

GETTING THE
DEAL THROUGH 

Transfer Pricing 2016

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CONTENTS

Albania	5	Indonesia	49
Andi Pacani Boga & Associates		Wahyu Nuryanto, Lilik F Pracaya and Zulhanief Matsani MUC Consulting	
Australia	9	Ireland	54
Hugh Paynter Herbert Smith Freehills		Joe Duffy Matheson	
Tony Frost and Richard Vann Greenwoods & Herbert Smith Freehills			
Austria	16	Italy	59
Andreas Damböck and Harald Galla LeitnerLeitner		Raul-Angelo Papotti, Paolo Giacometti and Filippo Molinari Chiomenti Studio Legale	
Brazil	21	Japan	65
Clarissa Giannetti Machado and Thiago Del Bel Trench, Rossi e Watanabe Advogados		Atsushi Fujieda and Shigeki Minami Nagashima Ohno & Tsunematsu	
China	27	Mexico	70
Matthew Murphy, Yu Du and Fei Dang MMLC Group		Ricardo León-Santacruz and Guillermo Villaseñor-Tadeo Sanchez Devanny Eseverri, SC	
Ecuador	34	Turkey	76
María Fernanda Saá-Jaramillo, Misael Ruiz and Juan Carlos Peñafiel Bustamante & Bustamante Law Firm		Erdal Ekinci Esin Attorney Partnership	
Germany	38	United Kingdom	81
Ingo Kleutgens and Susan Günther Mayer Brown LLP		Dominic Robertson Slaughter and May	
Greece	43	United States	86
Fotodotis Malamas M & P Bernitsas Law Offices		Jason M Osborn and Jonathan L Hunt Mayer Brown LLP	

Albania

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Overview

1 Identify the principal transfer pricing legislation.

Albanian transfer pricing legislation is covered by article 2 (for the definition) and articles 36-36/7 of the Income Tax Law. The Minister of Finance has further issued instruction No. 16, dated 18 June 2014, on Transfer Pricing concerning general rules on transfer pricing and instruction No. 9, dated 27 February 2015, on Advance Pricing Agreements.

2 Which central government agency has primary responsibility for enforcing the transfer pricing rules?

The responsibility for the enforcement of transfer pricing rules lies with the General Tax Directorate (GTD).

3 What is the role of the OECD Transfer Pricing Guidelines?

Instructions mentioned above are based on the principles of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TPG 2010). However, in the case of differences or conflicts between the OECD TPG 2010 and Albanian Income Tax Law and Instructions, the Albanian legislation will prevail.

4 To what types of transactions do the transfer pricing rules apply?

As defined by the Income Tax Law, transfer pricing rules will apply to all types of transactions that may impact the taxable income of a taxpayer (including transactions involving tangible goods, such as raw materials; finished goods; services transactions; transactions involving intangible property, such as royalties, licences, payment for the use of patents, trademarks, know-how, etc, and any other intellectual properties; financial transactions; capital transactions, including the purchase or sale of shares or other investments; and the purchase or sale of long-term tangible and intangible assets) between associated parties.

Associated parties are deemed to be two persons where one of them is considered to 'effectively control the business decisions of the other person'. Namely, the term 'associated parties' will apply if the first-mentioned person:

- holds, or can control 50 per cent or more of the voting rights in the other (legal) person;
- can control the composition of the board of directors of the other (legal) person;
- has the right to share in 50 per cent or more of the profits of the other person; or
- based on evidenced facts and circumstances, controls over the business decisions of the other person.

The term also applies if the other person is a relative, or associated party of a relative, or the first-mentioned person. It is to be noted that the burden of proof for demonstrating that a person 'effectively controls the business decisions of the other person' falls on the tax administration.

5 Do the relevant transfer pricing authorities adhere to the arm's-length principle?

Yes.

Pricing methods

6 What transfer pricing methods are acceptable?

The law provides for an approved list of methods, namely the comparable uncontrolled price method, resale price method, cost plus method, transactional net margin method and transactional profit split method.

However, taxpayers are allowed to apply a transfer pricing method other than the above-mentioned, in the case that it can be proved that none of the above methods can be reasonably applied to determine consistency with the market principle for the controlled transaction, and such other method yields a better result.

7 Are cost-sharing arrangements permitted? Describe the acceptable cost-sharing pricing methods.

There are no special provisions regarding the cost-sharing arrangements. However, those between the non-resident and its permanent establishment in Albania are considered controlled transactions.

8 What are the rules for selecting a transfer pricing method?

The legislation does not provide for any hierarchy of the methods. However, the taxpayer using a method other than the approved methods mentioned above should bear the burden of demonstrating that the method used yields a result consistent with the market principle.

