Service from 30 August 2012 N OA-4-13/14433 and Articles 105.7 and 105.8 of Russian Tax Code). Benchmarking studies based on Pan-European databases may be challenged by the tax authorities, specifically where it conflicts with local results.

#### 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

Since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept, parties need to also make sure their conduct is in line with what is reported in their accounts.

#### 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)
<b>Corporate Income Tax</b>	File	IFRS/Local GAAP	March, 28 <sup>th</sup> .	No	No	Yes
<b>Master File</b>	Prepare	Local Form	March, 28 <sup>th</sup> .	No	Yes	No, but high likelihood Russian version will be requested by Tax Authorities.
<b>Local File</b>	Prepare	Not clarified	Only when audited and may not be requested before 1 June following the	No	Yes	No, but high likelihood Russian version will be requested by Tax Authorities.

			calendar year in which the controlled transaction were entered into by the taxpayer			
<b>CbCR</b>	File	XML format	December, 31 <sup>st</sup> .	Yes	Yes	No, but high likelihood Russian version will be requested by Tax Authorities .
<b>Local Form</b>	Prepare	Notifications of controlled transactions	May, 20 <sup>th</sup> .	No	Yes	Yes
<b>Annual Accounts<sup>1</sup></b>	File	IFRS/ Local Tax GAAP	March, 31 <sup>st</sup> .	No	Yes	Yes
<b>Segmented P&amp;L</b>	File	N/A	N/A	N/A	N/A	N/A
* Russia has signed the MCAA agreement for the filing of CbCR.						
* Russia 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.						

On November 28, 2017, Russia published Federal Law No. 340-FZ, implementing the BEPS Action 13 documentation requirements.

CbCR:

Applies to MNEs with annual consolidated group revenue equal to or exceeding RUB 50 billion for fiscal years beginning on or after 1 January 2017. It must be filed no later than 12 months after the last day of the financial year of the MNE (i.e. 31 December). Entities are obliged to notify the Russian tax authorities which entity from the group will file CbCR within 8 months since the end of the last fiscal year of the parent entity. In case the entity fails to do so, a penalty of up to RUB 50,000 may be applicable. The report needs to be prepared in Russian.

Master file:

Applies to MNEs with annual consolidated group revenue equal to or exceeding RUB 50 billion if the parent company of the group is the Russian resident for fiscal years beginning on or after 1 January 2017. Master file needs to be provided if required by the Russian tax authorities within three months upon request. Such request can be made no earlier than 12 months and not later than 36 months from the last day of the reporting fiscal year. The report needs to be prepared in Russian.

Local file:

Applies to MNEs with annual consolidated group revenue equal to or exceeding RUB 50 billion if the parent company of the group is the Russian resident. Local file requirement applies for fiscal years beginning on or

<sup>1</sup> Federal Law 208-FZ 'On Consolidated Financial Statements'

after 1 January 2018. Local file has to be provided only within TP audit scheduled by the FTS and under its request. The company has 30 days to provide FTS with Local file after the date when a request is received. Local file may be requested by the FTS not earlier than as of 1 June of the year when Notification is submitted.

#### j) Mandatory Language

Documentation should be in Russian.

#### k) Notification Requirement

The Notification of Controlled Transactions and Supply of Information in a Notification of Controlled Transactions must be prepared and sent to tax authority before 20 May of the year that follows the year in which the controlled transactions take place.

#### l) Record Keeping

Transfer pricing documentation must be kept at least for a period of 3 years.

#### m) Penalties and Interest Charges

There are two specific transfer pricing penalties:

Article 129.3 of the Russian Tax Code – “Non-Payment or Incomplete Payment of Amounts of Tax as a Result of the Application for Taxation Purposes in Controlled Transactions of Commercial and/or Financial Terms That Are Not Comparable with the Commercial and/or Financial Terms of Transactions Between the Non-Related Parties”. Penalties up to 40% of the transfer pricing adjustment can apply for non-complying with the arm’s length principle. The TP regulation offer tax payers a transition period during the first years after the law becomes effective. Therefore, only a 20% penalty applies for the years 2014-2016.

Article 129.4 of the Russian Tax Code – “Unlawful Failure to Submit a Notification of Controlled Transactions and Supply of Inaccurate Information in a Notification of Controlled Transactions”. For submissions after the deadline or inaccurate completion of the documents, a penalty of RUB 5000 can apply.