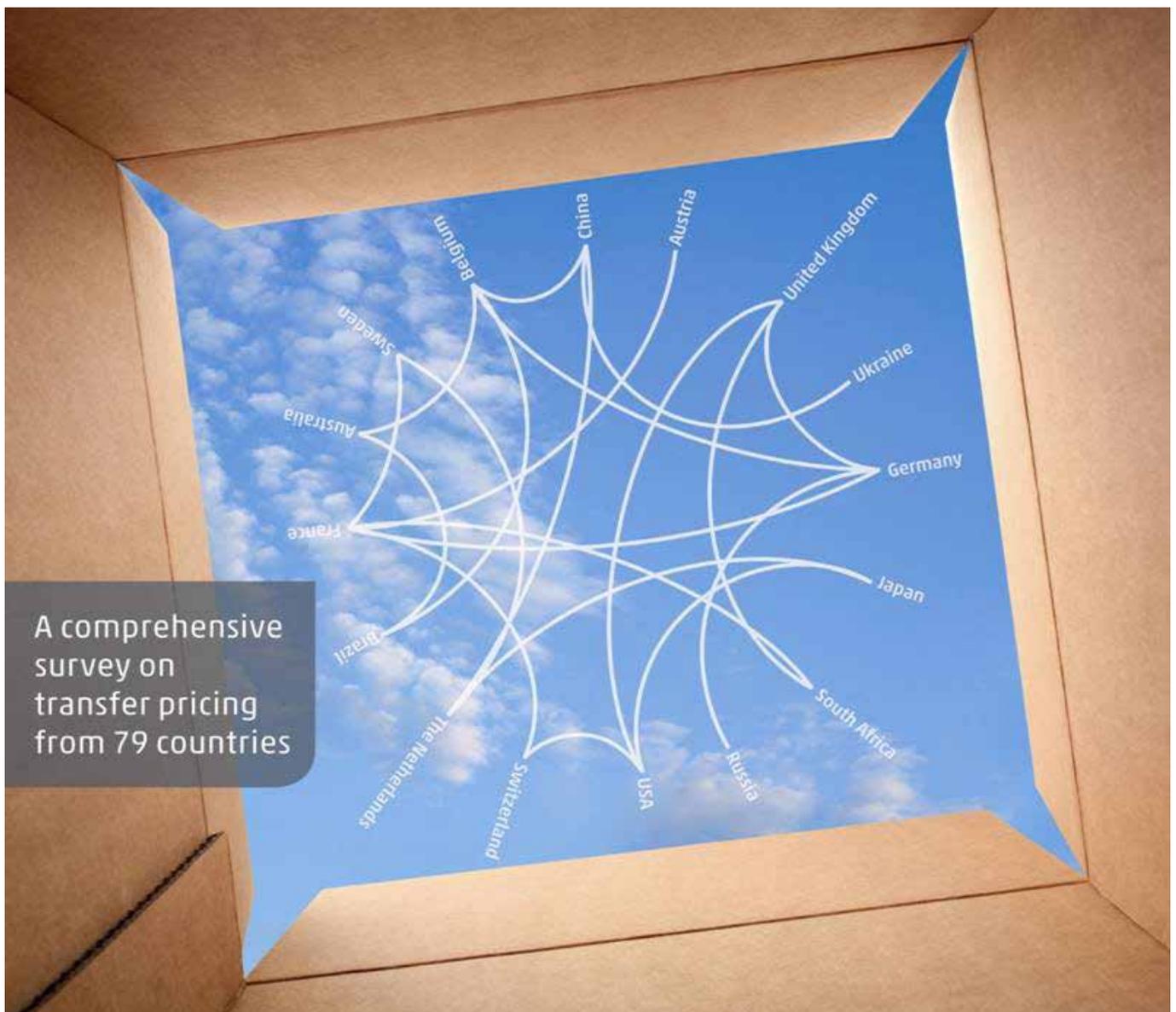


Global Transfer Pricing Survey and Country Guide

Intra-group (management) services



1. Preface

It is our pleasure to present you the first global transfer pricing survey on (management) service charges.

The comprehensive coverage of 79 countries not only shows that WTS has a capable and competent worldwide network of tax specialists. It also shows that it can handle your transfer pricing issues worldwide. A mature organisation that has a proven track record of transfer pricing documentation projects, transfer pricing structuring and tax effective supply chain management.

Given the OECD action plan on Base Erosion and Profit Shifting where management fees and head office expenses are given as examples of base erosion, it is clear that the (management) service charges are topical the coming years. We expect that the OECD will focus on the management fees and head office expenses that do not represent an

arm's length remuneration for a service, but are charged based on arbitrary arguments. Consequently it becomes more and more important to appropriately substantiate and document the arm's length character of a service charge for an actually provided (management) service.

This WTS survey provides insight in the worldwide requirements to allow a (management) service charge to be tax deductible for the service recipient, avoiding penalties, interest charges and double taxation. Should you have any questions on transfer pricing or tax issues, please feel free to contact one of the colleagues of the relevant country mentioned in the contact list. We will be at your service.



Jan Boekel



Maik Heggmaier

2. About the survey

Intra-group (management) service charges are often an easy target during tax audits. Often there is a lack of appropriate documentation to support that a service has been provided. Other common reasons for adjustments are that no charge is made for a service, or where the charge made is not supportable in view of the level of services. In addition, in various countries withholding taxes and indirect taxes are levied that need to be taken into account. Non-compliance with legislation on documentation leads to double taxation, penalties, interest payments and above all too much (external) management time. In addition, the OECD action plan on Base Erosion and Profit Shifting makes the intra-group (management) service charges even more topical.

In May 2013 we started a transfer pricing survey on (management) service charges among a large part of the WTS network. The survey focussed on the characteristics which the (management) service charge and the documentation thereof should meet to be accepted in most of the 79 countries that have participated in the survey. These 79 countries include, amongst others, the EU member countries as well as Australia, Brazil, Canada, China, Japan, India, Israel, Korea, Mexico, New Zealand, Norway, Switzerland, Turkey and the United States.

Goal of the survey was to obtain insight in the differences in (tax) treatment of (management) service charges between the various countries. The outcome of the survey is presented per country. Our findings and conclusions from the survey are presented along with the OECD special considerations for intra-group services.

One of the outcomes of the survey is that transfer pricing is (still) a new concept in many of the countries, even for those that have recently introduced TP regulations. Therefore, the answers from those countries cannot be as straight forward as from the countries where the legislation and experience regarding transfer pricing is more developed. One of the countries even stated that given the lack of experience, also a lot depends on which particular tax inspector is looking at the tax returns, no matter what the regulations say.

3. Intra-group (management) services and survey findings

Intra-group (management) services are addressed in chapter VII of the OECD transfer pricing guidelines for multinational enterprises and tax administrations ("TPG"), as updated in July 2010 by the Organisation for Economic Co-operation and Development (OECD). The TPG are intended to help tax administrations of both OECD member countries and non-member countries and multinational enterprises ("MNEs"). The TPG indicate ways to find mutually satisfactory solutions to transfer pricing cases. Goal of the TPG is to minimise conflicts among tax administrations and between tax administrations and MNEs and to avoid costly litigation.¹

The OECD has only 34 member countries and closely cooperates with China, India and Brazil and developing economies in Africa, Asia, Latin America and the Caribbean.² However, the outcome of the survey shows that more than 80% of the participating countries either have legislation based on – or that is similar to – the TPG, or have tax authorities and/or supreme courts that apply the TPG. Some countries do not have transfer pricing legislation at all and do not focus on transfer pricing, such as a few countries in the Middle East. China and Brazil have specific transfer pricing legislation that could deviate from the TPG on various points. But more than 75% of the countries does have specific transfer pricing legislation in place. 36% of the countries even has specific legislation regarding the transfer pricing of head offices/intra group services (Fig. 1).

Based on Chapter VII of the TPG, the following points should be addressed to ensure that a service charge is acceptable in the country of the service

recipient, so that it would be tax deductible (apart from certain specific limitations regarding the deduction of certain costs). When the arm's length character of the charge is proven, in principle, the charge should be tax deductible.

The service provider must be able to show by means of appropriate documentation that:

1. An actual service has been provided.
2. The service provides a benefit for the service recipient.
3. The service charge does not include shareholder costs.

Documentation

Our survey showed that in more than 60% of the countries appropriate transfer pricing documentation is required to document the intra-group (management) service charge. In more than 30% of the responding countries transfer pricing documentation is recommended or even highly recommended. Only in the countries Bahrain, Cyprus, Czech Republic, Malta and the United Arab Emirates the transfer pricing documentation would not (yet) be necessary (Fig. 2).

Fig. 1

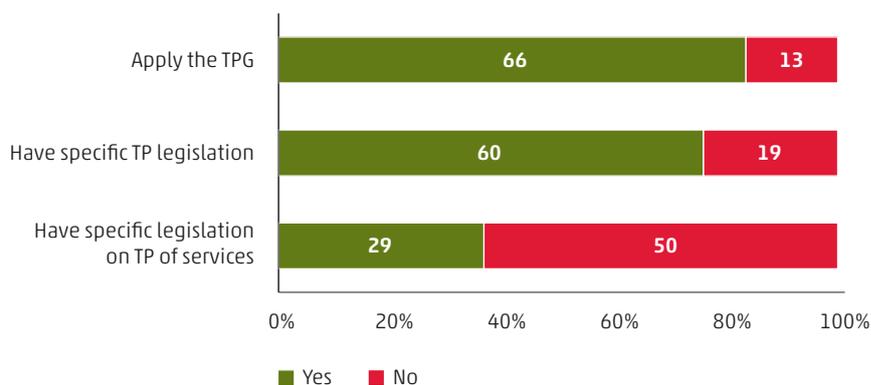
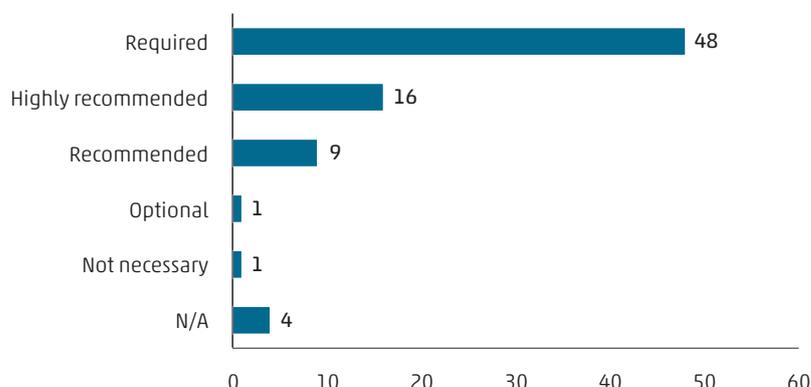


Fig. 2 - TP documentation



¹ TPG paragraph 15.

² <http://www.oecd.org/about/membersandpartners/>

In almost all countries (94%) legal agreements are (highly) recommended or required. Audit statements about the appropriateness of the level of the (management) service charge is in about 60% of the countries (highly) recommended to required, while an upfront request to provide a service is not very common but (highly) recommended in about 20% of the countries, mainly located in Asia and mid/south America (Fig. 3/4).

Service

Some intra-group services are performed by one member of an MNE group to meet an identified need of one or more specific members of the group. In such a case, it is relatively straightforward to determine whether a service has been provided. Ordinarily an independent enterprise in comparable circumstances would have satisfied the identified need either by performing the activity in-house or by having the activity performed by a third party.³

Benefit

Whether the service recipient benefits from an intra-group service depends on whether the activity provides a respective group member with economic or commercial value to enhance its commercial position. This can be determined by considering whether an independent enterprise in comparable circumstances would have been willing to pay for the activity if performed for it by an independent enterprise or would have performed the activity in-house for itself⁴. Our survey shows that in several countries specific legislation is in place that determines the application of the benefit test (Fig. 5).

Fig. 3 – Audit statement

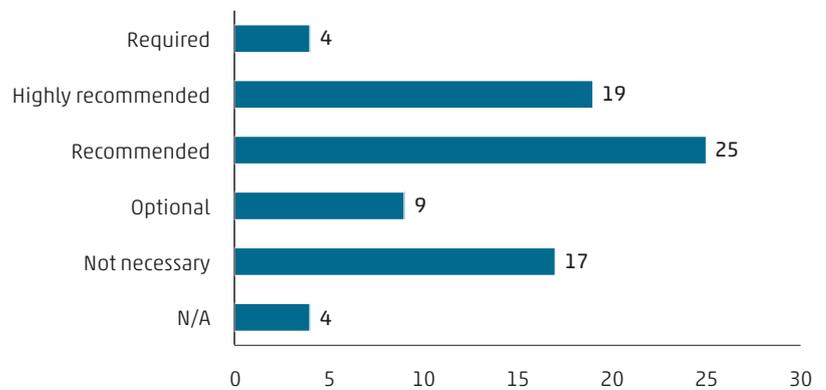


Fig. 4 – Upfront request

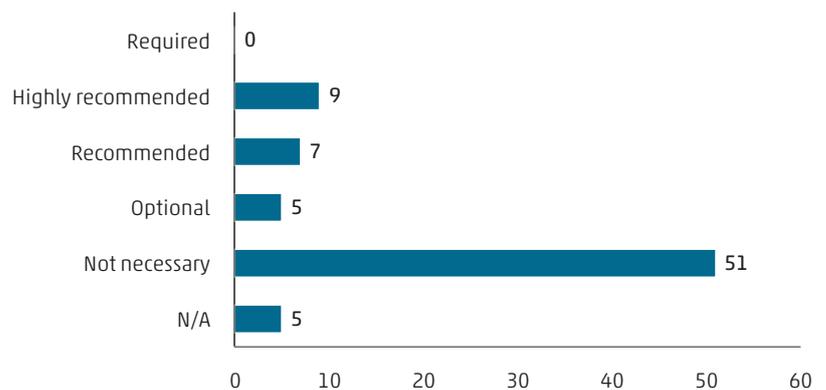
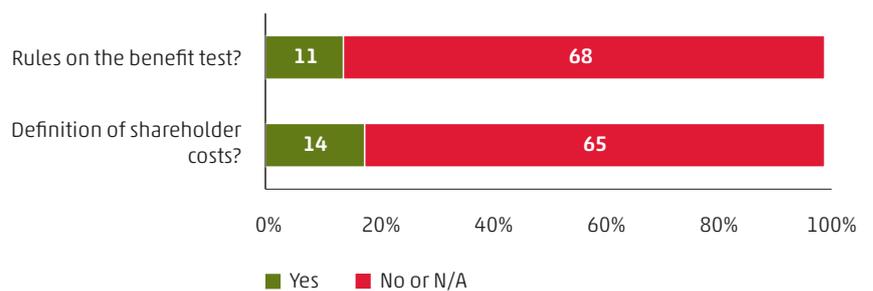


Fig. 5



³ TPG paragraph 7.8.

⁴ TPG paragraph 7.6.

Shareholder costs

Some activities are performed solely because of the service provider's ownership interest in one or more other group members, i.e. in its capacity as shareholder. The TPG provides the following examples of shareholder costs:

- Costs of activities relating to the juridical structure of the parent company itself, such as meetings of shareholders of the parent, issuing of shares in the parent company and costs of the supervisory board;
- Costs relating to reporting requirements of the parent company including the consolidation of reports;
- Costs of raising funds for the acquisition of its participations.

About 17% of the countries reported that specific legislation and/or a non-limitative list exists of examples of shareholder costs, amongst others The Netherlands, Japan and Slovenia. More than 2/3 of the countries responded that shareholder costs are to be borne by the shareholder. Most of the other countries indicated that there was no specific legislation and/or experience on this (Fig. 6).

Direct and indirect allocation method

If a service has been provided for the specific benefit of a particular group member then it should also be specifically recharged to that company (i.e. a direct charge). If the service is neither a shareholder activity, nor provided to a specific group member, but rather is provided for the benefit of the group as a whole, then it needs to be allocated around the group in a way which reflects the level of benefit received. This can be done by using an allocation key which often necessitates some degree of estimation or approximation.⁵ Almost 80% of the countries accepts the application of the direct and indirect methods. The other countries either only accept the direct charging method, or do not have legislation and/or experience with this.

The TPG indicate that the indirect method might be applied (as an example) on the basis of revenue, or staff employed or some other basis. Ideally, each type of service needs to be considered separately when setting the method of allocation. The countries in our survey responded that some of the allocation keys they engage are: sales, timesheets/working hours (i.e. man-hours spent

by key personnel), headcount, number of email-addresses, gross profit, number of IT/network users, HR costs and direct operating expenses.

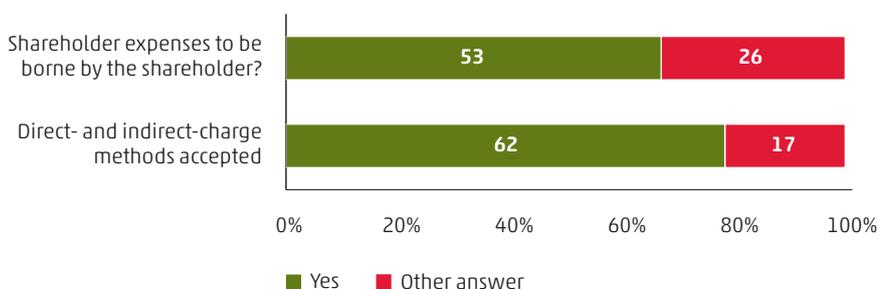
Summary

In summary: to comply with the TPG and the legislation in most countries, shareholder activities are to be identified and removed from the total service activities of the service provider, (or possibly recharged to the appropriate holding company). Specific services that can be identified separately should in principle be charged separately. The remaining balance of costs relating to the provision of services is allocated among the service recipients, using an appropriate allocation key. However, these indirect charges are not always accepted in the countries of the service recipients, or is the allocation key used deemed inappropriate.

Transfer pricing method

The service fee to be charged should be arm's length. Based on the TPG in general the arm's length service fee should be determined by identifying if comparable third party transactions are available. If no comparable third party transactions are available, in principle, 75% of the countries responded that the cost plus method can be applied. However, some countries have additional requirements to apply this method and also other methods are mentioned as appropriate, especially the transactional net margin method (TNMM).

