



Transfer Pricing
Country Summary

Turkey

March 2023



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1. Introduction

Formal transfer pricing rules were introduced in Turkey on 21 June 2006, under Article 13 Turkish Corporate Income Tax Law (numbered 5520), Disguised Income Profit via Transfer Pricing. The rules are effective for tax years effective from 1 January 2007.

The provisions under Article 13 follow the arm's length principle established by the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations established by the Organization for Economic Co-Operation and Development (OECD Transfer Pricing Guidelines) and are applicable to all financial, economic, commercial transactions and employment relations between associated parties.

Detail on the application of Article 13 is provided in Communiqué Regarding Disguised Income Distribution via Transfer Pricing (the Transfer Pricing Communiqué) via Transfer Pricing Serial Number 1,2& 3 are the local Transfer Pricing Regulations, which was first released on 18 November 2007. A second Communiqué was released on 22 April 2008 and the third one was released on 7 December 2017, as supplementary documents to the first communiqué. The third Communiqué changed the 6th Section of the TP Communiqué No 1, which is solely about the Advance Pricing Agreement system.

The Decree No. 2008/13490, with effect from 1 January 2009, introduces the options for companies to apply to Advance Pricing Agreements. Turkish Tax Authorities take into consideration both local TP regulations and OECD TP Guidelines.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Article 13 of KVK No. 5520[1] established transfer pricing regulations, which took effect on January 1, 2007. International developments, particularly the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines), were examined in the efforts to restrict disguised profit distribution through transfer pricing, as indicated in the legal justification for article 13. Article 41(5) of GVK No. 193,[2] which takes effect on January 1, 2007, likewise governs transfer pricing. The GVK No. 193's transfer price rules are identical to the KVK's.

The methods controlling transfer pricing are set by the Council of Ministers, according to Article 13(8) of KVK No. 5520. In Cabinet Decision No. 2007/12888, the Council of Ministers identified these procedures.

The Turkish Revenue Administration (TRA), Turkey's tax authorities, issued General Communiqué No. 1 on Hidden Profit Distribution through Transfer Pricing (General Communiqué No. 1) based on this cabinet decision, outlining the main principles and requirements for the implementation of Turkish transfer pricing legislation.

Cabinet Decision No. 2008/13490 and General Communiqué No. 2 presented various revisions to the above-mentioned cabinet decision and General Communiqué No. 1 in 2008.¹

b) Definition of Related Party

The arm's length principle applies to associated enterprises, which are defined in Section 4 in the Transfer Pricing Communiqué. The term "related party" refers to:

- Shareholders of an entity;
- Individuals or entities related to shareholders or the entity itself;

¹ [Document - Turkey - Transfer Pricing - 2. Allocation of Income - Tax Research Platform - IBFD](#), para. 2.2.

- Individuals or entities that are directly or indirectly associated with the entity in terms of management, audit or capital;
- Individuals or entities that are directly or indirectly under the management, audit or capital control of the entity or its shareholders;
- Shareholder's spouses; and
- Relatives of the shareholders or their spouses, including upper and lower lineage with third degree relationship by blood or marriage.

The term "natural person" in Article 13 of Corporate Income Tax law refers to any person treated as a natural person who is taxable and their corporations and ordinary partnerships. The term "entity" refers to equity companies, cooperatives, state economic enterprises, associations or foundations, economic enterprises and joint ventures of such entities.

In applications of Turkey's income tax law, related parties have been found to cover a shareholder's (including partners of general partnerships, ordinary partnerships and limited partnerships) spouse and any relatives of the shareholder or his/her spouse including upper and lower lineage with third degree relationship by blood or marriage and companies in which they hold direct or indirect ownership interests, partners to such companies, and companies that are under the management, audit or capital control of such companies are all considered to be related entities.

With a recent update, definition of related party has been constricted in a way that a 10% threshold will be applied when the relationship occurs directly or indirectly through shareholding. In cases where there is at least 10% voting or dividend rights directly or indirectly without any shareholding relation, parties shall still be treated as related parties.

c) Nature of Transfer Pricing Documentation

Specific transfer pricing rules are valid in Turkey as of the beginning of 1 January 2007 under Article 13 of the Corporate Income Tax Law (the CITL) No. 5520 with the title 'Disguised Profit Distribution through Transfer Pricing'.

The regulations under Article 13 follow the arm's-length principle, established by the Organisation for Economic Co-operation and Development Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines), and are applicable to all financial, economic, commercial transactions and employment relations between related parties. Details on the application of Article 13 are provided in a communiqué regarding disguised profit distribution through transfer pricing.²

In recent years, the Turkish Ministry of Finance significantly increased its number of transfer pricing audits against companies, with a particular emphasis on the pharmaceutical, automotive and fast moving consumer goods sectors. In the course of these audits, the Ministry of Finance has focused on the following transfer pricing issues:

- Pricing of raw materials traded amongst related parties, with the government relying on industrial benchmarking studies that omit relevant risks and functions.
- Continual losses in previous years by companies that operate primarily through related companies abroad.
- Management fees and indirect cost allocations.

