



Transfer Pricing
Country Summary

Slovakia

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1. Introduction

In 1993, the Slovak tax system was formed. In fundamental terms, tax legislation tried to prevent related party transactions from deviating from arm's-length prices.

The joining of Slovakia to the Organisation for Economic Cooperation and Development in December 2000 was a watershed moment in Slovak transfer pricing history (OECD). As a result, taxpayers can use the OECD Guidelines with reasonable confidence that their treatment will be accepted by the Slovak tax authorities.

Furthermore, the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations have been officially translated by the Slovak Ministry of Finance. The Slovak tax authorities' practical expertise with transfer pricing principles is at the level of a developing country, however it has grown dramatically in recent years.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

The Slovak Republic transfer pricing regulation came into force on 1 January 2009 and is prescribed in Article 2, Article 17 (Section 5-7) and in Article 18 of the Income Tax Act (ITA). By this virtue, these articles establish explicitly to the arm's length principle. Therefore, if transactions between foreign related parties are made in conditions which differ from comparable transactions between unrelated parties, namely if there is a difference that results in a reduction of the tax base or increase of tax loss.

Effective as of 1 January 2014 an amendment of ITA imposes a shorter deadline for submitting the transfer pricing documentation and the right of the tax authorities to request transfer pricing documentation without opening a tax audit. As of 1 January 2015, in above to the foreign related parties transfer pricing rules apply also to domestic related parties. Guideline no. MF/011491/2015-724 specifies the content of the transfer pricing documentation for all taxpayers that have to apply the transfer pricing rules. This guideline is applicable for tax years starting during 2015 or later.

The OECD Transfer Pricing Guideline (TPG) is not legally binding, but acceptable as an explanatory instrument.

Slovakia has adopted the CbC reporting standards in the local legislation effective as of 1st March 2017. The Slovak legislation on CbC reporting reflects the wording of the legislation presented by OECD within the BEPS Action 13 Implementation Package. The Ultimate Parent or Ultimate Surrogate Parent companies (being a Slovak tax resident) of MNE Groups will be required to submit the CbC Report to the tax authorities if in the preceding tax year its consolidated group revenues reach EUR 750 million, i.e. the "Primary" obligation to submit the CbC Report.

b) Definition of Related Party

Related parties are defined as enterprises that would meet any of the following:

- Economically, personally or otherwise connected persons or subjects*,
- Person or subject which are consolidated for statutory reporting purposes,
- Economic or personal connection
 - 25 % direct or indirect or derived indirect share in the registered capital or in voting rights
 - Not only parent and subsidiary, but also indirect connection (through other entities) and relationship between PEs
 - Members of statutory bodies or supervisory bodies
- Close persons (e.g., family members, dependents)
- Other connection
 - Relation created only for the purpose of decreasing the tax base or increasing the tax loss

* Association of assets (e.g., trust) / bodies (e.g., partnership, association) without legal status of a company or other legal arrangement owning or managing assets.

c) Nature of Transfer Pricing Documentation

The OECD Guidelines are largely followed by the Slovak TP rules enshrined in the Income Tax Act. Although the OECD Guidelines were published in the Slovak Financial Newsletter, they are not legally enforceable. Nonetheless, in practice, the tax officials often adhere to them.

Since 2009, taxpayers have been obligated to prepare and keep TP documentation supporting the TP method used in transactions with foreign related parties. The Ministry of Finance of Slovakia publishes formal recommendations on the contents of TP documents on a regular basis.

d) Tax Havens & Blacklists

Slovakia does not have a Tax havens list.

e) Advance Pricing Agreement (APA)

Taxpayers in Slovakia may request the tax authorities for an Advance Pricing Arrangement (APA) -an approval of a specific pricing method. Tax authorities approve also the practical application of the transfer pricing method (e.g. profit level indicator, process of identifying comparable transactions or entities, benchmarking analysis). If approved, the method may be applied for a maximum of five tax periods.

There is a deadline for submission of the written request for advanced pricing agreement –no later than 60 days before the beginning of the tax period when the agreed-upon method shall be applied. In other words the request for approval can only be filed in advance of carrying out the transaction.

As of 1st January 2017, the fee for an APA is 10 000 EUR for a unilateral APA and 30 000 EUR for a bilateral or multilateral APA.

f) Audit Practice

Tax authorities increased their focus on Transfer Pricing in all types of business in Slovakia. Therefore, specialized teams of highly skilled inspectors are in the process of preparing more and more audits in order to avoid exit taxation issues. Therefore, companies are strongly recommended to prepare Transfer Pricing documentation as the risk of audit is really high and the requirements for specified documents is strict. Special consideration is applied in transactions with direct or indirect participation of government and transactions with public interest.

3. Transfer Pricing Documentation

a) Level of Documentation

According to the latest legislation (guidance No. MF/011491/2015-724), there are three categories of documentation:

- Full Transfer Pricing scope documentation;
- Basic Transfer Pricing documentation;
- Abbreviated Transfer Pricing documentation.

The **full scope** documentation might be compared to the content of a Master file and a Country file report, according to the OECD guidelines. Full scope TP documentation must be prepared by taxpayers who:

- are obliged to prepare financial statements under IFRS, ·perform transactions with related parties' tax resident in non-treaty countries,
- request for advanced pricing agreements or corresponding adjustment,
- deducted tax loss in excess of 300 000 EUR in one or 400 000 EUR in two subsequent tax periods;
- applies tax relief or incentives.

Basic documentation should be prepared by all tax payers that do not fall in the categories mentioned for Full scope documentation and Abbreviation documentation. The basic level of documentation requires:

- Information on the taxpayer's group;
- General overview of functions and risks within the group;
- General information on the taxpayer;
- Description of the taxpayer's business activities;
- Identification of the taxpayer's industry;
- General overview of the taxpayer's functions and risks;
- Description of transactions with related parties;
- Volume of related party transactions; and
- Description of the transfer pricing method applied in the related party transactions.