Fig. 6

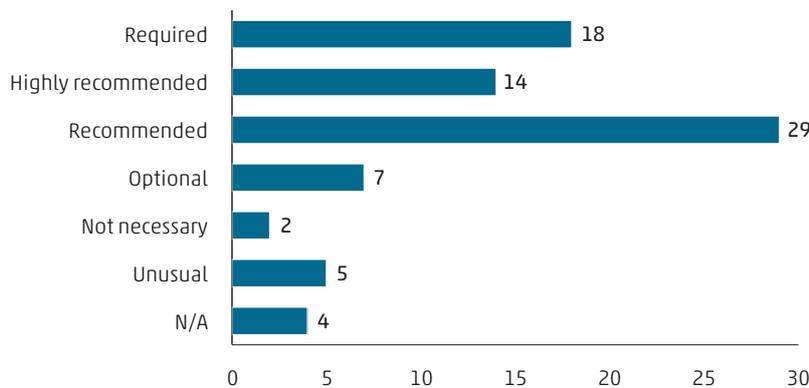


⁵ TPG paragraph 7.23.

Profit mark-up

The appropriate profit mark-up of the cost plus method can be determined based on a benchmarking study when no comparable uncontrolled price is available. In more than 50% of the countries the benchmark study is (highly) recommended. In 23% of the countries it is required. Most countries seem to use local databases and/or databases provided by Bureau van Dijk (e.g. Amadeus, Diane, Orbis, Isis, Osiris, Oriana, Ruslana, Sabi). In cases where insufficient information is available on comparable companies in the country or continent of the tested party, benchmark studies from other continents like Europe, America (US) or Australia are used (Fig. 7).

Fig. 7 – Benchmark study



The survey shows that the profit mark-ups applied in the world range from 0% to 30%, but most countries indicate that the profit mark-up generally ranges from 5% to 10%. This is in line with pan-European benchmark studies recently performed by WTS Alliance in Europe.

The profit mark-up should in principle not be applied to costs that have a disbursement nature.

No profit mark-up

Given paragraph 7.37 TPG, it is possible in certain circumstances to not impose a profit mark-up when the actual costs are charged. For instance, the Netherlands has specific rules on this where it is possible not to apply a profit mark-up when the actual costs of auxiliary services are charged based on an upfront agreement with the Dutch tax authorities. Although one could imagine that most countries would not have a problem with receiving a service cost charge without a profit mark-up, when it concerns the service charge out of a country, only 50% of the countries would accept not applying a profit mark-up, in line with 7.37 TPG.

Withholding tax and indirect tax

When charging (management) service charges, also withholding taxes need to be taken into account. In about 50% of the countries withholding taxes are/could be due on the service charge, ranging from 0.6% to 25%. Experience learns that in practise the withholding taxes are not always taken into account appropriately between the service recipient and the service provider.

Furthermore, also the VAT/indirect tax treatment needs to be taken into account. For instance, in the EU an intra-group service is in principle VAT taxable where the recipient of the service is established.

Increased tax audits on transfer pricing

Almost 80% of the countries stated that the local tax authorities focus (increasingly) on the transfer pricing of services during tax audits. Focussed is not only on whether a service actually has been provided, but also, for instance, whether the existing arrangements have been consistently applied or whether the service provides actually a benefit. Considering the OECD action plan on BEPS this focus may even increase the coming years.

Most countries report that a transfer pricing adjustment will be set at such an amount, that the remaining service charge can be considered arm's length. Profit levels outside the interquartile range would in various countries be adjusted to the median when it is not plausible that another point in the range is more appropriate. However, also adjustments are reported that result in non-deductibility of the whole amount. Also additional withholding taxes are levied in some cases where the non-arm's length service charge is qualified as a dividend payment.

Advance Pricing Agreements

To avoid double taxation, to obtain certainty in advance and/or to achieve a solution of a tax dispute regarding a (management) service charge, in principle an advance pricing agreement could be concluded. However, from the survey we concluded that only about 40% of the countries knows a well-developed

unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program. So concluding an APA is in many cases difficult or a not straight forward process.

Conclusion

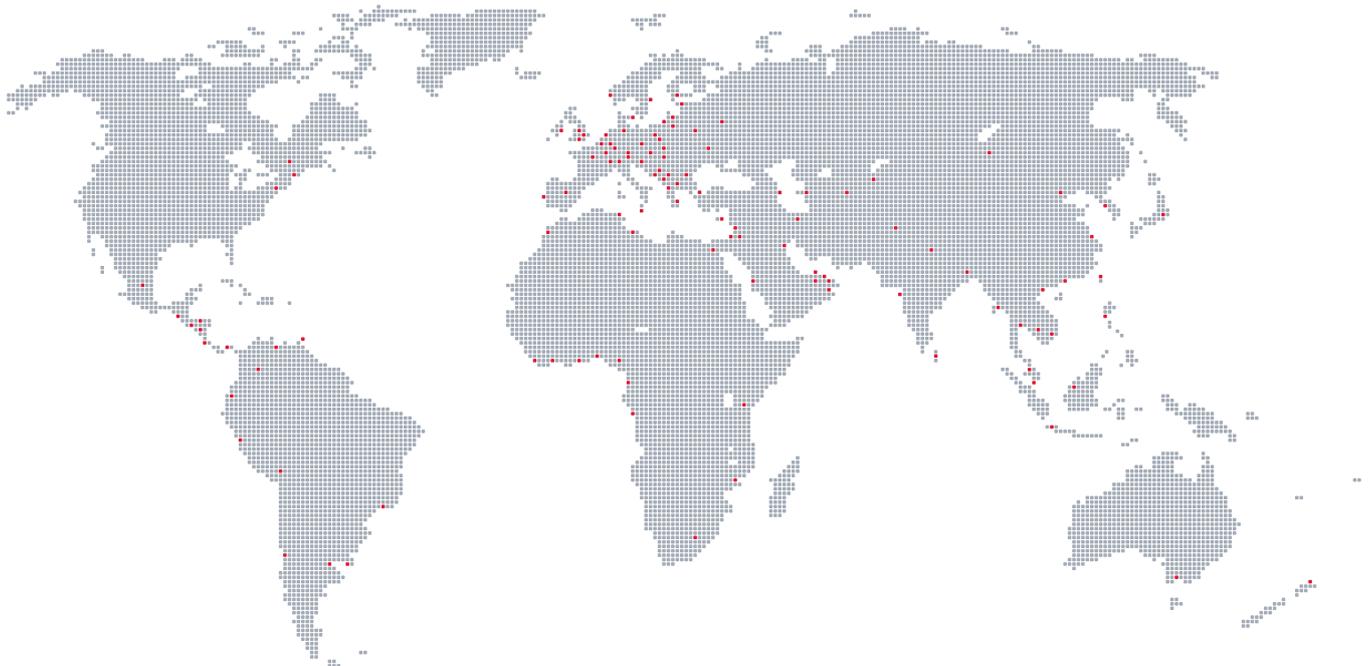
From the OECD action plan on Base Erosion and Profit Shifting and the outcome of our survey, we conclude that it is topical and essential to appropriately document the intra-group (management) service charge. To avoid non-deductibility and withholding taxes on deemed dividend payments, it needs to be substantiated that an actual service has been provided for an arm's length price. In addition, the service charge should also fit in the overall transfer pricing system within the group. It should for instance be avoided that certain services are charged out when that would (potentially) shift the ownership of the intellectual property (in time). The local review of the transfer pricing system and documentation is preferable, given that it is the local tax inspector who in the end needs to accept the service charge, based on the local legislation.

4. About WTS

WTS is a global network of selected consulting firms represented in about 100 countries worldwide. Within our service portfolio we are focused on tax, legal and consulting. In order to avoid any conflict of interest, we deliberately refrain from conducting annual audits. Our clients include multinational groups, national and international medium-sized companies, non-profit organizations and private clients.

Our highest aim is to provide the best possible tax consulting services. To guarantee this objective, we rely on employees with a broad knowledge base and practical experience from their work in international consulting firms as well as in industry and in the tax authorities. This enables us to take a practice-oriented approach in our consulting and to offer tailor-made concepts and solutions to our clients, thus sustainably increasing

their business potential and success. Our transfer pricing practice group is experienced to operate cross-border together with our WTS network partners.



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7. TP Country Guide

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Australia	India	Portugal
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Bahrain	Israel	Romania
Belgium	Italy	Russia
Brazil	Japan	Saudi Arabia
Bulgaria	Korea	Serbia
Cambodia	Kosovo	Singapore
Canada	Kuwait	Slovakia
China	Laos	Slovenia
Colombia	Latvia	Spain
Costa Rica	Lithuania	Sweden
Croatia	Luxembourg	Switzerland
Cyprus	Malaysia	Thailand
Czech Republic	Malta	Trinidad and Tobago
Denmark	Mauritius	Turkey
El Salvador	Mexico	Turkmenistan
Estonia	Myanmar	UAE
Finland	Netherlands	Ukraine
France	New Zealand	United Kingdom
Germany	Nicaragua	United States
Georgia	Nigeria	Uruguay
Ghana	Norway	Uzbekistan
Greece	Oman	Vietnam
Guatemala	Pakistan	
Honduras	Panama	



Albania

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. The Regulation of the Minister of Finance no. 01, dated 11.02.2002 "On Transfer Pricing" defines that the OECD guidelines have to be applied on the transfer pricing issues.

Does specific legislation exist in your country regarding transfer pricing in general?

The Regulation of the Minister of Finance no. 01, dated 11.02.2002 "On Transfer Pricing" which contains general provisions for the transfer pricing and Article 36 of Law no. 8438, dated 28.12.1998 "On Income Tax".

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. the Regulation provides that in case the direct methods cannot be applied, the indirect methods may be used.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. In practice the cost plus method is commonly used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended / optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Local benchmark does not exist.

The legislation does not refer to any benchmark study which can be used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/ optional/not necessary? Does it need to have a specific format and should it be in a local language?

Legislation does not provide a proper list of documentation or any specific format. However, the documentation is required in case of any inspection from the tax authorities. The documents should be/be translated in local language.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/ optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/ optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/ optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required in practise.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Legislation does not define any specific treatment/restriction for the management services. However, they are tax deductible provided that are charged based on arm's length.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

The withholding tax at the rate of 10% should be applied, unless the double tax treaty provides differently.



Albania

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

In case the service provider does not have the obligation to register a PE, the reverse charge is applied.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Transfer pricing adjustments may be carried over only by a Commission held near the General Tax Directorate; thus, the tax authorities must submit all transfer pricing cases to that Commission. This Commission has not been effective so far.

Do the tax authorities have a well developed unilateral/bilateral / multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

APA program does not exist. However, the legislation provides that the tax authorities and the taxpayer may enter into preliminary agreement on the transfer pricing transaction.

Are there any other important items you would like to mention?

The experience with the transfer pricing is very low. Tax authorities have poor expertise in transfer pricing issues.

Main point of contact

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Argentina

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. Even though it is not explicitly stated in the legislation, it has been recognized by the tax authorities and the tax courts.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. The income tax law was modified with that purpose in December 1999.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation, however there are many case laws based on tax authorities systematic rejection of this type of expenses.

Are there any rules regarding the benefit test?

Not in the law, but there are three rules used in the case laws

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted, subject to certain rules. Allocation keys that are often used are: sales, head-count, number of email-addresses, etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is most common. Charging cost is acceptable as long as it is viewed as an Argentina expense.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Not admissible if the shareholder is located in Argentina.

Is a benchmark study required/highly recommended/recommended / optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

A benchmark study is mandatory annually for every transaction with related parties, and has to be filed with the tax authorities. There are no local databases, US based or European databases are usually used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/ optional/not necessary? Does it need to have a specific format and should it be in a local language?

A transfer pricing study is mandatory on an annual basis and has to be filed with the tax authorities, it has to be in local language, any information

in foreign language has to be filed translated.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/ optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/ optional/not required ?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/ optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges:

- 1) can be regarded arm's length;
- 2) are necessary for the local business;
- 3) are related with taxable income;
- 4) documentation can be supplied to demonstrate the service had been effectively rendered. These rules come of from several case laws.



Argentina

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes if the services are considered to be an Argentinean source income, i.e. contain technical advice, are rendered in Argentina. Higher rate is 31,5%, tax treaties can lower it to 12% or 0%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Services rendered to Argentina are subject to VAT, the local taxpayer pays a 21% and then computes a tax credit, no cost. If the services are rendered from Argentina no VAT applies.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. But they are focused on the ability to deduct the expense itself, more than the mark up or the transfer price.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Denial of the whole service charge.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No. APA 's are not included in our legislation.

Are there any other important items you would like to mention?

Local tax authorities are in the first stages of experience in this matter, case laws are few.

Main point of contact

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Australia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. Re-write of transfer pricing laws in Subdivisions 815-A, 815-B, 815-C & 515-D of the Income Tax Assessment Act 1997.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation, however a Taxation Ruling TR 1999/1 sets out the ATO's position on prices for services between associated enterprises, requiring that these conform with the arm's length principle.

Are there any rules regarding the benefit test?

Yes. Subdivisions 815-A, 815-B and 815-C.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Borne by the shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct and indirect methods are used. Keys used may be sales, timesheets (i.e. man-hours spent by key personnel), tasks.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Not ordinarily, as the requirements to confirm with the arms-length principle is generally applied to all entities with related party dealings.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended now with re-write of Australia's transfer pricing rules. ATO has a strong reliance on TNMM for benchmarks and comparables, therefore advisable. The following databases and information available from public companies could be used:

- BvD ORIANA
- Thomson Reuters

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Recommended however taxpayers may rely on the safe harbours in Taxation Ruling TR 1999/1 which allow for a 7.5% mark-up on 'non-core' services provided or received where service revenue/expenses are not more than 15% of the Australian group's total revenue/expenses. The ruling also allows for smaller companies that receive or provide services worth not more than AUD 500,000 per annum, to apply the administrative practices to all services (i.e. core and non-core).

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended, as documentation should be created contemporaneously in order to meet the reasonably arguable test prescribed in the transfer pricing rules in order for penalty protection.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.



Australia

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

In broad terms, deductible under the ordinary tests of deductibility to extent they are incurred in carrying on business and are not of a capital nature.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Not generally, unless some or all of the services may be reclassified (for example, to royalties).

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Generally a taxable supply where made B2B within Australia or have a connection with Australia. Services supplied to a non resident may not be subject to GST, however there are rules around who the services relate to and whether there is any connection with Australia.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will occur, if an entity gets a transfer pricing benefit from conditions that operate between the entity and another entity in connection with their commercial or financial relations, the result being those non arm's length conditions are taken not to operate and, instead, arm's length conditions are taken to operate for the purposes of working out the entity's taxable income, losses, tax offsets or withholding tax.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. Detailed guidance on Australia's APA program can be found in ATO Practice Statement, PS LA 2011/1.

Are there any other important items you would like to mention?

Transfer pricing is a key focus of the Australian tax authorities and the ATO is vigilant in policing taxpayers' compliance with Australia's transfer pricing rules and continues to work closely with tax authorities in other jurisdictions and international bodies (such as the Organisation for Economic Co-operation and Development [OECD]) to reduce double taxation, resolve transfer pricing disputes and share information.

Main point of contact

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Austria

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

No specific legislation, although a decree on the tax treatment of certain services has been issued including safe harbour indications on mark-ups as well.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific rules with regard to the benefit test, but the Austria TP guidelines 2010 refer to details for carrying out an analysis of functions and risks within a group of companies.

Are there any rules regarding the benefit test?

The Austrian transfer pricing guidelines 2009 provide a non-limitative list of shareholder activities.

Are shareholder expenses defined in the local legislation?

To be borne or to be paid by the shareholder (parent company) on behalf and in the interest of one subsidiary or all subsidiaries.

How are the shareholder expenses treated in your country?

Yes. Both direct- and indirect-charge methods are accepted. Allocation key in line with 7.23 TPG: keys that are often used are: number of products sold added value, head-count, etc.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Cost plus method is most common. Also the charging of costs only is acceptable when certain conditions are met.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

For routine activities 5%-15%, for others of higher value above the standard range or even to be included in a service to be charged at arm's length.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Yes. Under certain conditions.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Recommended, but not required. To determine the appropriate profit mark-up, often a PAN-European benchmark study is conducted using Amadeus.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Required, above all in the area of intra-group-transactions to be done on a arm's length basis. The level of detail and size of the documentation should be in line with the EU council's

resolution on the code of conduct reg TP-documentation (official gazette C 176/1 dated with 28.07.2006) and the OECD TP-Guidelines including analysis about functions and risks (1,20 and 1.35 OECD TP-guidelines). The documentation is form free and can be in German or in English. When it is in another language, the German tax authorities may ask for a German translation, when necessary.

– BvD ORIANA

– Thomson Reuters

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Due to administrative practice supported by corresponding Austrian High Court decisions regarding intra-group services it is necessary to have a written agreement between the group entities stipulating clearly the terms and conditions on an arm's length basis.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Not required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Recommended.



Austria

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/ optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Management service charges are basically deductible, provided that the charges can be regarded arm's length; otherwise adjustments (hidden distributions or non deductible costs) will be applied; in case of artificial arrangements, fictitious transactions or even breach of law (abuse of rights) tax deductibility is denied.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

In broad terms, deductible under the ordinary tests of deductibility to extent they are incurred in carrying on business and are not of a capital nature.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Especially on whether a service actually has been provided and whether the terms and conditions are on an arm's length basis; in addition to that the benefit test, analysis of functions and risks and a proper documentation covering the intra-group services and corresponding transfer prices is also in the scope of a tax audit.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set at an amount, so that the remaining service charge can be considered arm's length. Profit levels outside the interquartile range will in principle be adjusted to the median when it is not plausible that another point in the range is more appropriate.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. A tax opinion issued by the responsible tax authority (binding statement resp unilateral, bilateral, multilateral APA) can be obtained on request regarding intra-group-transfer pricing matters. For intra-group issues a fee of regularly 20.000 EUR per request is to be paid to the Austrian tax authorities in charge.

Are there any other important items you would like to mention?

The Austrian tax authorities focus intensively on the transfer pricing aspects a) in case of inbound transactions whether they are objectively justified (with regard to reason) and at arm's length and b) in case of outbound transactions whether there are chargeable costs on a arm's length basis (including in any case the costs accrued in Austria) in comparison to shareholder activities.