² [turkey.pdf \(pwc.com\)](#)

- Yearend adjustments. It is expected that the companies will face different levels of tax audits under the subject of transfer pricing in the coming couple of years as the current rules seem to become a trendy subject to the tax inspectors.³

d) Tax Havens & Blacklists

In Turkish Legislation, there is no definition as "tax haven" but it is mostly used as a politic and economic term.

In order to prevent money laundering and tax evasion, Turkey has been taking some measures regarding EU Acquis and OECD rules. Lastly, in 2007, new corporate tax law no.5520, entered into force. According to article 30/7 of the Law no. 5520;

"All sorts of payments made to corporations (including branches of resident corporations) that are established or operational in countries which are regarded by the Council of Ministers to undermine fair tax competition due to tax and other practices will be subject to taxation in Turkey irrespective of the fact that: the payments in question are subject to tax or not; or the corporation receiving the payment is a tax payer or not. In this case, stoppage at the rate of 30% is foreseen to be levied over these payments. But under the following cases the stoppage shall not be applied:

- Principal interest and dividend payments over the loans obtained from foreign financial institutions.
- Insurance and reinsurance payments."

And according to article 7 of the Law no. 5520 that regulates Controlled Foreign Corporations;

"Corporations which are established abroad are controlled directly or indirectly by tax resident companies and real persons by means of separate or joint participation in the capital or dividends or voting rights by at the rate of minimum 50% are considered as Controlled Foreign Corporations (CFC) provided that the below conditions are fulfilled:

- 25% or more of the gross revenue of the foreign subsidiary must be composed of passive income,
- The CFC must be subject to an effective income tax rate lower than 10% for its commercial profit in its home country, and
- Gross revenue of the CFC must exceed the equivalent of TL100, 000 in a foreign currency in the related period."

CFC's profit would be included in the corporate income tax base of the controlling resident corporation irrespective of whether it is distributed or not, at the rate of the shares controlled, in the fiscal period covering the month of closing of the according to CFC.

Control rate is considered as the highest rate owned in the related fiscal period.

The CFC's profit that has already been taxed in Turkey as per this article will not be subject to additional tax in Turkey in the event of dividend distribution; whereas the portion of the profit distributed that has not been previously taxed in Turkey will be subject to taxation.

Taxes that the CFC pays over its profit in the related foreign country will be offset from the tax calculated for the same revenue in Turkey.⁴

e) Advance Pricing Agreement (APA)

Clause 5 of Article 13 of the Corporate Income Tax Law grants corporate income taxpayers the right to apply for an APA, which would be applicable for up to 3 years. The usual application procedure applies. If the Ministry

³ [turkey.pdf \(pwc.com\)](#)

⁴ [Tax Haven And Legislation In Turkey - Wealth Management - Turkey \(mondaq.com\)](#)

of Treasury and Finance and the applicant(s) conclude to make an APA, then the three-year period might be started on the date of this conclusion or might be started from the beginning of the following year.

Unilateral, bilateral, and multilateral APAs are now available for large corporate income taxpayers, since 1 January 2009. Bilateral APAs are concluded on the basis of income tax treaties.

As of 5 December 2017, the APAs application fee has been abolished with Law no 7061. Currently, there is no fee requirement for the application of APA.

The new regulations (Law no. 6728) allow for the transfer pricing methodology stated in an APA to be applied to the previous tax periods where the statute of limitation has not yet expired.

f) Audit Practice

The Turkish Tax Authority has increased the transfer pricing audit activity considerably since the transfer pricing regulation was adopted in 2007. There is a specialized group in the Ministry of Treasury and Finance⁵ who only focus on transfer pricing audits. Companies from all industries can be targeted for transfer pricing audit. The introduction of APAs has increased the interest of companies in transfer pricing, which are trying to eliminate the risks. In line with the Turkish Tax Procedural Code, transfer pricing audits should be finalized in 12 months.

3. Transfer Pricing Documentation

a) Level of Documentation

Corporate and individual income taxpayers must prepare transfer pricing documentation. The type of information that is required is outlined in the Transfer Pricing Communiqué and is as follows:

- Organizational chart and business description of the entity, identification of related parties (tax identification numbers, addresses, telephone numbers, etc.) and property relations among them;
- All information relating to the functions undertaken and risks borne by the entity;
- Price lists for the transaction year;
- Production costs for the transaction year;
- Volume of transactions with related and unrelated parties for the transaction year and associated invoice information;
- Copies of all related party contracts for the transaction year;
- Summary financial statements of related parties;
- Internal pricing policies relating to the related party transactions for the transaction year;
- Relevant information if related parties use different accounting standards and methods;
- Information related to intangible property ownership and royalties paid or received;
- Justification for the selected transfer pricing method and information and documentation regarding its application (internal and/or external comparables, comparability analysis);
- Calculations used to determine the arm's length price or profit margin and detailed information related to assumptions used;
- Statistical method used to determine the arm's length price range, if applicable; and
- Other documents used to determine the arm's length price.

⁵ The name of the Ministry has been changed as the Ministry of Treasury and Finance after 24 June 2018.