9 Can a taxpayer make transfer pricing adjustments?

Pursuant to the Tax Procedure Law, taxpayers are allowed to adjust any tax return within 12 months of the initial filing. The specific transfer pricing legislation provides for two types of adjustments related to the transfer pricing:

- where the financial indicators derived from the controlled transactions fall outside the market range (as defined in the Tax Procedure Law), the tax authority (with the written approval of the General Tax Director) may make an adjustment to the taxable income of the taxpayer; and
- where an adjustment related to the conditions of a controlled transaction is made by a tax administration in another country with which Albania has a double tax treaty, an adjustment to reflect such condition may be made by the taxpayer with the written approval of the General Tax Director.

10 Are special 'safe harbour' methods available for certain types of related-party transactions? What are these methods and what types of transactions do they apply to?

There is no safe harbour method available.

Disclosures and documentation

11 Does the tax authority require taxpayers to submit transfer pricing documentation? What are the consequences for failing to submit documentation?

All taxpayers should submit to the Regional Tax Directorate before or on 31 March of each year (starting from 2015) the annual controlled transactions form for the transactions of the previous year. Subject to such requirement are those taxpayers engaged in controlled transactions (including

loan balances), which in aggregate, within the reporting period, exceed 50 million lekë.

In the form the taxpayer has to disclose the amount of controlled transactions for each associated party, classification of transaction, residency of the associated parties, method used for transfer pricing and a simple confirmation whether the transfer pricing documentation has been prepared or not.

Transfer pricing documentation should be provided to the tax administration at its request within 30 days of receiving the tax administration's request. Transfer pricing documentation should be prepared based on the approach detailed in the code of conduct on transfer pricing documentation for associated enterprises in the European Union and the Annex thereof, approved by Resolution 2006/C176/O1 of 27 June 2006 from the EU Council and government representatives of member states.

12 Other than complying with mandatory documentation requirements, describe any additional benefits of preparing transfer pricing documentation.

Failure to submit the annual controlled transactions form is subject to a penalty of 10,000 lekë. In the case that the tax obligations are reassessed by tax authority, but the taxpayer has complied with the transfer pricing documentation, there will be no penalty (ie, the taxpayer has to pay only the additional tax obligation and interest).

13 When must a taxpayer prepare and submit transfer pricing documentation to comply with mandatory documentation requirements or obtain additional benefits?

The taxpayer should submit the transfer pricing documentation within 30 days (which is 10 days more than the general rule for submission of information required from the tax authorities). Failure to submit the documentation gives the right to tax authorities to reassess the taxable base of the taxpayer using alternative methods. Given that the transfer pricing legislation is new, no practice is yet established in this regard.

14 What content must be included in the transfer pricing documentation? Will the tax authority accept documentation prepared on a global or regional basis or must it conform to local rules? What are the acceptable languages for the transfer pricing documentation?

Transfer pricing documentation must address at least the following:

- an overview of the taxpayer's business operations (history, recent evolution and general overview of the relevant markets of reference) and organisational chart (details of business units or departments and organisational structure);
- a description of the corporate organisational structure of the group that the taxpayer is a member of (including details of all group members, their legal form and their shareholding percentages) and the group's operational structure (including a general description of the role that each of the group members carries out with respect to the group's activities, as relevant to the controlled transaction or transactions);
- a description of the controlled transaction or transactions, including analysis of the comparability factors, explanation of the selection of most appropriate transfer pricing method or methods, comparability analysis, including a description of the process undertaken to identify comparable uncontrolled transactions;
- an explanation of the basis for the rejection of any potential internal comparable uncontrolled transactions (where applicable);
- a description of the comparable uncontrolled transactions;
- analysis of comparability of the controlled transaction or transactions and the comparable uncontrolled transactions, and explanation of any economic analysis and projections relied on; and
- a conclusion as to consistency of the conditions of the controlled transactions with the market principle, including details of any adjustment made to ensure compliance and any other information that may have a material impact on the determination of the taxpayer's compliance with the market principle with respect to the controlled transactions.

Transfer pricing documentation may be submitted in the Albanian or English language. However, the tax authority may require the translation of documents even if prepared in English. An additional 30 days is given to the taxpayer to translate the documentation.

Adjustments and settlement

15 How long does the authority have to review a transfer pricing filing?

There is no deadline for reviewing the transfer pricing filing. However, the statute of limitation generally is five years, so no reassessment can be enforced after such time.

16 If the tax authority proposes a transfer pricing adjustment, what initial settlement options are available to the taxpayer?

There are no possible settlement options.

17 If the tax authority asserts a final transfer pricing adjustment, what options does the taxpayer have to dispute the adjustment?

Any adjustment that will result in a tax obligation increase may be challenged in administrative proceedings within the GTD, and if not agreed with this decision than may be challenged in an administrative court.

Relief from double taxation

18 Does the country have a comprehensive income tax treaty network? Do these treaties have effective mutual agreement procedures?

Albania does not have an ample tax treaty network (only 37 in force). The treaties are based on the OECD model and generally have a mutual agreement procedure.

19 How can a taxpayer request relief from double taxation under the mutual agreement procedure of a tax treaty? Are there published procedures?

There are no procedures yet published or by practice on how a taxpayer can request relief under a mutual agreement procedure.