Main point of contact

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Bahrain

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No.

Does specific legislation exist in your country regarding transfer pricing in general?

No transfer pricing legislation currently in place.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

N/A

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

N/A

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

N/A

What is the level of profit mark-up on the costs of the services you see in practice in your country?

N/A

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

N/A

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

N/A

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

N/A

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

N/A

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

N/A

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

N/A

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

N/A

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

N/A

Do the tax authorities focus on the transfer pricing of services during tax audits?

N/A

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

N/A

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

N/A



Bahrain

Are there any other important items you would like to mention?

UAE does not have corporation tax at the federal level with the exception of companies involved with oil and gas.

Main point of contact

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Belgium

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. Parts of the guidelines are translated in administrative practice notes of 1999 and 2006.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific regulations apply.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Shareholder expenses borne by the company may qualify as "abnormal or benevolent" advantages granted to the shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted. Allocation key in line with 7.23 TPG: keys that are often used are: sales, head-count, number of email-addresses, etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

The cost plus method is commonly used for routine services not related to sales.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

3%-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended, but not required. To determine the appropriate profit mark-up, often a PAN-European benchmark study is conducted using Amadeus.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended. There are no formal rules imposing a transfer pricing documentation file. The tax authorities expect each tax payer to act as a "good businessman" who can demonstrate, at the occasion of an audit, that the arm's length principle

has been complied with. No specific format is imposed. Reply to questions raised has to be in Dutch or French, English documentation can be used to support the transfer pricing policy. Intercompany agreements can be drafted in English.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided that (i) the nature and the amount of the charge can be documented, (ii) the charge was made to increase or maintain taxable income, (iii) the charge relates to the activities of the company and (iv) the charge is relating to the tax year in which it has been deducted.



Belgium

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?
No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. They verify whether actual services were rendered and whether existing arrangements have been consistently applied.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set at an amount, so that the remaining service charge can be considered arm's length. Profit levels outside the interquartile range will in principle be adjusted to the median when it is not plausible that another point in the range is more appropriate.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. A unilateral APA can be concluded on all transfer pricing related matters, as well as a bilateral or multilateral

APA. No fees are due to the Belgian government for such APA.

Are there any other important items you would like to mention?

The Belgian tax authorities have created specialised TP audit cells at local level. Belgium also has a rule allowing to tax non at arm's length advantages (so called "abnormal or benevolent advantages") received by a Belgian company. Certain tax deductions (e.g. tax losses) cannot be offset against the portion of the profit stemming from "abnormal or benevolent advantages" received. According to the tax authorities, such advantages would in any event be subject to corporate income tax.

Main point of contact

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Brazil

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No. Brazilian transfer pricing rules are substantially different from OECD guidelines.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both are applicable. Allocation keys will depend on the charge's nature and must be endorsed by an identifiable and reasonably foreseeable benefit.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus is the method used for intercompany service cost.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

15% on export and 20% on import transactions.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

No.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Unusual. Databases are not available.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended. It does not have a specific format, but should be presented in Portuguese.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Management fees are deductible.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. WHT of 25% is applicable.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

VAT/indirect taxes are levied up to 14,25%, depending on the local company domicile.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Especially on whether a service actually has been provided as well as the benefit test.



Brazil

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Based on fix margin methods provided by law, the excess shall be added to the taxable income for corporate income tax purposes.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

No.

Main point of contact

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Bulgaria

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

The TPG are not specifically mentioned in the Bulgarian legislation but they are used as a reference by the Bulgarian tax authorities on TP issues.

Does specific legislation exist in your country regarding transfer pricing in general?

There is a general anti-abuse rule concerning transactions between associated enterprises and a requirement for compliance with the arm's length principle. There is also a Regulation on the transfer pricing methods. The Bulgarian National Revenue Agency has adopted Transfer Pricing Guidelines (NRA TPG) which are not legally binding on enterprises and which follow closely the OECD TPG.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

The Bulgarian Corporate Income Tax Act regards as tax avoidance the charging of service remunerations or compensations when no service has been actually carried on. There is very limited case-law on transfer pricing of intra-group services and it is usually in the context of denial of VAT deduction for such services which the tax authorities claim that have not been actually provided. In those cases the expense for the service is also disallowed for corporate tax purposes.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No. However, the Bulgarian NRA TPG contain examples of such expenses which coincide with the examples in Chapter VII of the OECD TPG.

How are the shareholder expenses treated in your country?

Such expenses, if borne by the subsidiary, should be treated as "hidden distribution of profits" to the shareholder. Thus, they should be non-deductible for the subsidiary (as would be any VAT on such expenses) and they should be taxable as dividends on the level of the shareholder with a Bulgarian withholding tax of 5% which cannot be exempted under the Parent-Subsidiary Directive. The subsidiary could be also levied an administrative sanction in the amount of 20% of the hidden distribution.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both methods are acceptable with preference given to the direct method. The allocation keys used are generally the turnover of the subsidiary, head-count and other accepted allocation keys as per the OECD TPG.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. It is the most commonly used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

The NRA TPG deem normal a mark-up range of 3%-8%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

It should be generally possible if the service is not provided by the associated enterprise but by a third-party external provider and the cost is simply re-charged.

Is a benchmark study required/highly recommended/recommended / optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

NRA TPG require such benchmark studies as part of the TP documentation which the entities should prepare and keep. In practice, however, such documentation and studies are almost never requested and reviewed. NRA TPG contain an exemplary list of sources for such studies - e.g. the Bulgarian National Statistical Institute data, data by industry bodies, stock exchanges, Amadeus and ORBIS databases, etc.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/ optional/not necessary? Does it need to have a specific format and should it be in a local language?

Such documentation is required under the NRA TPG but in practice is not requested and reviewed in case of tax



Bulgaria

audits. TP documentation is required for transactions exceeding a certain annual threshold. The NRA TPG contain a list of the information to be included in the documentation. It should be prepared or translated in Bulgarian language.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy / legal agreement)?

Not required.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible unless regarded as hidden distribution of profits.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Generally should not be subject to withholding tax unless they involve

consultancy services which are subject to withholding tax at 10% domestic rate (it could be reduced to 0% under the applicable DTT).

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

They specifically focus on whether a service has been actually provided so that the VAT deduction and the expense deductibility can be examined.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

An adjustment is generally made only if it is established that no service has been actually provided. In this case, the whole service charge is treated as a non-deductible expense for tax purposes.

Do the tax authorities have a well developed unilateral/bilateral / multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No APA procedure exists in Bulgaria.

Are there any other important items you would like to mention?

No.

Main point of contact

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Cambodia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Currently, there is no transfer pricing rule implemented in Cambodia.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. The Article 18 of Law on Taxation provides that the tax authority has power to scrutinize the transactions between related parties.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

There is no specific legislation.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

2003 Law on Taxation.

How are the shareholder expenses treated in your country?

To be borne by that shareholder if the expense is not for company's benefit.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Cambodia does not have such specific methods. The allocation of expense is allowed but it must be supported with the valid evidences.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is the most common used one and generally accepted by the tax authority.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

There is no legitimated benchmark of the profit mark-up in Cambodia. However, the mark-up of 5%-10% would be generally acceptable by the tax authority.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

No. Generally the tax authority does not accept the actual costs which are charged without any mark-up.

Is a benchmark study required/highly recommended/recommended / optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?
Recommended.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/ optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. The level of detail and size of the documentation should be in line with the size of the company and of the transaction. The documentation form is free and can be in Khmer

or in English. When it is in another language, the Cambodian tax authorities may ask for a Khmer or an English translation, when necessary.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/ optional/not necessary?

Recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/ optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/ optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes. It is deductible.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. Technical and management service fee paid to overseas is subject to 14% withholding tax.



Cambodia

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

The VAT/indirect tax of the head office / intra groups service charge from overseas will be become the cost of the party in Cambodia.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be made at an amount which is reasonable to the tax authority based on the judgment of tax authority or previous precedences. Similar transactions can also be used as the benchmark for making the decision. The tax authority will only reject a part of the service charge which is considered to be inappropriate. The profit mark-up will set in the range of 5%-10%.

Do the tax authorities have a well developed unilateral/bilateral / multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

The Cambodia tax authority places more attention on the transactions between related parties which are not deemed to be conducted at arm's length.

Main point of contact

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Canada

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

N/A

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both are accepted. Consideration is given to the nature and use made of the service when choosing an allocation key.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. The cost plus method is used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-15%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Not explicitly recognized, depending of certain factors.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended, but not required.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. Details and size will depend of the company and of the transaction. The documentation has to be in English or French.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges: 1) can be regarded arm's length; 2) do not need to be capitalized as part of the acquisition costs of an asset, and: 3) do not qualify as non-deductible costs of a loan.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. Unless certain requirements are met. 25%, subject to the application of specific tax convention provisions.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Taxable if services and intangible personal property acquired outside Canada for consumption, use, or supply in the course of an activity in Canada.



Canada

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. There is a current focus by the tax authorities.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set at an amount, so that the remaining service charge can be considered arm's length.

Do the tax authorities have a well developed unilateral/bilateral / multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes.

Are there any other important items you would like to mention?

No.

Main point of contact

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China

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No. OECD is a reference document.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Since the expenses are incurred for the shareholder's benefit, it should be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. If the service is charged by the indirect method, the enterprise has to demonstrate the reason that the allocation key is used to allocate the cost and the allocation of the cost is reasonable.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

20-30% in general.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

A benchmarking study will be a very helpful document to support the level of mark-up. OSIRIS.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly Recommended. No specific format shall be needed and it should be in local language.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes: In case one company (A Company) provides management service to another company (B Company) and charges relevant management service fees from B Company, the management service fees paid by B Company could be deducted before tax is paid; the management service fees charged between associated companies shall comply with the arm's-length principle.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

In case the (management) service is provided offshore and does not constitute a Permanent Establishment (PE) in China, no CIT shall be levied, however turnover tax shall be due. In case the (management) service constitutes a PE in China, usually, the in-charge tax bureau might adopt the



China

income assessed approach to calculate the CIT. The deemed profit rate shall be between 30% to 50%, the CIT rate shall be 25%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

In case the head office/intra groups service falls into VAT taxable service, 6% VAT shall be levied. In case the head office/intra groups service falls into BT taxable service, 5% BT shall be levied.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Where, upon investigations, an associated transaction entered into by an enterprise fails to comply with the arm's length principle, thereby leading to a reduction in its taxable income or earnings, a taxation authority shall make adjustments to transfer pricing. In case the tax authority deem it as management fee, the whole charge needs to be adjusted. Where an enterprise's profit level is below the median of the profit range of a comparable enterprise, in analysing and evaluating the profit level of the enterprise by way of the quartile method, a taxation authority shall in principle make adjustments as if the enterprise's profit level is not below such median.

Do the tax authorities have a well developed unilateral/bilateral / multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Is developing. And now the tax authorities welcome APA. More relevant cases are increasing.

Are there any other important items you would like to mention?

Currently, the general service agreement is one sensitive topic in China. The tax authorities might regard the general service as Management Fee paid by Chinese subsidiary to foreign company, which cannot be deducted by the Chinese company before CIT. It is very important to keep supporting documents to prove the service authenticity and service allocation rationality.

Main point of contact

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Colombia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

TPG are not obligatory in Colombia, but they are auxiliary criteria of interpretation according to Constitutional Court jurisprudence.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

For intragroup services or cost sharing agreements between related companies, the taxpayer will have to render evidence regarding the reality of the service rendered and that the price for the services is an arm's-length price.

Are there any rules regarding the benefit test?

The Colombian Tax Statute requires the description of the benefits arising from the services is included within the Functional Analysis.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

There are no specific regulations.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. There are no specific allocations keys accepted commonly.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

The cost-plus method is not the most common, as methods based on profitability are used most of the time.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

In practice the mark-up ranges from 5% to 10%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Inasmuch as certain conditions prevail in the market.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

The benchmark study is required. International databases such as Amadeus, for example, are acceptable.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Transfer pricing documentation to document the management service charges of a head office or group company is required. It has to be issued in Spanish and does not need to follow a specific format but generally does.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

A legal agreement documenting the services is not necessary as long as the Transfer Pricing documentation is duly prepared.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

The Audit Statement is required.



Colombia

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Management service charges are not deductible in Colombia except that they are specifically supported by Transfer Pricing documentation proving that the price is within arm's-length standards and the services where effectively rendered.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Management service charges are not subject to withholding taxes.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

It would be applicable a VAT Withholding tax at a general rate of 16% if the service is rendering in Colombia.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The transfer pricing adjustment will be set at an amount equal to the median. The profit-mark up will be set at the median.

Do the tax authorities have a well developed unilateral/bilateral / multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. Unilateral, bilateral and multilateral APA's are regulated in the national tax legislation.

Are there any other important items you would like to mention?

Internal regulations on reorganizations have just been issued. These regulations are not superseded by Transfer Pricing documentation support.

Main point of contact

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Costa Rica

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

There is no transfer pricing law or by rules yet in place. However, the Tax Administration has been auditing taxpayers based in the OECD Guidelines, already discussed in the Constitutional Court and approved. Law and by rules projects are already been discussed.

Does specific legislation exist in your country regarding transfer pricing in general?

No.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Not yet discussed.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Not yet discussed.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

As of now, the Tax Administration is practicing very basic procedures to test transfer pricing. The most common method used is CUP based in information of other taxpayers.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

10%-15%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Not yet discussed.

Is a benchmark study required/highly recommended/recommended / optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Highly recommended; required if law project is approved. The use of international databases is recommended if local benchmark studies/databases are not available.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/ optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended; required if law project is approved.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/ optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/ optional/not required?

Highly recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/ optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes. If those are necessary to generate taxable income.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. 15% or 25% depending on the type of management services.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

No VAT on these services.



Costa Rica

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Tax Administration is using as comparables tax payers in the same activity. The few cases known show that adjustments are either to reject the expense or to adjust to the median under CUP method. No mark up adjustments are known however we understand that in some huge cases the Tax Administration is negotiating.

Do the tax authorities have a well developed unilateral/bilateral / multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

Costa Rica is giving its initial steps in transfer pricing, with no law as of now but a project in Congress and by rules in discussion in the Treasury Ministry. It is important to take steps ahead to plan on local operations in coordination with headquarters.

Main point of contact

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Croatia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. The OECD is basis for the legislation provision i.e. legislation provisions are in line with OECD guidelines. However, the legislation do not directly refer to the OECD guidelines and to the use of the OECD guidelines.

Does specific legislation exist in your country regarding transfer pricing in general?

The provisions on TP are given only within the Profit income Tax Act, there is no any additional specific legislation.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

There are no specific legislations/regulations on the TP of the head offices/intra group services. Case law is limited to a few cases but the strict supervision of the head offices/intra group services by the Tax Authority is a very common practice.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

The shareholder expenses are treated in line with OECD guidelines since the TP legal provisions are in line with the OECD guidelines and the Official

Tax Bulletin of the Tax Authority refers to the OECD guidelines/refers to the application of the OECD guidelines.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted. Allocation key that are often used are sales, head-count, working hours, etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method (external) is the most common one. TNMM (external) is second used in practice and the CUP (external) is the third choice.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-10% (7% recommendable as a "golden percentage" for overall types of services).

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

It is recommendable that profit mark-up is always charged, except for the non material one-off transactions which could be without the profit mark-up.

Is a benchmark study required/highly recommended/recommended / optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Benchmark study is required and highly recommended due to the reason that the Tax Authority tests the arms length character with the benchmark analysis. Amadeus database is used by the Tax Authority and therefore it is highly recommendable that it is also used by the taxpayers due to the reason that the Tax Authority then can check all search steps of the taxpayer in the same database (in the exactly same edition of the database).

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/ optional/not necessary? Does it need to have a specific format and should it be in a local language?

It is required to document the (management) service charges of a head office or group company. There is no specific format and it should be in the local language.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/ optional/not necessary?

Highly recommended.



Croatia

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, no any specific restrictions.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. At general rate of 15% and at rate of 20% for "black listed" countries.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Especially on whether a service actually has been provided.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

TP adjustment will be settled in the interquartile range at any value (Q1 to Q3).

Do the tax authorities have a well developed unilateral/bilateral / multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No. The APA is not applicable/not available.

Are there any other important items you would like to mention?

The Tax Authority started to request the transfer pricing documentation with the annual financial statements and in the supervision of the taxpayers the transfer pricing documentation is requested very often. The large entrepreneurs and entrepreneurs with significant transactions with affiliated enterprises are under current scope of the Tax Authority.

Main point of contact

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Cyprus

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No specific transfer pricing legislation.

Does specific legislation exist in your country regarding transfer pricing in general?

No specific legislation exists. Only a reference to the arm's length principle for transactions between related parties.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific rules.

Are there any rules regarding the benefit test?

No specific rules.

Are shareholder expenses defined in the local legislation?

No specific rules.

How are the shareholder expenses treated in your country?

No specific rules.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

No specific rules.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

No specific rules.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

No specific mark-up or safe harbour margins.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Although no specific rules exists, it is expected that between related parties a profit margin will be applied.

Is a benchmark study required/highly recommended/recommended / optional/not necessary | unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Not applicable as no TP legislation exists.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/ optional/not necessary? Does it need to have a specific format and should it be in a local language?

Not applicable as no TP legislation exists.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/ optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/ optional/not required?

Not applicable as no TP legislation exists.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/ optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not applicable as no TP legislation exists.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible assuming they have been incurred for producing taxable income.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No WHT.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Not in a structures TP manner, however the arm's length principles are reviewed and need to be supported.



Cyprus

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Either a disallowance of the expense on the receiver's side or additional deemed income on the provider's side.

Do the tax authorities have a well developed unilateral/bilateral / multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

The Cypriot tax authorities do not perform TP audits, however the "arm's length" principle should be applied. Practically, the method to support such transactions is by having a slimmed down version of TP documentation, although there are no clear guidelines or specimen studies.

Main point of contact

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Czech Republic

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

No specific legislation, the matter is dealt with at the level of instructions of the Ministry of Finance.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Instructions of the General Financial Directorate (GFD) have been issued.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

There is no exhaustive list of types of expenses.

How are the shareholder expenses treated in your country?