Turkey's Ministry of Treasury and Finance may request additional information and documentation from the taxpayer as deemed necessary.

Country-by-country reporting obligation: Turkey has adopted CbC reporting in the local legislation through Draft Communiqué. In order to start CbC reporting, Draft Communiqué should be finalized, the President's Decision should be announced.

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 five OECD transfer pricing methods, i.e., the comparable uncontrolled price (CUP) method, resale price method, the cost-plus method, the transactional net margin method and the profit split method are accepted, with a preference for the CUP method to be applied where possible. Other methods are also accepted provided the taxpayer can prove that the method is in accordance with the arm's length principle.

f) Economic Analysis – Benchmark Study

Turkish Tax Authority is in favor of internal(self)comparable or Turkish (third party) comparable. Provided that tax payers explain in their Report that these types of comparable do not exist or not accessible, foreign data bases can also be used as long as the economic conditions and sector dynamic are comparable.

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

Corporate and individual income taxpayers must prepare transfer pricing documentation. The type of information that is required is outlined in General Communiqué No. 1, including Financial Statements.

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	OECD Format	April, 25 th .	N/A	N/A	Yes
Master File	Prepare	OECD Format	December, 31 st .	N/A	Yes	Yes
Local File	Prepare	OECD Format	April, 25 th .	N/A	Yes	Yes
CbCR	File	OECD Format	December, 31 st .	Yes	Yes	Yes
Local Form	File	Transfer Pricing Form OECD Format	April, 25 th .	N/A	Yes	Yes
Annual Accounts	Prepare	Local IFRS	June, 30 th .	N/A	Yes	Yes
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A

* Turkey has signed the MCAA agreement for the filing of CbCR on 30th of December 2019.⁶

⁶ <https://www.oecd.org/tax/beps/CbC-MCAA-Signatories.pdf> .

* Turkey 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 should be prepared in Turkish. If the documentation is in a foreign language, Turkish translations must be submitted.⁷

k) Notification Requirement

Each year, until the end of June, a notification will be sent to the TRA in accordance with Communiqué No. 4. Due to the fact that 2019 was the first reporting year, the deadline for sending CbCR notifications to the TRA for 2019 was October 30, 2020. Members of an MNE group that is subject to CbC reporting must send a notification in accordance with the template provided in the Communiqué (Annex-5 Template).

The deadlines for CbCRs pertaining to FY2019 that must be filed by 31 December 2020 and CbCRs pertaining to special accounting periods ending January 2020 that must be filed by 31 January 2021 have been extended to the end of the day on Friday 26 February 2021, according to the Administration's circular dated 17 December 2020. The deadline for MNEs with an ultimate parent entity (UPE) or a surrogate parent entity (SPE) in Turkey has been extended to Wednesday, March 31, 2021. The deadline for MNEs whose UPE or SPE is not based in Turkey has been extended until Wednesday, June 30, 2021. Furthermore, for MNEs with a UPE or SPE in the United States, the deadline has been extended until December 31, 2021.

According to Presidential Decree No.2151, dated February 25, 2020, submissions for accounting periods ending in February 2020 and after will be made electronically within 12 months after the end of the accounting period.

According to the Decree, no local filing of CbCR will be necessary if qualifying competent authority agreements between the relevant jurisdictions and Turkey become effective before the end of the aforementioned periods.

The Notification will be sent using the reporting entity's existing log-in credentials through the Internet Taxpayers' Office. According to the Communiqué, one entity can submit a notification on behalf of all Turkish entities.

When no timely notification is made, general penalty rules governed by VUK will apply.⁸

l) Record Keeping

The Turkish Tax Procedure Law requires taxpayers to keep documentation for a period of 5 years after the end of the financial year to which they relate.

m) Penalties and Interest Charges

No specific transfer pricing penalties. The penalty provisions of the Tax Procedural Law apply to those who do not submit the required documentation and/or where transactions are found to be inconsistent with the arm's length principle.

⁷ [Document - Turkey - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD](#), para. 13.2.10.; para. 13.3.6.; para. 13.4.1.

⁸ [Document - Tax Research Platform - IBFD](#), para. 13.2.4.

Tax penalties are calculated as 100 per cent of the taxes that haven't been accrued on time or haven't been accrued at all and there is also default (delay) interest which is calculated as 1.4 per cent of the tax accrued on a monthly basis, effective from 19 October 2010. For previous periods, the interest has different levels: from 19 November until 18 October 2010, the interest is calculated as 1.95 per cent and between 21 April 2006 and 18 November 2009 the interest rate is calculated as 2.5 percent.

Beginning from 1 January 2008, in case of a TP in domestic transactions, in order to be subject to a TP penalty for the disguised income distribution through transfer pricing, there must be a kind of tax loss in the sense of total tax among the whole group of companies not only from a single tax and/or single company perspective. In other words, there is tax penalty if there is a tax loss in the expected total tax in a group of companies.

If the taxpayer meets its transfer pricing documentation requirements both completely and on time, tax loss penalty which equals one time of the corporate tax principle will be applied with a 50% discount.