20 When may a taxpayer request relief from double taxation?

Taxpayers may request relief at any time within the limit prescribed in the double tax treaty.

21 Are there limitations on the type of relief that the competent authority will seek, both generally and in specific cases?

There are no limitations under domestic law. Double tax treaties will set out time limits for making a claim (these usually provide for three years).

22 How effective is the competent authority in obtaining relief from double taxation?

The effectiveness of GDT has not been tested in practice. There has been no case of mutual agreement procedure yet for transfer pricing issues.

Advance pricing agreements

23 Does the country have an advance pricing agreement (APA) programme? Are unilateral, bilateral and multilateral APAs available?

Recently, the Minister of Finance (February 2015) released an instruction which will govern the process of APA. Based on this instruction unilateral, bilateral and multilateral APAs are possible.

24 Describe the process for obtaining an APA, including a brief description of the submission requirements and any applicable user fees.

The process is structured in six phases: pre-filing meeting, APA application, assessment, negotiation, drafting and execution, and annual compliance reporting.

An initial non-refundable fee of 50,000 lekë is paid before the pre-filing phase and after that 300,000 lekë for unilateral APAs and 1.2 million lekë for bilateral and multilateral APAs.

25 How long does it typically take to obtain a unilateral and a bilateral APA?

There is no official practice showing how long it takes; however, based on the time limits of each phase mentioned above it should take 260 to 350 days.

26 How many years can an APA cover prospectively? Are rollbacks available?

An APA may cover a maximum of five years with the exemption of APAs related to the application of agreements ratified by the Albanian parliament. No rollbacks are allowable. In addition, only the requests for controlled transactions exceeding €30 million will be considered.

27 What types of related-party transactions or issues can be covered by APAs?

There is no limitation on types of transactions.

28 Is the APA programme widely used?

There are no APAs in place currently in Albania.

29 Is the APA programme independent from the tax authority's examination function? Is it independent from the competent authority staff that handle other double tax cases?

The APA programme is handled within the GTD (under the Transfer Pricing Sector), as part of the Operational Directorate. The staff who handle double tax treaties are subordinates of the Technical Director.

30 What are the key advantages and disadvantages to obtaining an APA with the tax authority?

As indicated above, the advantages of an APA are not yet tested in practice. Theoretically the advantage will be the clarity on applying the transfer pricing.

Update and trends

New and wide transfer pricing legislation was introduced in Albania in 2014, and it is expected to be implemented in the forthcoming year. By 31 March 2015, taxpayers submitted the annual form for the first time. During this period different taxpayers were required to submit transfer pricing documentation related to 2014. The tax authority has not yet made public any outcome from such filing.

Special topics

31 Is the tax authority generally required to respect the form of related-party transactions as actually structured? In what circumstances can the tax authority disregard or recharacterise related-party transactions?

There is no official practice, but it is expected that OECD TPG 2010 will apply.

32 What are some of the important factors that the tax authority takes into account in selecting and evaluating comparables? In particular, does the tax authority require the use of country-specific comparable companies, or are comparables from several jurisdictions acceptable?

Theoretically, the following factors should be considered important factors:

- the characteristics of the property or services transferred;
- the functions undertaken by each party with respect to the transactions, taking into account assets used and risks assumed;
- the contractual terms of the transactions;
- the economic circumstances in which the transactions take place; and
- the business strategies pursued by parties in relation to the transactions.

33 What is the tax authority's position and practice with respect to secret comparables? If secret comparables are ever used, what procedures are in place to allow a taxpayer to defend its own transfer pricing position against the tax authority's position based on secret comparables?

There is no practice but it is expected that OECD TPG 2010 will apply.

34 Are secondary transfer pricing adjustments required? What form do they take and what are their tax consequences? Are procedures available to obtain relief from the adverse tax consequences of certain secondary adjustments?

There are no requirements regarding the secondary adjustments. In addition, current tax legislation does not provide for any special relief or penalties in this regard.

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35 Are any categories of intercompany payments non-deductible?

There are no special provisions related to intercompany payments. The management fees and interest payments are considered deductible (or not) without taking into consideration the provider or beneficiary of the payment.

36 How are location savings and other location-specific attributes treated under the applicable transfer pricing rules? How are they treated by the tax authority in practice (if different)?

There are no location savings incentives per se, but the new incentives granted to economic zones aims, inter alia, to create an effective administrative process to provide essential government services and provide tax incentives.

37 How are profits attributed to a branch or permanent establishment (PE)? Does the tax authority treat the branch or PE as a functionally separate enterprise and apply arm's-length principles? If not, what other approach is applied?

Practically, branches (which are the only possible way to register a PE) are considered as a separate enterprise, and the tax authority applies the arm's-length principles.

38 Are any exit charges imposed on restructurings? How are they determined?

No, there are no such regulations. Albania is usually a host country, and no exit charges are seen as necessary.

39 Are temporary special tax exemptions or rate reductions provided through government bodies such as local industrial development boards?

Except from the tax incentives granted to economic zones there are no other tax exemptions or reductions available.

Getting the Deal Through

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