Expenses are borne by the shareholder. Generally, interests on credits accepted 6 months before the acquisition of shares as well as indirect costs amounting to 5 per cent of dividends received are considered to be non-deductible expenses.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Both methods are accepted, although the indirect method is recommended.

Turnover, number of staff etc. are often used as allocation key.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

The cost plus method is commonly used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

According to the GFD instruction, a mark-up of 3-7 per cent is considered to be appropriate when using the cost plus method concerning these services.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended / optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Not required.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/ optional/not necessary? Does it need to have a specific format and should it be in a local language?

In general, using of TP documentation is not required; in particular, no comprehensive documentation is required in case of services provided within the group. The tax

administration is entitled to require submitting all evidence in Czech.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/ optional/not necessary?

Written form of the agreement is not required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/ optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/ optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

General rules and the chronological and material correlation principle apply; the costs must be provably spent on attaining taxable income. Some types of expenses, such as representation expenses or thin capitalisation expenses, are non deductible.



Czech Republic

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Depending on DTT. In general, no withholding tax is paid on services rendered between contracting states.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Reverse charge.

Do the tax authorities focus on the transfer pricing of services during tax audits?

In particular, the purpose of services and the actual rendering thereof are examined.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Questioning and adjustment of a part of the service charge not corresponding to the price that would be agreed upon between unrelated parties.

Do the tax authorities have a well developed unilateral/bilateral / multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No. The taxpayer is able to ask for the Advance Pricing Agreement in principle but it takes months if not years to receive a binding opinion.

Are there any other important items you would like to mention?

No.

Main point of contact

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Denmark

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. However, the guidelines does not have status as a primary source of law in Denmark.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes. The transfer prices shall reflect a fair market value.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted in Denmark depending on the circumstances. Allocation key in line with paragraph 7.23 TPG.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. CPM is commonly used but also the CUP method, resale price, profit split and TNMM are often applied. In selection of the method, the taxpayer should take into consideration the methods stated in the OECD Guidelines.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

3%-12%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. It depends on whether an independent party in a similar transaction would be willing to waive a profit mark-up on such transaction.

Is a benchmark study required/highly recommended/recommended / optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Highly recommended. In practice, the most commonly used database for comparability analysis is Amadeus.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/ optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. There are no specific format requirements and the documentation

should usually be in local language. The Danish tax authorities do however allow English language in certain cases.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/ optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/ optional/not required?

Optional.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/ optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes. Management services charges are deductible in Denmark. Please note that the payments must be in compliance with the arm's length principle and have a direct relation to the generated income. Thus, no shareholder expenses should be included in the service charges.

Denmark

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

As a general rule, there are no withholding tax on management service charges but service charges that include a royalty component may be subject to a withholding tax.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

As a general rule, the recipient company will have to pay VAT on the intra group service charge.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

That would depend on the circumstances. Normally, the tax authorities would only adjust the a part of the transaction in order to reflect a fair market value.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. Unilateral and bilateral APAs are available.

Are there any other important items you would like to mention?

The Danish tax authorities has increasing focus on compliance with TP-rules.

Main points of contact

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El Salvador

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Transfer Pricing regulations were introduced through modifications to the Tax Code between 2009 and 2011. The regulations are applicable as from 1 January 2011.

Although El Salvador is not an OECD member, the legislation is based on the basics described by OECD Transfer Pricing Guidelines.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

Yes.

How are the shareholder expenses treated in your country?

The amounts of the following items can be deductible from the enterprise's taxable income: food expenses, fuel, car use, and in general any other expense duly verified and necessary to the shareholder to perform its functions.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Even though, legislation is not as recent as other countries in Central America, no case law has yet been published.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

10%-15%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Not yet discussed.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Required. Since there is limited local information, the use of international data bases are recommended.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Highly recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes. Shall those be necessary to produce taxable income.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. 20% and 25% if Head Office is located in a tax haven.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Yes. 13%



El Salvador

Do the tax authorities focus on the transfer pricing of services during tax audits?

No case has been published yet.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

No case has been published yet.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

Although El Salvador, along with Panama are the countries with the most time of having a Transfer Pricing Legislation, there have been no audits related to Transfer Pricing.

Main point of contact

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Estonia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. As confirmed in the Ministry of Finance's 10.11.2006 regulation.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes.

Are there any rules regarding the benefit test?

No. Missing benefits should trigger the so-called distribution tax, not transfer pricing.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Per OECD guidelines (shareholder activities).

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Allocation keys are per TPG.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is deemed most reliable.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Generally, no.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Required "if possible to obtain", Estonian studies and databases are preferred. If local studies and databases are not available, RoyaltyStat, Intellectual Property, Royalty Source, Bloomberg, Loanconnector and Amadeus are used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. The level of detail and size of the documentation is varied. Form according to general demands for documenting economic transactions. Documentation can be in another language, but the tax authority can demand the documentation to be translated into Estonian.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Not required, but highly recommendable.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

There is not enough practice to comment on that, but services that are available (instead of being rendered) have been under special scrutiny.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not necessary.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

No restrictions. Deductible if value is received in return.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. 21%, usually prohibited by double tax treaties.



Estonia

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

20% B2B: taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Usually not.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

If the transfer price is outside the limits of the price range, the tax authority can adjust it in the limits of the price range. Only comparable data can be adjusted, not the data of inspected transactions. If whole service is denied, it attracts so called distribution tax instead of transfer pricing adjustment.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

APAs are not available but there are plans to introduce these from 2015.

Are there any other important items you would like to mention?

No.

Main point of contact

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Finland

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. The TPG is used as a source of reference in matters that require interpretation. Furthermore the internal legislation of Finland applies.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. Finnish Tax Act on Assessment Procedure §§14 a-c, 31, 32, 75 and 89.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

The internal legislation of Finland requires that associated parties (including subsidiaries of the same consolidated group of companies) follow the arm's length principle. There is no established case law.

Are there any rules regarding the benefit test?

The internal legislation of Finland requires that associated parties (including subsidiaries of the same consolidated group of companies) follow the arm's length principle. There is no established case law.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Following allocation keys are generally accepted: sales, head-count, amount of posts.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. The cost plus method is commonly used TP method.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5-10 %

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Generally, no.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended. The databases Amadeus, Orbis, Oriana and Ruslana of Bureau van Dijk are often used as benchmarks.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. The contents of the TP documentation is regulated in the domestic legislation supported by the guidelines of the tax authorities. The documentation is free form and can be in Finnish, Swedish or English. Tax authorities may request translation into Finnish/Swedish in some parts of the documentation.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.



Finland

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible provided the charges are at arm's length.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No. Transactions between Group companies are eliminated.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set at an amount, so that the remaining service charge can be considered arm's length.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Tax Office for Major Corporations is responsible authority in Finland

to negotiate APAs. No domestic legislation regarding APAs is yet available but according to our understanding there has been discussions on APA legislation.

Are there any other important items you would like to mention?

The Finnish Tax Authorities focus on transfer pricing matters and at the moment especially on intra-group financing. Case law will develop in this field in the near future.

Main point of contact

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France

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes.

Are there any rules regarding the benefit test?

French tax code provides that an expenses is tax deductible only when it benefits to the business of the acquirer - Significant guidelines and jurisprudences are available.

Are shareholder expenses defined in the local legislation?

No limitative list of shareholder expenses is available.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Any method is acceptable as long it is possible to demonstrate that the result is arm's length. Most frequent allocation keys refer to headcount and sales.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is commonly used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Around 5% +/- 2%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

In practice a mark-up is required for management services charges by a French company to affiliates abroad. Should a tax payer contemplate no mark-up, an APA would be highly advisable.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

A benchmark study is required. French data base Diane is commonly used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required since 2010 when the yearly sales or balance sheet of the French entity or the Group it belongs to, is of €400Mio or higher. Highly advisable in the other cases because a documentation is the only

way to support a transfer pricing policy. French language is standard. English is accepted most of the time. A translation may be required for other languages. The structure of the documentation is free, but a list of mandatory information is legally required.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended. In practice, is very unlikely to obtain the tax deductibility of managements fees without at least a proper agreement.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required. However a yearly statement detailing the services provided and the calculation of the fees is highly recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

An proper management fees agreement and a yearly detailed description of the services explaining how the costs are calculated is highly recommended.



France

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Management fees are tax deductible up to the arm's length price and assuming that they meet the benefit test.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B - Taxable at the place of the customer of the services.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. French tax authorities routinely check the consistency between the price paid, the content of the services acquired, the benefit for the customer and the technical capacity of the provider to deliver the services sold (quality and quantity).

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

According to the facts, none, part or all services will be denied. Theoretically the profit level should be between the median and the third quartile. Practically this is a very fact driven issue. The tax defensible profit margin for routine services will be nil or

extremely low. More sophisticated services may carry a higher margin.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. Both unilateral and bilateral APA may be agreed for all transfer pricing matters at no cost. A simplified process is available for SME. Multilateral APA are also possible but in practice they are limited to large/very large operations.

Are there any other important items you would like to mention?

More cumbersome rules are currently under review by the French law maker. Higher penalties for lack of documentation should apply. The burden of the proof of the arm's length status of the transfer prices should be legally shift from the tax authorities to the tax payer.

Main point of contact

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Germany

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Germany is an OECD member country and German tax authorities consider the German transfer pricing laws to be in line with the OECD TPG. However, the OECD TPG are not legally binding and German transfer pricing laws apply.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. Section 1 of the Foreign Tax Code ("Außensteuergesetz") contains relevant legislation, including definition of the arm's length standard. Various decrees on transfer pricing are available.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes. German administrative principles specifically cover the provision of intra group services: see for example Bundesministerium der Finanzen ("BMF") circular "Verwaltungsgrundsätze 1983" as of 23 February 1983, Sec. 3.2 ff.

Are there any rules regarding the benefit test?

Yes. With regard to the provision of intra group services, the German Verwaltungsgrundsätze 1983 state in sec. 6.2.2, that "Remuneration for such services would only be paid between unrelated parties if the services [...] are rendered in the recipient's own interest (i.e. provide an expected benefit and reduce the recipient's costs)".

Are shareholder expenses defined in the local legislation?

Essentially yes. The German Verwaltungsgrundsätze 1983 state in sec. 6.2.2. that "no transfer price can be charged if a subsidiary receives services by only taking into consideration the circumstances of the parent, and if the subsidiary, considering only its own circumstances, would not have utilized the services if it had been an independent enterprise". This provision essentially refers to what would be described as shareholder expenses. Note that the interpretation of the term "shareholder expenses" by German tax authorities is broad, and not necessarily in line with the OECD definition.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct and indirect charge methods are principally accepted in Germany. For direct charge method see Verwaltungsgrundsätze 1983 sec. 3.2.1. Indirect charge method permissible following para. 305 BGB (parties have freedom to contract). In addition, the German BMF has issued a circular on pooling arrangements (see BMF circular dated 30.12.1999). Various allocation keys are available, especially revenues, number of employees, etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. In Germany, CUPM, C+M and RPM have priority over profit based methods. The RPM is often not applicable for services as these are not resold. As a result, CUPM and C+M are more common to charge the intercompany provision of services.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Mark-ups between 3% and 10% are often seen in practice.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Depends on the case - Pure cost allocation is not uncommon, especially in cases where third party service costs are allocated from one group entity to other group entities. This proceeding should be defensible, especially when no significant value is added by the group entity which is allocating the costs. In addition, in special "pooling" arrangements as defined in the BMF circular dated 30.12.1999, the application of a profit mark up is not permissible.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Depends on the client's circumstances - The use of benchmarking studies is common in German TP practice, although there is no legal



Germany

requirement. From our experience, also European benchmarking studies in English language are often accepted by German tax authorities (these can e.g. be conducted in the Amadeus database). Especially in cases where the adequacy of intercompany pricing cannot be substantiated with already available data, the conduct of a benchmarking study may be recommended.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required - From our experience, German tax auditors scrutinize management charges critically during tax audits. The deduction of charges for management services may not be accepted, if the provision of the service to the benefit of the entity which received management services cannot be made credible. Such documentation is principally part of the TP documentation report but may also be written as a memorandum or addendum to the documentation report. In Germany, the taxpayer may apply to hand in this documentation in a living language other than German. From our experience, documentation in English language is usually accepted.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly Recommended - In our experience, German tax auditors often ask for written agreements covering the intercompany transactions. From a legal perspective, written form is not necessarily required to conclude a binding agreement in Germany. Still, we would recommend to conclude such written agreements for relevant intercompany transactions.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required ?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Optional.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes. Management fees are generally deductible. If shareholder costs are already included in management fees, tax deductibility is likely to be refused. However, the interpretation of the term "shareholder costs" by German tax authorities is broad and

not necessarily in line with the OECD definition.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Withholding tax may be triggered, if management activities involve the transfer of intellectual property.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

1. Between legal entities: B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.
2. Between Head Office and Branch: Principally no taxable event.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Transfer price adjustment may be either denial of the whole service charge or only of a part of the service charge. In practice, German tax authorities may also offer a bargaining solution at the end of a tax audit. In such case, the part of the service charge which is accepted would effectively be the result of negotiation.



Germany

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. Both unilateral and bilateral APAs are available in Germany. The BMF has also released a circular dated 05.10.2006 in which the APA process is described.

Are there any other important items you would like to mention?

No.

Main point of contact

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Georgia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

It can be stated that the principles of TPG have been the statutory basis according to which applicable provisions of the Georgian Tax Code were drafted. However, Georgian transfer pricing rules are rather general and not comprehensive.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. The primary legislative act regulating transfer pricing in Georgia is the Tax Code of Georgia.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No. General principles of transfer pricing will be applicable to such transactions. Certain case law exist on application of market price to the transactions involving inter-related persons.

Are there any rules regarding the benefit test?

No. Although there are special requirements for intra group transactions to be calculated and taxed on arm's length principle, no specific benefit test provisions, assessing the need of on-call services or evaluating the possibility of its obtainance from independent third parties, are introduced.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Subject to the general principle that every person shall account only the expenses incurred by it. Expenses are deductible only in case if they were related to gaining certain profit. Thus, shareholder expenses which were designated for gaining profit by the shareholder can be deducted only by the latter. Expenses may be incurred by the subsidiary company as well, however due to the aforementioned principle of necessary link between incurred expenses and gained profit, subsidiary will not be able to deduct expenses incurred for earning profit by its mother company. In case of transactions between inter-related parties, expenses and benefits shall be allocated as it would have been allocated on arms length basis.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both the indirect and direct charge methods are accepted. However, no specific allocation methods are prescribed in the Tax Code. Due to recent enactment of indirect charge method in international controlled operations chapter of the Code, no specific keys for allocation are envisaged therein and no significant practice exist in its relation.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Pricing methods for evaluating international controlled operations between related companies/intra

group services have been recently introduced in the Tax Code of Georgia. Its provisions include cost plus method among others, however no significant cases exist in relation with their applicability in practice. Thus, it cannot be explicitly stated that the cost plus method is the commonly used TP method for charging service costs.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

See the answer above.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Optional, but not required. There is no customary database applied by the Georgian tax authorities.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. The level of details in the documentation will be depended on the particular transaction, however, it shall include all essential conditions determining the commercial terms thereof. The language of the document can be selected by the



Georgia

Parties. However, the tax authorities will require provision of an official Georgian translation for assessment purposes. The documentation is form free.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Optional, however it is an established practice for minimizing risks. Thus, may be stated that it is recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Management services charges are deductible under the general terms of the Tax Code.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

If the head office or the group company is qualified as a non-resident, the management service payment will be subject to withholding tax at the rate of 10% (and at the rate of 15% in case of offshore registered companies). Withholding tax is also applicable at 20% rate (as the personal income tax rate) in cases when the Head Office's employee is earning salary/benefit in the country of residency of the head office's permanent establishment. Such withholdings shall take place, unless exemption is granted under respective Double Tax Treaty.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Intra group service charge will usually be subject to Reverse Charge VAT if it falls under the respective provisions of the Tax Code.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Mainly focusing on whether inter-related parties' transactions were calculated and taxed on market price principle basis.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

If certain tax amount had already been paid by the transaction party and the tax authorities decide that it is

incorrect and lower than it should be, they will make respective adjustment and the difference between the to-be-paid and already paid tax amounts should be paid to the state budget. If no tax had been paid before, the whole tax amount which should have been paid on that particular transaction, shall be due and payable by the taxpayer. No special mark-up margins are ascertained.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Such option is incorporated in the Tax Code of Georgia. However, applicable provisions have been recently enacted and have not been tested in practice.

Are there any other important items you would like to mention?

As mentioned above additional transfer pricing regulations have been introduced recently, in 2011-2013 years.

However, respective provisions are not detailed, practice and case law are quite scarce and the implementation rules or commentaries on different issues, such as compensating adjustments, documentation, burden of proof and etc. have not been yet elaborated and issued by the state authorities.

Main point of contact

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Ghana

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. Transfer Pricing Regulations, 2012 (Legislative Instrument L.I. 2188) which supports the provision in section 70 of Internal Revenue Act, 2000 (Act 592).

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes. Regulation 1 sub regulation (1) paragraph (a) and sub regulation (2) paragraph (d) of L.I.2188 respectively.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by the shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes but there are other methods such as Resale Price (RP) Method, Profit Split (PS) Method, Transactional Net Margin Method (TNMM).

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Ghana's Legislation was passed last year 2012 so the practice cases are yet to display this.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Highly recommended however a combination of benchmark studies from any commonwealth nation will be most appropriate.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. Yes there is a specific format as TP Return Forms exist. It should be in English.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Optional.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes they are tax deductible but have to be approved under the Technology Transfer Regulations, 1992 (L.I. 1547).

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. At the rate of 15%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

They will be treated as direct supply of service not exempted under any of the schedule under the Value Added Tax Act, 1998 (Act 765). It is taxed at



Ghana

12.5% VAT and 2.5% National Health Insurance Levy (NHIL).

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes they do.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

It depends on the findings so it could be all and in some instances a part of the service calculated as the proportion the turnover of the entity in Ghana bears to the total turnover of the Group.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

Although the acceptable methods have been outlined in the TP Regulations as in Note 10 above, there is room for an entity to discuss its method which is outside the approved methods with the Commissioner-General for approval. Ghana's TP Regulations were passed in the last quarter of 2012, hence case law is yet to be developed. Currently a series of training and capacity building of officers of the Ghana Revenue Authority are on-going.