Abbreviated TP documentation should be prepared by:

- Natural persons with respect to their business activities and taxpayers meeting the definition of micro accounting unit, i.e. a company with (2 out of 3 criteria must be met):value of net assets not exceeding thousand EUR 350 threshold, net turnover not exceeding thousand EUR 700 threshold, the average number of employees not exceeding 10 during the accounting period;
- Taxpayers performing only local transactions with Slovak taxpayers with exception of: ·taxpayers applying state subsidy in form of tax allowance;
- taxpayers utilizing tax loss in the amount exceeding thousand EUR 300 threshold exceeding aggregate amount of thousand EUR 400 threshold in two taxation periods;
- taxpayers who request for advanced pricing agreements; and
- taxpayers who request for corresponding adjustment;
- Public administration accounting entity.

All levels of documentation should include information on monetary and non-monetary income (with exception of clinical testing) provided to a health care provider, its employee or health professional (Slovak tax residents) provided on behalf of taxpayer by foreign related party.

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

The Slovakian legislation follows the recommendation of the OECD Guidelines. The following methods are accepted:

- Comparable Uncontrolled Price Method;
- Resale Price Method;
- Cost Plus Method;
- Transactional Net Margin Method;
- Profit Split Method;

No hierarchy in application of the above methods has been applied.

For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.

f) Economic Analysis – Benchmark Study

Comparables are available via Pan-European database Amadeus. Although not each type of transfer pricing documentation involves the benchmark study according to the guideline MF/011491/2015-724, tax office usually asks for benchmark analysis through their additional questions related to the submitted transfer pricing documentation.

Process of comparability adjustments are defined in domestic legislation –Income tax Act, Section 18, Subsection 1 : “The difference referred to in Section 17 subsection 5 above shall be determined using any of the methods pursuant to subsection 2 or 3 or their mutual combination or, as appropriate, other methods, which are not described in subsections 2 or 3 below. Only such methods may be used, the use of which complies with the arm’s length principle. The arm’s length principle is based on a comparison of the terms which were agreed in any business or financial transactions between related parties and the terms which would have been agreed between unrelated parties in similar business or financial transactions, in comparable circumstances. The review of comparability of the terms is made by confronting in particular the businesses conducted by the parties, including, but not limited to, their production, assembly works, research and development, purchase and sale, the scope of their business risks, the characteristics of the compared property or the service, the terms agreed between the parties to the transaction, the economic environment in the marketplace, and the business strategy. The terms shall be considered comparable if there is no difference at all or if only minor adjustments would compensate any such a difference”.

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

According to Regulation MF/8288/2009-72, a foreign related party is obliged to keep basic documentation for the respective tax period if it is obliged to prepare its individual financial statements according to the International Financial Reporting Standards (IFRS).

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	March, 31 st .	N/A	No	Yes
Master File	Prepare	OECD Guidelines	March, 31 st .	No	Yes	Yes
Local File	Prepare	OECD Guidelines	March, 31 st .	No	No	Yes
CbCR	File	Electronic Form 442/2012	Within 12 months after the taxpayer's financial year-end.	Yes	Yes	Yes
Annual Accounts	N/A	N/A	N/A	N/A	N/A	N/A
Segmented P/L	N/A	N/A	N/A	N/A	N/A	N/A
* Slovakia has signed the MCAA agreement for the filing of CBCR						
* Slovakia 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

Transfer pricing documentation must be submitted in Slovak language. However, other languages are accepted, but need approval before they are submitted to the tax authority. In general, the documentation in German and English language are likely to be approved.

k) Notification Requirement

The CbC notification contains the following entity's information:

- business name;
- seat;
- tax registration number;
- beginning of the fiscal year;
- the fact, whether the constituent entity files the CbC report as the ultimate parent entity, surrogate parent entity or constituent entity according to article 22c of Act No. 442/2012 Coll.; and
- if the constituent entity does not file the CbC report it must notify which member of the MNE group will file the CbC report, specifically the following identification information must be included:
 - business name;
 - seat;
 - country; and
 - identification number.

The CbC notification also contains the following information on the MNE group:

- name of the MNE group; and
- name of the ultimate parent entity.

The notification must be filed by the deadline for submission of the corporate income tax return, i.e. 3 months following the end of the tax period (a 3 or 6-month extension is available).

The notification form must be filed either electronically (through the web page of Financial Directorate of the Slovak Republic) or in paper form depending on the type of communication of the relevant taxpayer.

Penalties up to EUR 3,000 could be assessed by the tax authorities if the taxpayer fails to submit the notification.

l) Record Keeping

TP documentation records must be kept for a period of at least 5 years.

m) Penalties and Interest Charges

Penalty up to 3 000 EUR may be imposed if the transfer pricing documentation is not submitted to tax authorities within 15 days of their request or if the content does not follow the Slovak requirements. Penalty may be imposed repeatedly.

Tax underpayment arising from non-arm's length pricing:

In case of tax underpayment resulting from applying non-arm's length prices, a penalty (triple the base interest rate of ECB, currently the minimum of 10% p.a.) from the difference in additional tax assessed would apply. As of 1st January 2017 a doubled sanction (two times triple the base interest rate of ECB, currently 20% p.a.) shall apply if the tax administration finds, during tax inspection, that the taxpayer reduced their tax base using transfer pricing on the basis of transactions lacking economic substance and resulting in intentional tax evasion (under Article 3(6) of the Tax Code) or violating anti-avoidance rules (Article 50a of the Income Tax Act).