Main point of contact

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Greece

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. The legislation was first introduced in 2008 and last amended in 2013.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. Income Tax Law 2238/1994 is now the legislation governing intra-group transactions and the transfer pricing regulations in Greece.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific regulation.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is most common. Also the charging of costs only is acceptable when certain conditions are met.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Highly recommended, but not required. To determine the appropriate profit mark-up, often a PAN-European benchmark study is conducted using Amadeus.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. There is no specific format and the documentation shall be in Greek Language. When it is in another language, the Authorities will ask for a Greek translation.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required. In case of the absence of an agreement other documentation, such as Purchase Orders, written communication for the terms and conditions shall be in place so as to document the service.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges: (1) are made at arm's length principle, (2) do not relate to previous periods, and (3) are not in the list of non-deductible expenses provided by Greek Law (i.e. a list of expenses that are not related to the company's operations).

Greece

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. There is a WHT of 25% due on the payment (management) service charges in general. If there is a Double Taxation Avoidance (DTA) Treaty signed with the country of the supplier and the relevant documentation (Claim for the Application of the DTA) is submitted then the rates of the DTA treaty apply. If conditions are met, the Directive 2003/49/EC.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Transfer prices that are considered non documented are determined by the auditors based on the available data from any source. In cases where a range of prices or profit mark-up is acceptable by the Tax Authorities, then the prices are determined in any price or profit mark-up within the acceptable range. If the range is not acceptable by the Tax Authorities, then the Tax Authorities determine the transfer price at the median.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No. The Advance Pricing Agreements were introduced in Greek legislation in early 2013 and the APA process will begin from 01/01/2014.

Are there any other important items you would like to mention?

Greek legislation introduced in 2011 the "Tax Certificate" that is a Tax Audit mandatory for all entities that according to Law shall be audited for Statutory purposes from Certified Auditors. The "Tax Certificate" Audit is performed by the Certified Auditors (firm or individuals) that perform also the Statutory Audit. The "Tax Certificate" replaces the tax audit by the Tax Authorities. Part of the "Tax Certificate" Audit is the review of the Transfer Pricing Documentation File and all the intra-group transactions.

All other entities will be audited for Transfer Pricing by the Tax Authorities.

As Transfer Pricing regulation was introduced in 2008 in Greece, there is no vast experience on how the Tax Authorities approach the intra-group transactions, only with the approach by the Certified Auditors for the "Tax Certificate".

Main point of contact

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Guatemala

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Transfer Pricing regulations were introduced in 2012 tax reforms by the Decree 10-2012 (Tax Law Update/ Ley de Actualización Tributaria) and enforced through Government Agreement n° 233. The regulations are applicable as from 1 January 2013. Although Guatemala is not an OECD member, the legislation is clearly based on OECD Transfer Pricing Guidelines.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

Yes.

How are the shareholder expenses treated in your country?

Only expenses that can be deducted from taxable income are shareholder's travel expenses.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

No case law has been yet published.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

10%-15%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Not yet discussed.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Required. Since there is limited local information, the use of international data bases are recommended.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Highly recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes. Shall those be necessary to produce taxable income.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. 15%

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

12%

Do the tax authorities focus on the transfer pricing of services during tax audits?

No case has been published yet.



Guatemala

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

No case has been published yet.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

2013 was the first year of full application; multinational companies must take special considerations regarding this matter.

Main point of contact

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Honduras

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Transfer pricing regulations were introduced in 2011 tax reforms by the Decree 232-2011 (Transfer Pricing Regulacion Act/Ley de Regulación de Precios de Transferencia).

This legislation is applicable as from 01 January 2014.

Although Honduras is not an OECD member, the legislation is clearly based on OECD Transfer Pricing Guidelines.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No

How are the shareholder expenses treated in your country?

Not yet discussed.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

No case law has been yet published.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

10%-15%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Not yet discussed.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Required. Since there is limited local information, the use of international data bases are recommended.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Highly recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

No.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. 25%

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

25%

Do the tax authorities focus on the transfer pricing of services during tax audits?

No case has been published yet.



Honduras

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

No case has been published yet.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

Like Nicaragua, Honduras is also in a preparing state for what is coming on transfer pricing audits.

Main point of contact

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Hong Kong

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No. As there is no specific TP legislation. However, the transfer pricing guidelines (Departmental Interpretation and Practice Note No. 46 ("DIPN 46")) are largely based on the TPG.

Does specific legislation exist in your country regarding transfer pricing in general?

No. Anti avoidance regulations are the legal basis.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Referenced in DIPN 46 only.

Are there any rules regarding the benefit test?

DIPN 46 para 95-98.

Are shareholder expenses defined in the local legislation?

Described in DIPN 46, para 92-93.

How are the shareholder expenses treated in your country?

Borne by shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Both methods accepted; allocation keys include sales revenue, headcount.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is most commonly used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5% is common for admin services; other services such as sub-advisory services up to 12-15% subject to benchmarking.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

No clear guidance or practice on this; assumed to follow OECD.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended; highly recommended for high value or unique transactions; BvD databases such as Oriana and Osiris are used, as well as potentially other providers.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Recommended; format to follow TPG; should be in English or Chinese.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Optional.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, subject to general deductibility rules.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

N/A as there is no indirect tax in Hong Kong.



Hong Kong

Do the tax authorities focus on the transfer pricing of services during tax audits?

Limited tax audits carried out; however there are hardly any tax audits in Hong Kong.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Most likely denial of part of the service charge unless the benefit test cannot be satisfied; profit mark-up typically at median although arguments can be validly made for a different position.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

APA regime is very new; no finalised APAs yet although a few are under review; will grown in popularity, particularly as more DTAs now being concluded to enable bilateral/multilateral APAs..

Are there any other important items you would like to mention?

Strict penalty regime in place. General penalty provisions can result in penalties of 100% to 300% of the tax undercharged.

Main points of contact

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Hungary

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. The national legislation is in line with the most important TP principles, also the latest amendments are implemented in the legislation.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes. Certain services with low mark-up can be covered with simplified documentation.

Are there any rules regarding the benefit test?

No. However, expenses allocated to a Hungarian entity must have business purpose to be deductible expenditure.

Are shareholder expenses defined in the local legislation?

Not defined. However, certain costs (establishment, restructuring) are tax deductible or can be capitalized at the level of the Hungarian subsidiary based on invoices issued to the Hungarian company.

How are the shareholder expenses treated in your country?

N/A

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Both charging methods might be accepted, however, indirect charging might need to be supported with proper analysis. The allocation keys that are mainly used are based on sales figures, number of users.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. The cost plus method is the commonly used. Nevertheless, TNMM method is also used lack of information on comparable transactions.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Between 0% and 5%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain circumstances.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Benchmark study might be needed (recommended), but not required in all cases. This depends on the volume and nature of expenses, if a mark-up is added. BvD databases (e.g. Amadeus) is the usual source for

benchmark studies, this is used by the tax authority as well.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

TP documentation is basically required, however, exemptions might apply e.g. if transaction value is low in a given tax year. The documentation is accepted if prepared in English, German, French or Hungarian language. According to our experiences, a special format needs to be applied when preparing the TP document.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Optional.



Hungary

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Such service charges are generally tax deductible, however tax deduction might be blocked if it is related to control and management of the Hungarian subsidiary. Detailed supporting analysis is needed to support the exact nature of the services and the basis for calculating the final service charge e.g. hourly rates and time spent, reasoning of the allocation keys, and the business reason of using management services etc.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The transfer price is adjusted to the arm's length level. The profit mark-up can be adjusted to any points within

the interquartile range determined by the tax inspectors in the Amadeus search, it absolutely depends on the tax inspectors' approach.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. The APA was introduced for unilateral/bilateral/multilateral transactions, however, fee is payable if such an application is filed. Unilateral APAs are the most common procedures.

Are there any other important items you would like to mention?

The Hungarian tax authorities are reviewing TP effects of management fees rigorously and it is often challenged by them if no proper TP documentation or supporting documents are available (even if it can lead to double taxation).

Main point of contact

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India

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

The TP regulations draw inference from OECD Guidelines and follow the internationally accepted arm's length principle.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

The TP regulations also cover intra-group services and management services. Further, legal precedents are also available.

Are there any rules regarding the benefit test?

Benefit test is prescribed in the TP regulations, though specific rules have not been prescribed.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Disallowed u/s 14A of the Income tax Act, 1961, as dividend is exempt.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

No specific rule is prescribed for determining the charge for intra-group services. Taxpayers apply both

direct and indirect charge method, depending upon facts.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Most popular method is TNMM.

Cost Plus Method is also used in case of provision of services except in case of reimbursement of expenses.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

It depends on facts of the case. There are no safe harbour rules with respect to profit mark-up on costs of services.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

The TP regulations do not incorporate paragraph 7.37 TPG. However, for reimbursement of expenses profit mark-up may not be charged provided there is no element of provision of services.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Required. In India, local databases are available for benchmarking.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. Local language and no specific format prescribed.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Highly Recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Tax deductible. However, specific restriction is prescribed in domestic law with respect to head office executive and general administration expenditure.



India

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. Withholding tax is applicable on payment of service charges to head office at the rate prescribed in the tax treaty. Domestic law prescribes 25% rate.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

service tax of 12.36% applies in case of import of services.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Transfer pricing adjustments have been provided in the TP legislation. The quantum of adjustment and range of profit mark-up depend on facts of the case.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

APA procedure has been introduced in India by Finance Act, 2012 with effect from 01-07-2012. The APA scheme incorporates rules relating to unilateral/ bilateral APA.

Are there any other important items you would like to mention?

No.

Main point of contact

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Ireland

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. The legislation recognises the arm's length principle as set out by the OECD in Article 9 of the OECD Model Tax Convention and the OECD Guidelines on Transfer Pricing.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation/regulations exist - all TP matters dealt with under the general TP legislation which impacts on transactions between "connected persons". No case law published and unlikely to exist given the TP legislation is a very recent enactment in Ireland (2010/2011).

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Any expense incurred by a company must meet the "wholly and exclusively" test defined in domestic legislation to be tax deductible. So shareholder expenses are to be born by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Given the legislation is relatively new, practices are still developing and have not been set in stone. The overriding principle is that the charge should reflect the level of service provided and should reflect that commonly applying to similar situations between unconnected/arms-length parties.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Again, we await to see how the TP legislation operates in practice before we can draw definitive conclusions. In a domestic sense, it has been common when dealing with group service companies/management companies to see a management service profit in the order of 10% over costs. That said, we have seen this level of mark up most commonly in small and medium size enterprises which, as noted elsewhere, are outside the scope of the Irish TP legislation.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Because the TP legislation only applies to large companies and because the legislation is only in place a little over 2 years, very little (if any) information is available in relation to the level of profit mark up being applied. Any mark up would, in any event, refer to the level of service provided, similar charges in similar companies etc.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

No. Provision is not made in the domestic legislation for concessional treatment.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Depends on the facts of the case but generally recommended; but not required. The Irish tax authorities do not have a preference or requirement for local comparables in benchmarking nor do they have requirements/comparables regarding the source of data for comparables.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required/need not be in a specific format but must support the level of charges paid or received as appropriate/ideally in the local language but if not, a certified translated copy would have to be provided in the event of an audit.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Not required but depending on the size of the transaction and the



Ireland

companies involved, it is highly recommended to have a formal written agreement between the parties.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Again, not required but recommended to establish a formal relationship between the parties and to put in place, a documentation trail in respect of service request and provision.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required - in Ireland, opinions as to the acceptability of the costs would generally be given by the company's tax agent/adviser. What could be obtained is a statement from the directors as to the nature of the costs and their opinion that the costs are in line with the TP agreement/policy.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Accepted but subject to domestic legislation rules regarding the deductibility of expenditure as follows: (A) The "wholly and exclusively" test in section 81(2) (a) TCA 1997, denies a deduction for an amount of a payment between connected parties in excess of the

arm's length amount. (B) Tax law as interpreted by the courts permits an upward adjustment to profits to reflect the arm's length price in certain cases.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?
No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B cross-border EU; taxable where the recipient of the service is established. B2C or domestic supplies: Taxable where the service provider is established. Domestic VAT grouping can alleviate the VAT charge.

Do the tax authorities focus on the transfer pricing of services during tax audits?

In general tax audits, no, but if issues are identified, a specific TP audit can be carried out by a specifically nominated Revenue officer experienced in TP issues. Also, a specific TP compliance audit can be conducted by a TP experienced and specifically appointed, Revenue auditor.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set to reduce excess charges payable by an Irish company by reference to the facts of the case, industry indicators, level of service provided etc. Conversely, inadequately set charges receivable by an Irish company

measured by the same indicators can be increased.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Ireland does not have a formal APA procedure for Irish companies to agree prices for international related party transactions with the Irish tax authorities. However, the Irish tax authorities have been willing to negotiate and conclude Bilateral Advance Pricing Agreements with treaty partners, and are generally willing to consider entering such negotiations once the case has been successfully accepted into the APA program of the other jurisdiction.

Are there any other important items you would like to mention?

The TP legislation in Ireland was introduced in 2010 and applies to accounting periods commencing on or after 1 January 2011. Grandfathering provisions apply in respect of transactions entered into prior to 1 July 2010 although material adjustments to such arrangements post 1 July 2010 will lose their grandfathering status. The legislation applies only to large companies, that is, companies with more than 250 employees and either turnover exceeding €50m or balance sheet net value in excess of €43m (both tests on a group basis). The provisions apply only to transactions that are trading in nature that are taxed under Case I or II of Schedule D, whether at 12.5% or 25%. Financial services and treasury companies that are taxed on interest income and



Ireland

other associated activities at the 12.5% corporation tax rate are also within the remit of the TP provisions, as well as intellectual property companies that are trading. Income that is subject to tax at the 25% passive rate of corporation tax, such as rental income, interest income in a non-trading environment and certain dividend income, are not within the remit of the provisions. Also outside the scope are non-trading transactions that are capital in nature and certain interest-free loans that are not classified as trading activities.

Main point of contact

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Israel

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Specific legislation on TP was enacted in 2006 (section 85A in the Income Tax Ordinance ("ITO")). It is based not only the TPG but also on the UN and American guidelines.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. Since 2006 there is a specific clause (85A) regarding TP.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

The legislation and regulation relate to cases in which "special relations" exist in an international transaction. This term includes a variety of situations. There is no specific and separate reference to cases of head offices/intra group services though they are included.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

No specific relation in the rules nor published opinion of the Income Tax Authority.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted. Allocation keys which are often used are: sales, head-count, etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

The Cost Plus method is acceptable to charge service costs. However, other methods can be regarded as applicable as well.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Though it depends on the case at hand and the unique specification of the industry, a mark up of around 10% is acceptable in many cases.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions.

Is a benchmark study required/ highly recommended/recommended/ optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

A study is required. There are no limitations as to the database which may be used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/ optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended. No special format or language is required, though in some cases the ITA require translations.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/ optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/ optional/not required?

Recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/ optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Optional.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

They are deductible. However, in some cases, such as lack of documentation as well as in cases where such services are paid from a company with liable



Israel

income to a company with losses, such deductions may be challenged by the tax authorities. In some cases there are special disclosure obligations.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

There are no special rules in this respect. General domestic legislation as well as double taxation treaties apply.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

No special rules apply for management services. In case the provider is a business entity - VAT would usually apply. However 0% VAT applies in certain circumstances when services are rendered to a foreign entity.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set at an amount, so that the remaining service charge can be considered arm's length. Profit levels outside the interquartile range will in principle be adjusted to the median when it is not plausible that another point in the range is more appropriate.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

A mechanism and an APA department exists. No fees are due to the Israeli government for such APA.

Are there any other important items you would like to mention?

No.

Main point of contact

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Do the OECD Transfer Pricing Guidelines (“TPG”) form the basis of the transfer pricing legislation in your country?

From the point of view of legal sources, no specific reference is made to the OECD Guidelines in the provision that regulates transfer pricing (Art. 110 of the Italian Tax Code ; hereinafter, I.T.C.). At the same time, the authoritative Circular Letter on transfer pricing (Circular Letter 22nd September 1980, No. 32) makes explicit references and substantially duplicates, with some original implementation solution, the framework and methodologies set forth by the OECD Transfer Pricing Guidelines (in the version available at the time; nonetheless, later documents issued by the Tax Administration implicitly endorse an ambulatory interpretation).

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

This specific issue is not directly addressed by the relevant legal provisions but has been the subject of extensive case law.

Are there any rules regarding the benefit test?

No benefit test appears to be required by legislation, however, the benefit test is recommended by Tax Authorities in their Guidelines, in particular, Circular Letter 22nd September 1980, No. 32. Reference to the benefit test

can also be found in case law by the Supreme Court (see, in particular, Italian Supreme Court, Decision 26 February 2007, No. 1709; although other decisions would seem to be less rigid on the application of the test).

Are shareholder expenses defined in the local legislation?

In Italy, shareholder expenses (that is, the expenses for the activities that a group member - usually the parent company or a regional holding company - performs solely because of its ownership interest in one or more other group members, i.e. in its capacity as shareholder) are not specifically defined in legislative sources but a definition to the one provided above (and based on the OECD TP Guidelines) can be found in Circular Letter 22nd September 1980, No. 32.

How are the shareholder expenses treated in your country?

Shareholder expenses are subject to the deductibility requirement of other expense, so that general rules concerning the deduction of business expenses and transfer pricing are applicable. In particular, according to Art. 109, Para. 5 I.T.C., “expenses and other charges shall be deductible if and to the extent to which they relate to activities or assets that generate earnings included in the taxable income.” The deductibility is also conditional upon the meeting of the “arm’s length” criterion provided by Art. 110, Para. 7 I.T.C.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Legal sources do not provide guidance in this respect. The Tax Administration, emphasises the direct charge method (see in particular Circular Letter 21st October 1997, No. 271/E). On the other hand, existing case law on the subject (see, in particular, the decisions of the Supreme Court 12 March 2009, No. 5926 and 18 March 2009, No. 6532) would seem to favour indirect charge methods as long as applied in a reasonable way. As to the choice of the allocation keys, Italy adheres closely to the OECD TPG, thus the indirect-charge method is acceptable if it is reasonable in the specific circumstances.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

The cost plus method is the most common method applied to the charging of service costs, to the extent that the service is not purchased/supplied by other parties on the open market, in those cases the C.U.P. method shall be applied.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Typically between 5% and 10%. This is in line with the informal “safe harbour” set forth by the EUJTPF in its 2010 document “Guidelines on Low Value Adding Intra-Group Services”.



Italy

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

This is possible where the concerned services are not a core activity of the supplying entity (see in this respect Circular Letter 32/1980).

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended, but not required, especially when the measure of the mark-up is contained. To determine the appropriate profit mark-up, often a PAN-European benchmark study is conducted using Amadeus. However, where the C.U.P. method is applied, a study of comparable transactions should be provided instead.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

The documentation is highly recommended. The documentation can also be in English, in case it is drafted in other languages, it is recommended to provide a certified translation. Contemporaneous documentation whose possession is declared in the tax return of the concerned Fiscal Year and which adheres to the template of Master File and Country File developed by the Italian Tax Administration would enable the preparing company to

avoid being charged with penalties in case of transfer pricing adjustments.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

When services are concerned, the presence of a written legal agreement documenting the terms and conditions of the services provided is highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

An audit statement would further corroborate the likelihood of the cost basis and it is therefore highly recommended. This requirement is emphasised by the case law of the Supreme Court (see, in particular, Decision 6532/2009 and 5926/2009).

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

The benefit test as well as the general deductibility conditions set forth under the earlier cited Art. 109, Para. 5 I.T.C.

and Art. 110, Para. 7 I.T.C. have to be met.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

A 20% withholding tax might be applied to services rendered by non-resident companies on the Italian territory which qualify as intrinsically akin to independent personal services. Such an occurrence is however fairly unlikely; furthermore, the withholding tax should not apply in the presence of a tax treaty.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

The transfer pricing of intra-group services is often one of the central focuses of a transfer pricing audit. The key issue are the ascertainment of the existence of the services and the determination of the underlying cost-basis and mark-up.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set at an amount, so that the remaining service charge can be considered arm's length. The profit



mark-up may be determined on the grounds of a comparability analysis although, in some case, the benchmark of reference may be represented by a "safe harbour" (such as for instance the EUJTPF rate of 5-10%).

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

APAs are only unilateral in Italy and are increasingly used especially in relation to complex intragroup cost sharing and service agreements even though they still represent a marginal phenomenon with just a few being concluded every year.

Are there any other important items you would like to mention?

No.

Main points of contact

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Japan

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Japanese tax authority refers OECD TP Guideline for direction, and the Administrative Guidelines for IGS fee are prepared based on OECD Guidelines.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Administrative Guidelines

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

Nature and examples are stated in Administrative Guidelines

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

N/A

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

CUP or Cost plus, and charging of total cost only is acceptable if certain conditions are met.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

-

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. If certain conditions are met.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended, the documentation is form free and can be in English. Japan tax authorities may ask for Japanese translation, when necessary.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

-

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges: 1) have economical or commercial value 2) can be regarded arm's length; 3) do not need to be capitalized as part of the acquisition costs of an asset, and: 4) do not qualify as non-deductible costs of a loan.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

It is not subject to W/H tax as long as the services are not performed in Japan, and it is not regarded as royalty



Japan

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

It is not subject to Japanese consumption tax as long as the services are not performed in Japan.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

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Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes.

Are there any other important items you would like to mention?

No.

Main point of contact

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Korea

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. Korean TP rules are generally in line with the OECD TPG.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes. The Korean TP rules stipulates certain conditions for deductibility of head office/intra group services.

Are there any rules regarding the benefit test?

Yes. But not detailed rules.

Are shareholder expenses defined in the local legislation?

Yes.

How are the shareholder expenses treated in your country?

Shareholder expenses are not deductible and should be borne by shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct and indirect-charge methods are accepted.

Allocation keys: Sales, Headcount, etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. cost plus method is commonly used. The costs includes both direct and indirect costs incurred by service provider.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Around 5%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended, but not required. If a mark-up is within the normal range, mark-up itself is usually not a significant issue.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Recommended, but not required. Under the Korean TP rules, if a taxpayer prepares a timely contemporaneous documentation, underreporting penalty could be exempted.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required. Service agreement should be concluded in advance.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, if it satisfies certain conditions.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No. But certain services may be viewed as royalty, etc. subject to withholding tax.



Korea

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Not subject to local VAT. But, certain service recipient should pay proxy VAT (VAT exempted business such as banks).

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

In many cases, only certain part of the services charges are denied. But, if taxpayer fails to submit sufficient evidential documents, the whole service charges could be denied.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. But, APA cases on management service fee are not common in practice.

Are there any other important items you would like to mention?

Transfer pricing issues including management service fee are scrutinized closely in a tax audit.

Main points of contact

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Kosovo

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

The legislation does not explicitly refer to OECD guidelines.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. The Administrative Instruction no.14-2010 dated 19.11.2010 "On Implementation of Law on Corporate Income Tax" which contains general provisions for the transfer pricing and Article 27 of the Law no.03/L-162 "On Corporate Income Tax".

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

The legislation provides the application of the following methods: the comparable Uncontrolled Price Method, the resale price method, The Cost Plus Method, the profit split

Method, the transactional net margin Method.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. In practice the cost plus method is commonly used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Local benchmark does not exist.

The legislation does not refer to any benchmark study which can be used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Legislation does not provide a proper list of documentation or any specific format. However, the documentation is required in case of any inspection from the tax authorities. The documents should be in or translated in local language.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required in practise.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Legislation does not define any specific treatment/restriction for the management services. However, they are tax deductible provided that are charged based on arm's length and supported with proper fiscal documentation/invoice.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

It should be applied the withholding tax at the rate of 5% for payments exceeding 5,000 Euro in any tax period, unless the double tax treaty provides differently.



Kosovo

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

In case the service provider does not have the obligation to register a PE, the reverse charge is applied.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The transfer price (i.e. price applied by related persons) should be compared with the market value. The difference between the open market value and the transfer price has to be included in the taxable income.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

APA program does not exist.

Are there any other important items you would like to mention?

The experience with the transfer pricing is very low. Tax authorities have poor expertise in transfer pricing issues.

Main point of contact

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Kuwait

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No TP legislation. But OECD TPG used as reference for arm's length measure.

Does specific legislation exist in your country regarding transfer pricing in general?

In relation to general anti avoidance the arm's length standard is imposed.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Not for companies.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Not chargeable.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Standard is what third parties charge. The authorities would prefer in general to have a CUP and in many cases try to use a charge for a local service which is not in fact comparable but gives a better tax result for the tax authority. If they can be persuaded to accept them, then the direct charge allocation is most likely to be the only one accepted.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

No. Deemed profit method.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

N/A

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

The answer would be no in most cases but if the numbers are not viewed as significant by the tax authority they are unlikely to challenge. What is significant is dependent on the inspector.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Highly recommended if CUP not available. European comparables acceptable based on BvD databases. However there is first the barrier to be overcome in explaining why the local information can not be used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

In principle "not required", however, in some industries annual estimates for services are required in case of multi-year contracts.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not necessary.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes if arm's length.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No. Deemed profit method.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

No VAT.



Kuwait

Do the tax authorities focus on the transfer pricing of services during tax audits?

Increasingly yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Variable. Can recharacterise whole transaction.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

Increasing focus on intercompany transactions.

Main point of contact

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Laos

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No. As at present, there is no TP legislation in Lao PDR.

Does specific legislation exist in your country regarding transfer pricing in general?

No. It does not.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

There is currently one provision in the Tax Law (Article 33, p. 11) which provides that expenses paid over actual amount may be disallowed for deduction when calculating the profit tax due.

Are there any rules regarding the benefit test?

No. There are none apart from Article 33, p. 11 cited above.

Are shareholder expenses defined in the local legislation?

No. They are not.

How are the shareholder expenses treated in your country?

There are several provisions that limit the deductibility of shareholder expenses such as interest on shareholder loans, personal expenses of shareholders, salaries paid to shareholders that are not managers or employees of the company.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

N/A

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

N/A

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Vary greatly between different industry sectors.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. If plausible reasons could be advanced.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Benchmark studies are not usual, but may be presented and taken into consideration by the tax authorities to substantiate prices in related-party transactions.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Presenting TP documents to local tax authorities is not a usual practice, but may be done to substantiate prices in related-party transactions. The documentation should be in Lao language.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Legal agreement is required - expenses may be disallowed if supporting documentation is not available.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

N/A

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.



Laos

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

They are generally deductible unless non-related to business operations or paid at excessive amount.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Management services fall into the category of "general services" and are subject to 4.8% WHT.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

There are no special VAT rules on the head office/intra-group service charge. Provision of services from an offshore service provider will usually trigger 10% VAT unless the service is VAT-exempted.

Do the tax authorities focus on the transfer pricing of services during tax audits?

They may if the margin rate is unusual, i.e. it deviates from the market conditions.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

It is more likely that the whole amount of service charge which is not at arm's length will be denied and thus adjusted for profit tax purposes.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

The lack of legislative provisions and very limited practice of local tax authorities on TP issues makes the payments on intra-group services vulnerable to non-unified interpretation and possible tax readjustment.

Main point of contact

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Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. The Regulations provide the reference that in applying one of five methods the taxpayers may use the OECD Guidelines.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No. Just that non-business expenses are not deductible for tax purposes

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by shareholder. If allocated to subsidiary, then non-deductible for subsidiary or if included in cost basis, then the service fee price is adjusted.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect charge methods are accepted, if properly substantiated. Various allocation keys are used, such as turnover, gross profit, headcount, number of IT users, etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Cost plus method is the most common. If hourly rates are commonly used in service line, then also comparable uncontrolled price method is used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Mostly 5%-10%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Generally Latvian tax authorities deem service charges without mark-up as not being arm's length.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Highly recommended. Mostly pan-European databases are used, often Amadeus which is used by the Latvia tax authorities as well.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required, especially to prove that the benefit test is met. The documentation can be in English, but the tax authorities can request translation into Latvian. For entities having turnover

over 1 million LVL (ca 1,4 million EUR) the legislation request providing particular information on industry, company, functional, risk and asset split, TP method used, description of the transaction as well as benchmarking study. Other companies should have at least description of the transaction, TP method and comparable search and analysis.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Taxpayer has to show that the services were received and that they were beneficial. Otherwise the service fee might be treated as non-business expense to be added to taxable income with coefficient 1.5 (i.e. The



Latvia

effective tax rate is increased from 15% to 22.5%).

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. Generally 10%, but the exemption can be claimed under a double tax treaty.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Especially on whether a service actually has been provided as well as the benefit test.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

If taxpayer cannot prove that the service was received and that it was beneficial to its business, the whole amount is non-deductible and added to taxable income with coefficient 1.5 (i.e. The effective tax rate is increased from 15% to 22.5%). If the receipt and benefit of service is not challenged, then the adjustment amounts to part of service fee which exceeds arm's length fee. Profit levels outside the interquartile range will in principle be adjusted to the median when it is

not plausible that another point in the range is more appropriate.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Unilateral APA was introduced only in 2013 so there is no established practice.

Are there any other important items you would like to mention?

No.

Main point of contact

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Lithuania

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. Lithuanian transfer pricing regulations give reference to TPG as source of interpretation of TP and TP documentation requirements.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. Rules implementing TP requirements set forth in Law on Corporate Income Tax and Law on Personal Income Tax were adopted (the Rules) in 2004.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes. There is a separate section on intra-group services in the Rules.

Are there any rules regarding the benefit test?

Benefit test is established for intra-group services in the Rules.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Under general principle of TPG, such expenses should be borne by shareholder. If allocated to subsidiary, then non-deductible for subsidiary or if included in cost basis, then the service fee price is adjusted.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Generally, both direct- and indirect charge methods are accepted, if properly substantiated. The Rules do not specify any allocation keys for indirect-charge method. However, under Lithuanian legislation the only allocation key in case of indirect attribution of headquarter costs to the Lithuanian branch is turnover.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Costs plus is most commonly used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

No specific regulations with this respect. However, when attributing costs to the Lithuanian branch, Lithuanian legislation specifically precludes imposing a mark-up.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Benchmark study is highly recommended, Amadeus is most common (also used by the tax authorities).

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Documentation is required only if the turnover of the Lithuanian company/branch/establishment exceeds LTL 10 million (about EUR 2.8 million) per year.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended, otherwise it would be difficult to substantiate terms of the agreement.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required/not common.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required/not common.



Lithuania

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Generally, management service charges are deductible if are necessary and related to the ordinary course of business of the company. However, Lithuanian national legislation precludes attribution of management costs incurred by the foreign headquarters to expenses of the Lithuanian branch.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No withholding tax on management service fees is applicable in Lithuania.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Subject to VAT under place of supply rules (VAT rate in Lithuania is 21%).

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Management services in general attract increased attention of the tax authorities.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

If taxpayer cannot prove that the service was received and that it was beneficial to its business, the whole amount is non-deductible and added to taxable income. If the receipt and benefit of service is not challenged,

then the adjustment amounts to part of service fee which exceeds arm's length fee.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Unilateral APAs available free of charge as of 1 January 2012. Practice is very limited.

Are there any other important items you would like to mention?

No.

Main point of contact

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Luxembourg

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. As confirmed in circular letters issued by the tax administration and case law.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific regulations apply.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Shareholder expenses borne by the company may qualify as "hidden distribution" to the shareholder, potentially subject to 15% WHT and not deductible at the level of the company.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Any method generally accepted by the OECD may be used in Luxembourg. The choice of the more suitable method must be made on a case by case basis.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. The cost plus method is the most commonly used to charge service costs.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended, but not required (specific conditions and procedure have been provided by circular letters only for intra-group financing activities). Luxembourg being a small country, local benchmark studies/databases are very often not available. Any databases could be used as long as the samples are representative.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended. There are no formal rules imposing a transfer pricing documentation file in that

respect. The tax authorities expect each tax payer to act as a "good businessman" who can demonstrate, at the occasion of an audit, that the arm's length principle has been complied with. No specific format is imposed. Reply to questions raised has to be in German or French. English documentation can be used to support the transfer pricing policy. Intercompany agreements can be drafted in English.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges:
1) can be regarded arm's length;
2) do not need to be capitalized as part of the acquisition costs of an asset;



Luxembourg

3) the charge is relating to the tax year in which it has been deducted.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No. Except in case the management service charges are not arm's length compliant (in which case these expenses are not deductible at the level of the company and may be subject to a 15% WHT in Luxembourg).

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B: Taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. They verify whether actual services were rendered and whether existing arrangements have been consistently applied.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set at an amount, so that the remaining service charge can be considered arm's length. Profit levels outside the interquartile range will in principle be adjusted to the median when it is not plausible that another point in the range is more appropriate.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Circular letters have been issued by the tax administration regarding conditions and procedure to get an APA for intra-group financing activities. For other matters, unilateral APA may always be concluded with the tax administration, as well as bilateral or multilateral APA. No fees are due to the authorities for such APA.

Are there any other important items you would like to mention?

The Luxembourg tax authorities have created a specialized TP audit cell.

Transfer pricing issued are most of the time analysed by the Luxembourg authorities and case law based on the hidden distribution/hidden contribution theories, meaning that :

- advantages granted by a Luxembourg company to a related entity
- advantages received by a Luxembourg company from a related entity

would have to be analysed as an hidden distribution or an hidden contribution depending on the specific relationships between the related parties (from subsidiary to parent = hidden distribution; from parent to subsidiary = hidden contribution).

In both cases, the arm's length price must be taken into consideration for Luxembourg tax purposes and the difference between the arm's length

price and the applied price has to be requalified into dividend or hidden contribution.

Main point of contact

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Malaysia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

No.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes. There are regulations and guidelines.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by the shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both are acceptable with sales as the common key allocation.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. It is the most commonly used method.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Minimum of 5%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

No.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

It is not compulsory but it is highly recommended.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. It need not be in any specific format and has to be either in the Malay or English language.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required but recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required but recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible on condition that it is wholly and exclusively incurred for the generation of income.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes if the service is conducted in Malaysia by a non-tax resident. Rates will depend on the DTA signed between Malaysia and the relevant country.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Not applicable.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Not for now.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The charge will be denied only in circumstances when the authorities



Malaysia

are of the opinion that the charges are not incurred wholly & exclusively for the generation of income. Otherwise, the authorities would propose an appropriate adjustment and the amount would be on a case to case basis.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

They do have the relevant guidelines but in practice there is lack of certainty.

Are there any other important items you would like to mention?

No.

Main point of contact

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Malta

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

There is no transfer pricing legislation in Malta. However, anti-avoidance provisions do exist, including provisions relating to transactions concluded between related parties one of whom is resident and the other non-resident.

Does specific legislation exist in your country regarding transfer pricing in general?

No.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

N/A

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

N/A

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

N/A

What is the level of profit mark-up on the costs of the services you see in practice in your country?

N/A

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

N/A

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

N/A

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

N/A

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

N/A

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required ?

N/A

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

N/A

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible under general deduction rules to the extent that they are wholly and exclusively incurred in the production of the income.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B or B2C rules apply depending on the VAT status of the customer.

Do the tax authorities focus on the transfer pricing of services during tax audits?

N/A

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

N/A



Malta

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

There is no specific Maltese legislation in the field of transfer and no there are no legislative proposals in this regard.

Main point of contact

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Mauritius

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No. There are only general anti-avoidance provisions which cater for Transfer pricing.

Does specific legislation exist in your country regarding transfer pricing in general?

No. There are only general provisions in the law for Transfer pricing covering excess management fees, excess remuneration, benefit to shareholders, adequacy of rent, interests and a broad category for transactions designed to avoid tax liability.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

There are no specific legislations.

Are there any rules regarding the benefit test?

General rule that all transactions should be at arm's length basis.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

No specific treatment, but if the expenses are not for the purposes of generating income for the company, then the expenses have to be disregarded for tax purposes irrespective of whether they have been borne by the company or otherwise.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Although not clearly stipulated in the legislation, both direct and indirect methods should be acceptable depending on circumstances. For the indirect method, the basis of apportionment should be fair and supported by appropriate commercial and documentary evidences. Allocation keys - (NAVs, Sales, etc.).

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Will depend on the industry but could be between 5% to 20%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes in exceptional cases.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended - Nothing specific in the legislation.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended - It can be either in French or English and it should clearly set out the service charges and the basis of calculation of the fees. The documentation is form free but it should make commercial sense.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.



Mauritius

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible if properly documented & at arm's length and towards production of taxable income.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No. But, if services are provided by the head office (which is a non resident) in Mauritius (e.g. head office employees come to Mauritius to provide services), then there will be a withholding tax.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Fund management fees are exempt from VAT. Reimbursement of expense may not attract VAT.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Generally they consider whether transactions are at arms length.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Under the legislation, the tax authorities have the power to re-adjust the prices to arm's length.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

The tax authorities are not very aggressive on applying transfer pricing rules in Mauritius. However, the transactions for head office/ intra-group structures should be well documented and supported by evidences, e.g. invoices, proof of benefit obtained, etc.

Main point of contact

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Mexico

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No. General provisions of Article 215 of the Mexican Income Tax Law ("MITL") apply.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by the shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Only direct expenses are allowed. Mexican legislation does not allow for prorated cost allocation.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is most common.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Case by case.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Required.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended. In case that the tax authorities exercise their audit faculties, they usually request such legal information in order to confirm the special features corresponding to the services that were provided and also to determine if the market value is reasonable.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Recommended. As much information as could be obtained due to the transactions entered into with foreign related parties, in case that the tax authorities exercise their audit faculties, the Mexican companies could provide information supporting that the transactions were really carried out.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Required for taxpayers with high amounts of assets or revenues, which will be obligated to request a registered accountant to audit their financial statements on an annual basis. In contrast, taxpayers with lower level of assets and revenues, it is optional to request the audit of their financial statements by a registered public accountant. Even if the taxpayer has obtained its audited financial statements by such an accountant, the tax authorities may differ from the criteria set in said statements and consider that the transactions of the taxpayer with its related parties were not agreed at fair market value. The only way in which the company may ensure the acceptability of the type of costs included would be the request of an APA.



Mexico

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes. Assuming that all ancillary requirements are satisfied and the expenses were not allocated on an indirect pro rata basis.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No. As long as the service provider is a resident of a country that maintains a double tax treaty with Mexico.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Services rendered in Mexico will be taxed with the Mexican VAT for the person that renders such services. Also, such tax will be derived due to services rendered abroad that are utilized in Mexico (importation of services).

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. The tax authority specifically addresses pro rata expenses that have been deducted as management fees.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Depends on the nature of the services and the way in which the charges were made.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

The tax authority has an extensive history related to APAs in the maquiladora industry. Unilateral and Bilateral APAs may be obtained. The fee for an APA is MXN 10,024.

Are there any other important items you would like to mention?

No.

Main point of contact

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Myanmar

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Myanmar is not a member of OECD and there are no legislations on transfer pricing.

Does specific legislation exist in your country regarding transfer pricing in general?

No.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Expenditure incurred in earning business income are permitted as deduction, except for the following:

(i) capital expenditure;

(ii) personal expenditure;

(iii) expenditure not commensurate with the volume of business;

(iv) payment made to a member of an association of persons other than a company and a co-operative society.

Payment made for professional service shall be deducted.

Hence, if 'shareholder expenses' falls into above non-deductible nature, it is not permitted as a deductible expense.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

There are no formal adoption of any transfer pricing methodology.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

There are no formal adoption of any transfer pricing methodology.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

The profit mark-up on the costs of the services ranges from 2% to 10%, depending on nature and scope of the service provided.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Whilst there is no formal transfer pricing legislations, a benchmark study is recommended as it may be accepted

as evidence of the transfer pricing methodology adopted.

Should a benchmark study is required and there are no formal local studies/database available, a benchmark study of countries that Myanmar has entered into DTA may be acceptable.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Recommended. No specific format. English is acceptable.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not necessary.



Myanmar

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Expenditure incurred in earning business income are permitted as deduction, except for the following:

- (i) capital expenditure;
- (ii) personal expenditure;
- (iii) expenditure not commensurate with the volume of business;
- (iv) payment made to a member of an association of persons other than a company and a co-operative society. Payment made for professional service shall be deducted.

There is no formal guidance on what is "expenditure not commensurate with the volume of business".

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Withholding tax of 3.5% is applicable on payments to non-resident for goods and services under a contract or agreement.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

There is no VAT system in Myanmar. However, there is a 'Commercial Tax' of 5% applicable to certain type of services provided in Myanmar. These services includes agency, advertising and printing (Schedule 7 of the Commercial Tax Law ('CTL')). Head office/Intra groups service charge by a Myanmar entity may be subject

to Commercial Tax if the nature of services are within Schedule 7 of CTL.

Do the tax authorities focus on the transfer pricing of services during tax audits?

No.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The service charge may be wholly or partially denied, subject to the tax authorities findings on the facts of the service charges.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No for APA, although Myanmar has also entered into DTAs with several countries.

Are there any other important items you would like to mention?

Myanmar has strict control policies on foreign exchange. Any outbound remittance is subject to scrutiny and approval of the authorities. It is highly recommended that legal documentations and other evidence are available for scrutiny.

Foreigners that seek to invest in Myanmar under the Foreign Investment Law are subject to approval by the Myanmar Investment Committee ('MIC'). MIC will scrutinize and consider all aspects of the proposed investment including

'shareholder expenses', 'management services', etc. MIC may approve, varies or disapprove these expenses.

Main point of contact

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Netherlands

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. As confirmed in the 2001 transfer pricing decree.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation, although a decree on the treatment of certain services has been issued. Case law is mainly on mark-ups and the cost base of the charge.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

A 2004 decree provides a non-limitative list of shareholder activities.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted. Allocation key in line with 7.23 TPG: keys that are often used are: sales, head-count, number of email-addresses, etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is most common. Also the charging of costs only is acceptable when certain conditions are met.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-12%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended, but not required. To determine the appropriate profit mark-up, often a PAN-European benchmark study is conducted using Amadeus.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. The level of detail and size of the documentation should be in line with the size of the company and of the transaction. The documentation is form free and can be in Dutch or in English. When it is in another

language, the Dutch tax authorities may ask for a Dutch or an English translation, when necessary.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges: 1) can be regarded arm's length; 2) do not need to be capitalized as part of the acquisition costs of an asset, and: 3) do not qualify as non-deductible costs of a loan.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.



Netherlands

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

reorganisations, arguing in various cases that the decision maker (i.e. the head office) needs to bear the reorganisation costs.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Especially on whether a service actually has been provided as well as the benefit test.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set at an amount, so that the remaining service charge can be considered arm's length. Profit levels outside the interquartile range will in principle be adjusted to the median when it is not plausible that another point in the range is more appropriate.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. A unilateral APA can be concluded on all transfer pricing related matters, as well as a bilateral or multilateral APA. No fees are due to the Dutch government for such APA.

Are there any other important items you would like to mention?

The Dutch tax authorities focus on the transfer pricing aspects of

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New Zealand

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. The New Zealand legislation provides that the transfer price must be determined by any one of the five prescribed methods which produces the most reliable measure, and the tax authority applies the TPG.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. The New Zealand Income Tax Act 2007 contains several provisions outlining the general transfer pricing principles that apply in New Zealand.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Apart from the general provisions referred above, there is no specific legislation, regulations or case law regarding transfer prices of head offices/intra group services. However, New Zealand Inland Revenue Department ("IRD") has issued several guidelines on New Zealand transfer pricing practice ("IRD Guidelines") covering transfer pricing issues relating to intragroup services. The IRD Guidelines are not intended to supersede the TPG, and the TPG applies in respect of matters not addressed in the IRD Guidelines.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

IRD considers that these may not be deductible. However, the position is unclear, and in some cases shareholder expenses should be deductible.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted. Allocation key in line with 7.23 TPG, keys that can be used include: sales, head-count, time expended.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. The cost plus method is the most common TP method used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

This can vary depending on the nature of the goods or services supplied.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions. The New Zealand Inland Revenue Department has issued commentary in relation to arrangements between head office and branch which is consistent with paragraph 7.37 of the TPG.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Optional. Inland Revenue's Transfer Pricing Guide states that Inland Revenue will accept the use of overseas comparables in determining the price of an arm's length transaction. In utilising international pricing data, the economic and geographical differences which can affect the price of goods, services and intangibles need to be identified and taken into account. Sufficient documentation as to the use of such international pricing data should be retained by taxpayers.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended. The level of detail and size of the documentation should be in line with the size of the company and of the transaction. The documentation is form free and should be in English.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.



New Zealand

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible provided the charges can be regarded as arm's length and are revenue in nature.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No (but withholding tax may apply where the services are physically performed in New Zealand in some cases).

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

GST will apply in respect of services provided in New Zealand, however, they are generally zero-rated when supplied to non-resident. B2B can apply in respect of services supplied from overseas in some cases.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The arm's length amount is determined by the taxpayer unless IRD can demonstrate another amount that is a more reliable measure of the arm's length amount or the taxpayer fails to co-operate with IRD in determining the arm's length amount. There is no set profit mark-up, although in respect of non-core services or services with costs below a de minimis threshold, charges no less than the cost of providing the services plus a mark-up of 7.5% are acceptable.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. A unilateral APA can be concluded on all transfer pricing related matters, as well as a bilateral or multilateral APA.

Are there any other important items you would like to mention?

The burden of proof falls on IRD if IRD considers transfer pricing to be occurring. The important (and presuming) obligation for NZ taxpayers is to document their cross-border associated transactions and transfer pricing methodologies adopted.

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Nicaragua

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

In December 2012, Nicaraguan Congress approved law 822: the Adjustment Tax Law. Chapter V of this law regulates Transfer Pricing, however this legislation is applicable as from January 01, 2016. Although Nicaragua is not an OECD member, the legislation is clearly based on OECD Transfer Pricing Guidelines.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

Yes.

How are the shareholder expenses treated in your country?

Not deductible if they are personal expenses. Other expenses are not mentioned in the law.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. No case law has yet been published.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Very recent legislation, no case law yet published.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

10%-15%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Not yet discussed.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Required. Since there is limited local information, the use of international data bases are recommended.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Highly recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes. Shall those be necessary to produce taxable income.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. 15%

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Yes but only to those services rendered abroad, which shall be tax at a 0% rate.

Do the tax authorities focus on the transfer pricing of services during tax audits?

No case has been published yet.



Nicaragua

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

No case has been published yet.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

Tax Payers as well as the Tax Administration are preparing to face this new Law published in 2012. Application will come in force until year 2016.

Main point of contact

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Nigeria

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes as confirmed in Section 11 of the Income Tax (Transfer Pricing) Regulations No 1 2012.

Does specific legislation exist in your country regarding transfer pricing in general?

Not strictly a legislation but the Income Tax (Transfer Pricing) Regulations No 1 came into force in August 2012.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

There is case law on artificial transactions and the arms length principle.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Shareholder expenses are borne by the shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes both direct and indirect charge methods are accepted in Nigeria. TP is a recent development in Nigeria.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes the cost plus method is typically applied in order to arrive at an arm's length service fee. This would require an analysis of the costs incurred in providing the services.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

2% to 3% (based on guidelines issued by the National Office for Technology Acquisitions and Promotions (NOTAP)).

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Optional. Benchmark studies/databases from other African countries as well as OECD Countries would be used where local benchmark studies/databases are unavailable.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required, the document is required to be readily available upon the request

by the Tax Authorities. All documents must be translated in English.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Optional.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, once approved by NOTAP.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. Taxable at 10%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

VAT is a consumer tax and therefore borne by the recipient of the services.



Nigeria

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

TP Adjustments will be made to ensure that the service charge (if any) is consistent with the arms length principle.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. A taxable person can request for an APA and the Revenue is willing to structure an Advanced Pricing Agreement to establish an appropriate criteria for determining whether the transaction has complied with the arm's length rule.

Are there any other important items you would like to mention?

Transfer pricing regulations have only recently been introduced into Nigeria. Hence the number of Transfer pricing cases are relatively few.

Main points of contact

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Norway

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

No limitation.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes both methods will be accepted. The normal key is sales and headcounts.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Both methods are used in practice.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

3-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

There are no developed rules on this issue.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. The level of detail and size of the documentation should be in line with the size of the company and of the transaction. The documentation is form free and can be in Norwegian or in English.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not necessary.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges: 1) can be regarded arm's length; 2) do not need to be capitalized as part of the acquisition costs of an asset, and: 3) do not qualify as non-deductible costs of a loan.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Reverse charge system.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Regularly.



Norway

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Normally the charge will be adjusted to an arm's length cost. Mark up adjustments will be +/- 10% depending on the nature of the costs.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No. With the exception for gas contracts.

Are there any other important items you would like to mention?

Tax authorities tested the level in a court case (3M) and lost. The level of scrutiny was reduced subsequent to this.

Main point of contact

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Oman

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No TP legislation. But OECD TPG used as reference for arm's length measure.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes in relation to general anti avoidance.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Not for companies.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Not chargeable.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Standard is what third parties charge. The authorities would prefer in general to have a CUP and in many cases try to use a charge for a local service which is not in fact comparable but gives a better tax result for the tax authority. If they can be persuaded to accept them, then the direct charge allocation is most likely to be the only one accepted.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

No common mark-up.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

The answer would be no in most cases but if the numbers are not viewed as significant by the tax authority they are unlikely to challenge. What is significant is dependent on the inspector.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Highly recommended if CUP not available, European comparables acceptable based on BvD databases. However there is first the barrier to be overcome in explaining why the local information can not be used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

In principle "not required", however, in some industries annual estimates for services are required in case of multi-year contracts.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not necessary.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes if arm's length.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. 10%

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

No VAT.



Oman

Do the tax authorities focus on the transfer pricing of services during tax audits?

Increasingly.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Variable. Can recharacterise whole transaction.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

Increasing focus on intercompany transactions.

Main point of contact

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Pakistan

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. Pakistan is a signatory to several tax treaties. Article 9 thereof follows the wordings of the OECD Model Convention. The OECD Commentary on the Model Convention is binding on Pakistan in the interpretation/application of the treaty provisions.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. There is specific section on arm's length principal in the Income Tax Ordinance 2001 and a separate chapter in the Income Tax Rules 2002 on the transfer pricing.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

There is no specific legislation regarding transfer prices of head offices/intra group services. However, there have been certain reported case laws in which the transfer prices of head offices and intra group services have been discussed in detail.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes both the direct and indirect charge methods are accepted and for this turnover ratio between local and all over the world is used as allocation key.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is most common and useful where semi-finished goods are sold to related firms.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

It ranges between 12-17%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

No. In order to have an arm's length transaction the market price has to be used.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Unusual. Any study for the Asian region.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. There are no specific format requirement and normally it has to be in English Language.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required if agreement is in place.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible expenses if proper tax is withheld, however, in case of branch office the calculation method for calculating the allowable head office expenses is provided.



Pakistan

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. It is subject to tax @ 15%, treated as fee for technical services to non residents subject to limit given in Double Taxation Agreement. For services other than the FTS are subject to 6% withholding tax.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

The indirect tax in the form of Federal Excise Duty is payable @ 15% if the same is treated as franchise fee by the tax authorities.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Not specifically.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Normally the assessing officer uses the guess work on the basis of his own experience, however, where precedents are available these are used as a basis to support his action. On that basis they normally make adjustment in the transfer pricing rather than denial of the whole service unless they have evidence to substantiate that the service was not actually provided. Mark up will be set around 15%.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

There is no such Advance Pricing Agreement program in place in our country and only the Federal Board of Revenue is currently looking at the individual instances from taxation point of view. No certainty can be given in advance.

Are there any other important items you would like to mention?

It is advisable to get the advice in advance before entering into any such agreement.

Main point of contact

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Panama

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Not yet discussed.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. No case law has yet been published.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Very recent legislation, no case law yet published.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

10%-15%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Not yet discussed.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Required. The use of international data bases is recommended if local benchmark studies/databases are not available.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required ?

Highly recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes. These shall be necessary to produce taxable income.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. Tax rate 12,5%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

No in services imports.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

No case law as of yet published.



Panama

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

2012 was the first year of full application; multinational companies must take special considerations regarding this matter.

Main point of contact

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Philippines

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. It was released early this year under Revenue Regulations 2-1013.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

None.

Are there any rules regarding the benefit test?

None.

Are shareholder expenses defined in the local legislation?

None.

How are the shareholder expenses treated in your country?

Borne by shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. No specific rule of allocation.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5-10%. This may change as the new TP regulations take effect.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Not clear yet.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Required. No specific requirement for use of local data.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required ?

Not required but recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required but recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible provided arms-length.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No if service is done outside the country.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

-

Do the tax authorities focus on the transfer pricing of services during tax audits?

Not yet clear, but with the recent issuance of TP regulations this year, we expect a focus on TP during audit. We also expect that TP audit maybe done as a special audit and not part of regular audit.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Not clear yet.



Philippines

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

APA is provided in the new TP regulations but it is not yet in effect until a more detailed regulation for APA is released.

Are there any other important items you would like to mention?

Philippines just adopted the TP regulations early this year. We expect the tax bureau to be aggressive during the early years of implementation starting 2013.

Main point of contact

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Poland

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. The TPG are the basis to form the TP legislation in Poland as specific regulations formulated with accordance to TPG provisions or as a reference to TPG.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

In 2013 specific TP regulations regarding the low value adding intra-group services will be introduced to the tax provisions. Those provisions will be consistent with the EU Joint Transfer Pricing Forum Guidelines on low value adding intra-group services. Case law is mainly on mark-ups and the cost base of the charge.

Are there any rules regarding the benefit test?

The taxpayer should substantiate that the purchase of services contributes to its business and supports earning revenues. The tax authorities could request taxpayer to provide source evidence confirming that the services were actually rendered.

Are shareholder expenses defined in the local legislation?

No. However, in 2013 specific TP regulations regarding shareholder costs will be introduced to the tax provisions. Those provisions would

provide a non-limitative list of shareholder activities.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted. Allocation key in line with 7.23 TPG: keys that are often used are: sales, head-count, number of email-addresses, etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus and TNMM methods are most common and acceptable. Also the charging of costs only is acceptable when certain conditions are met. In specific cases the charges are established based on time spent and hourly/daily rates (timesheets).

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended, but not required. TNMM studies based on Amadeus or similar databases are usually accepted. In specific cases the tax authorities could request internal comparables.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. The level of detail should be in line with the Polish TP requirements as set in Art. 9a of CIT Law and consisting of: functional analysis, pricing methodology, business strategy, market overview/ other factors as well as presentation of the benefits to be derived from the services. The documentation is form free and need to be prepared in Polish language. The scope of information included in the documentation shall also comply with the requirements regarding low value adding intra-group services (if applicable).

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.



Poland

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required however could be supportive to substantiate the services.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Generally deductible, provided the charges: 1) can be regarded arm's length; 2) were incurred in order to earn revenue or to maintain or secure a source of revenue 3) do not need to be capitalized as part of the acquisition costs of an asset, and; 4) do not qualify as non-deductible costs listed in the CIT/PIT Act.

In cases where tax authorities try to challenge the costs of management services as deductible, the burden of proof that those services were actually rendered and incurred in order to earn revenue or to maintain or secure a source of revenue lies on the taxpayer.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. For the provision of: advisory services, accounting services, market research services, legal services, advertising services, management and control, data processing, personnel recruitment services, guarantees and sureties and similar services, the WHT rate is 20% of the revenue.

However, if management service charges are recognised to constitute a business profit under the relevant double tax treaty provisions concluded between Poland and the home country of related contractor the WHT will not apply. To enjoy DTT treatment the Polish taxpayer has to be provided with the certificate of tax residency by its subcontractor.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Generally:

- B2B: Taxable where the recipient of the service is established;

- B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Intangible services usually triggers scrutiny of the tax authorities. In the first instance the tax authorities examine whether a given service actually has been provided as well as the benefit test.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The tax authorities will be willing to disallow the overall charge. Due to the new TP regulations that are introduced in the Polish tax regulations in 2013, the tax authorities will be obliged to conduct a comparable analysis in order to determine the arm's length value of the transaction during the estimation procedure.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. A unilateral APA can be concluded on all transfer pricing related matters, as well as a bilateral or multilateral APA. The fee for APA depends on the type of APA and value of the transaction. Generally, it ranges between 5 000 - 200 000 PLN. There are also additional fees for the prolongation of the APA.

Are there any other important items you would like to mention?

The taxpayer is obliged to provide the tax authorities with the transfer pricing documentation in the statutory term of 7 days upon a written request (usually requested during the tax audit). If the taxpayer does not provide the tax authorities with the transfer pricing documentation within the deadline, the tax authorities may apply 50% tax rate in a case they



Poland

question the arm's length character of intercompany pricing arrangements.

Penalties resulting from Fiscal Penal Code may be imposed on Company's Board Members and individuals assigned to be responsible for the financial matters of the company in cases where the tax documentation is not provided to the tax authorities or the actions of those individuals have led to the diminution of the tax.

Issues related to transfer pricing are treated by the Ministry of Finance as a priority for tax audits.

Main point of contact

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Portugal

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. Since 2002.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation for these two cases. The law is mainly on mark-ups and the cost base of the charge.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Both direct- and indirect-charge methods are accepted. The mainly allocation key used are: sales, HR cost.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

In line with the OECD guidelines on transfer pricing, the cost-plus method is usually used in the case of entities

that add value in the development of their functions, such as manufacturing companies or service and, in turn sell goods or services to related parties.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended, but not expressly imposed by law. To determine the appropriate profit mark-up, often a PAN-European benchmark study is conducted using Amadeus or Bureau Van Dijk Sabi ("Sabi"). These benchmark studies are also used by the Tax Authorities.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended. When it is in another language, the Portuguese tax authorities may ask for a Portuguese or an English translation, when necessary.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required ?

Not required..

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Optional.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Under TP rules, these charges are deductible if arm's length conditions are met.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. At a rate of 25% if no Avoiding Tax Treaty applies and the proper formalities are accomplished.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established.



Portugal

B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

As a first approach the tax authorities focus on the TP file preparation accomplishment (when applicable). The analysis/audit of the TP rules is usually made by specialized tax group.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set on the amount that is considered not to comply with arm's length principles.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. A unilateral APA can be concluded on all transfer pricing related matters. Bilateral or multilateral APA can be concluded but only where Avoiding Tax Treaty applies and the clause of friendly procedure exists. Fees are due to the Portuguese tax authorities for such APA.

Are there any other important items you would like to mention?

No relevant items.

Main point of contact

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Qatar

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes for those in the QFC. Otherwise no TP legislation.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes for QFC companies. Yes for others in relation to general anti-avoidance - must use CUP or seek permission to use other method.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes for QFC companies. Otherwise no. Need to use CUP for related party transactions as part of anti avoidance.

Are there any rules regarding the benefit test?

Yes for QFC companies otherwise no.

Are shareholder expenses defined in the local legislation?

Yes for QFC companies otherwise no.

How are the shareholder expenses treated in your country?

Not chargeable.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes for QFC companies. Otherwise standard is what third parties would do.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes for QFC. Otherwise CUP.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

QFC 7%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes for QFC companies.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Highly recommended. European comparables acceptable based on BvD databases. However there is first the barrier to be overcome in explaining why the local information can not be used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Yes documentation needed. For non-QFC companies with taxable income above QAR100k need various documents.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

In principle "not required", however, in some industries annual estimates for services are required in case of multi-year contracts.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Required if taxable income above QAR100k to show costs are actually incurred.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes if arm's length.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. 5%-7%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

No VAT.



Qatar

Do the tax authorities focus on the transfer pricing of services during tax audits?

Increasingly yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Variable. Can recharacterise whole transaction.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

Increasing focus on intercompany transactions.

Main point of contact

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Romania

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

Yes.

How are the shareholder expenses treated in your country?

As dividends, if the respective expenses are not taxable with income tax or corporate tax.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Should be justified, allocation key clearly defined.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Upon estimating the arm's length price of transactions, one of the following methods may be also used:

a) the comparable price method;

b) the cost-plus method;

c) the resale price method;

d) any other method recognised in the transfer pricing guidelines issued by the Organisation for Economic Cooperation and Development.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Between 5%-10 %.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended but not required.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

There is a local guideline regarding the content of documentation required. It should be available also in Romania language for the tax authorities.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not specifically required.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible with restrictions, the need for the services should be justified/proved.



Romania

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

16% or DTT quota if certificate of fiscal residency is available.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. For international transactions as well as for local ones.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Profit levels outside the interquartile range will in principle be adjusted to the median when it is not plausible that another point in the range is more appropriate.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. Under a determined period and if a fee is paid.

Are there any other important items you would like to mention?

No.

Main point of contact

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Russia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No. However the new TP law that has been introduced in 2012 has much in common with OECD TPG.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No limitation.

How are the shareholder expenses treated in your country?

No special treatment.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Both methods are used in practice.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. The cost plus method is commonly used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Difficult to determine as there is not enough information available.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

There are no developed rules on this issue.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

The benchmark study is difficult in practice as there is not enough information available. However, the databases Ruslana and SPARK may be used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

TP documentation is required if certain conditions are met.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Tax deductible provided that it is proved that they are actually rendered and they can be regarded as arm's length.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

VAT is paid where the service recipient is located (unless the service includes the transfer of the chartered management functions of the recipient).



Russia

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Especially on whether the service actually has been provided.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The last court practice shows that the adjustment is made based on the position of the tax authorities that all or part of services has not been actually rendered. Thus, there may be the denial of the whole service charge or of a part of it.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Not yet.

Are there any other important items you would like to mention?

It is reasonable to monitor attentively the changes in the administrative and court practice as the TP legislation is new in Russia.

Main point of contact

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Saudi Arabia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No TP legislation.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes in relation to general anti avoidance. CUP method is expected.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation but expenses not deductible if not arm's length.

Are there any rules regarding the benefit test?

If no benefit not deductible.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Not rechargeable.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Only direct costs can be charged.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

CUP method expected.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

0%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Benchmarks not common.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Documentation is required for any charges. No prescribed format but it needs to be in Arabic.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

As per a third party agreement.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Evidence required of costs actually incurred for benefit of recipient.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible provided they are direct costs and can be shown to be arm's length.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. 15%-20%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

N/A

Do the tax authorities focus on the transfer pricing of services during tax audits?

Increasingly.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Denial of whole charge.



Saudi Arabia

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

No.

Main point of contact

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Serbia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Basically, yes. Pursuant to the Corporate Income Tax Act, all bylaws to be issued by the Ministry of Finance need to be inline with the OECD and other international TP-related sources.

Does specific legislation exist in your country regarding transfer pricing in general?

Not yet, other than the provisions of the Corporate Income Tax Act.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Not yet specified, since TP is completely redrafted as of January 1, 2013 and there is still no practice in this regard.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

It is expected that both methods will be applied in Serbia.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

The C+ method will be probably the commonly used method.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Still no sufficient experience for the assessment of the mark-up.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Currently not possible to assess.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

A benchmark study will be most probably necessary. No local database is available, so most probably Amadeus will be used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

The TP documentation for service charges will be most probably necessary. Still no rules about the format and language (language will be most probably Serbian).

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Still no provisions about the audit statement and we are not able to anticipate whether it will be required/recommended/optional.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Management service charges are tax deductible.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Management services are VAT-able services, which place of business



Serbia

depends on the specific type of services in question.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Not yet, given that the new rules are applicable as of January 1, 2013.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The service charge should be denied only in the part exceeding the arm's length price. If outside of the range, the profit mark-up would be set as the median value of the range.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

New, OECD based, rules have been introduced in Serbia only in 2013. Currently there have been no TP audits, so there is still no practice in this field of tax.

Main point of contact

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Singapore

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

No.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes. There is regulations being issued.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by the shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Both methods acceptable. Common key allocations are sales and number of users.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is most common.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

At least 5%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

No.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended but not compulsory.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Recommended and in English.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Recommended but not compulsory.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required ?

Recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not necessary.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible provided that it is proven to be incurred wholly and exclusively for the production of income.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes only if the service is rendered in Singapore and withholding tax is at the rate of 17% (prevailing corporate tax rate).

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Not applicable unless the service is rendered in Singapore and the total service fee is S\$1 million (approximately Euro 600,000) in any consecutive 12 months.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Not common.



Singapore

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

It is rarely a total denial of the whole service fee. Appropriate adjustment would be proposed by the authorities if they are of the opinion that the charges are not on arm's length basis.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

We believe so.

Are there any other important items you would like to mention?

No.

Main point of contact

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Slovakia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. In Income Act and in Regulation of Ministry of Finance. This legislation follows OECD rulings.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by the shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Not required, but recommended. Amadeus database is used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. German, English version is acceptable. There is no requirement on form.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided that :

a) the service is documented as being related to the scope of business of such a dependent party;

b) the non-resident related party would have to place an order for such a service with unrelated parties or provide such a service in-house, if the service were not provided by a party, to which it is related;

c) the price of the service was determined on an arm's length basis (Section 18 subsection 1 below);

d) the party shall submit evidence of the aggregate amount of expenses (costs) incurred in the provision of such a service, and their distribution among the beneficiaries of such a service.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

If management fee has royalty nature - conditions of parent subsidiary directive must be followed not to withhold the tax.



Slovakia

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Only part of the service charge.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes.

Are there any other important items you would like to mention?

No.

Main points of contact

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Slovenia

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. The basis of the transfer pricing legislation in Slovenia are OECD TPG.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. Transfer pricing is regulated by the Corporate Income Tax Act and the Rules on transfer prices.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes. The transfer prices of head offices/intra group services are regulated by the Rules on transfer prices, Article 22 (Intra-group services).

Are there any rules regarding the benefit test?

Yes. The benefit test is pursuant to the Rules on transfer prices a criteria for consideration whether a company may be allowed to deduct expenses related to intra-group services or not.

Are shareholder expenses defined in the local legislation?

Yes. The Rules on transfer prices determines a general definition and a non-limitative list of shareholder expenses.

How are the shareholder expenses treated in your country?

The shareholder expenses are not deductible if such expenses are charged by the associated entity to other entity because of its own share in the capital, management, control or voting rights, and the associated

persons would not be willing to pay for such an activity in the same or comparable circumstances.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both methods are accepted. When the indirect-charge method is applied the following allocation keys are commonly used: revenues, number of employees, time spent for providing services, sales plan etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. The cost plus method is the most commonly used TP method to charge service costs. Comparable uncontrolled price (CUP) method is also applicable where there is comparable service provided between independent companies or where the company provides the service also to non-associated companies in comparable circumstances.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Required. To determine the appropriate profit mark-up the Amadeus database is most commonly used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. The transfer pricing documentation needs to have a specific format (master file and country-specific file) prescribed by Tax procedure Act. Masterfile might be in foreign language. If masterfile is not prepared in Slovenian language it must be translated into Slovenian language only at the request of the Tax Authority. Country-specific documentation must be prepared in Slovenian language.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.



Slovenia

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible under the following conditions: a) They are in line with the arm's length principle b) They are required to acquire revenue that is taxable (e.g. shareholder expenses, consolidated reports expenses etc. are not deductible).

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No. Unless the payment refers to consulting, marketing, market research, HR, administration or legal services where payments are made to persons with a head office or place of effective management located in countries other than the EU Member States, where the general and/or average nominal profit tax rate is lower than 12.5% and where the country is published on the list prepared by the Ministry of finance. WHT rate is 15%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

B2B: Taxable where the recipient of the service is established (in case that a fixed establishment is involved in

a transaction the place where the fixed establishment is located shall be relevant).

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Especially if the company which is part of international group of companies generates continuous tax loss.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set at an amount, so that the remaining service charge can be considered if all other conditions for deductibility are met. Profit levels outside the interquartile range will in principle be adjusted to the median when it is not plausible that another point in the range is more appropriate.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

APA program is now under implementation by the Tax Authorities. It is expected that APA program will develop gradually in next few years.

Are there any other important items you would like to mention?

No.

Main point of contact

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Spain

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be born by that shareholder

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Turnover, number of users, personnel.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

For services the most common method is cost plus, unless the business purpose of the company consists in such services where the CUP method would be the most consistent.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. As far as if necessary it can be proved that no additional service or value has been provided.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

In case of CUP Method required. Highly recommended in other cases. Amadeus.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. It must have a specific content. Nothing is foreseen with regard to the language but in practice often the translation into Spanish is required in case of a tax audit and it is necessary if the documentation is filed before the courts.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended and in case of cost sharing agreements required

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges: 1) can be regarded arm's length; 2) do not need to be capitalized as part of the acquisition costs of an asset, and: 3) do not qualify as non-deductible costs of a loan; and as far as they cannot be qualified as shareholders' expenses and if it can be proved that they are or can be useful or generate an advantage or benefit to the recipient.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

In general not, but the relevant double taxation treatments have to be checked. E.g. the Spanish-Turkish treaty foresees special rules with regard to professional services.



Spain

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

These services, rendered between entrepreneurs, fall under the general B2B rule.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Not only the accordance with the arm's length rule is audited but even more the existence and not duplicity of the services.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

If the existence or a duplicity of a service is disputed (which is more common that a discussion about the adequacy with arm's length rules) the whole expense is adjusted. In case of an arm's length issue the tax authorities will adjust the difference and apply also a secondary adjustment in order to give to the detected difference the accounting and tax treatment that corresponds to the income derived from such difference.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes.

Are there any other important items you would like to mention?

The deductibility of financial interest paid within the group is one of the

main issues analysed by tax auditors besides of the services charged under related parties.

Main point of contact

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Sweden

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. As repeatedly referred to in Swedish tax case law.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation - only has to show that a cost is attributable & reasonable to charge to a company.

Are there any rules regarding the benefit test?

No specific legislation - only has to show that a cost is attributable & reasonable to charge to a company

Are shareholder expenses defined in the local legislation?

No local legislation - follows by Swedish tax case law.

How are the shareholder expenses treated in your country?

To be born by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted. Allocation key in line with 7.23 TPG: keys that are often used are: sales, head-count, number of customers etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is most common. Also the charging of costs only is acceptable when certain conditions are met.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. Under certain conditions.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended, but not required. To determine the appropriate profit mark-up, often a PAN-European benchmark study is conducted using Amadeus.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Normally required. The level of detail and size of the documentation should be in line with the size of the company and of the transaction. The documentation is principally form free (but should include the main

characters of the TPG) and can be in Swedish or in English. When it is in another language, the Swedish tax authorities may ask for a Swedish or an English translation, when necessary.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended - legal agreement or policy if only a branch.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges: 1) can be regarded arm's length; 2) and are not characterized as shareholders'/acquisition costs.



Sweden

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?
No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?
B2B; taxable where the recipient of the service is established. B2C: Taxable where the service provider is established.

Do the tax authorities focus on the transfer pricing of services during tax audits?
Yes. Especially on whether a service actually has been provided as well as the benefit test.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?
A transfer pricing adjustment will be set at an amount, so that the remaining service charge can be considered arm's length. Profit levels outside the interquartile range will in principle be adjusted to the median when it is not plausible that another point in the range is more appropriate.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?
Yes. Uni- or bilateral APAs can be concluded but the Swedish APA institute is a rather new tax feature in Sweden (established 2010). An

administrational fee of 150,000 is charged (per foreign country involved) and the TP question tried must normally be of some importance - not too simple or small amount wise.

Are there any other important items you would like to mention?
The Swedish Tax Agency (Sw. Skatteverket) has during recent years focused on questioning the interest rates on cross-border intra-group loans - a number (15-20) of cases have been tried in the Swedish Tax courts but very often (in the end at least) in the favour of the individual tax payer! Interest rates are a hot tax topic in Sweden simply!

Main points of contact

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Switzerland

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. Federal Tax Administration principally applies these principles.

Does specific legislation exist in your country regarding transfer pricing in general?

No.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation. Case law applies especially on mark-ups and the determination of the cost base of any charge.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No. There are case-to-case definitions in respect to head-office costs.

How are the shareholder expenses treated in your country?

To be borne by the shareholder; principally tax deductible costs if shareholder is a company and costs are economically justified.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted. Allocation mostly based on advances rulings disclosing the allocation method.

Keys often used are sales, head-count, direct operating expenses.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is most common. The charge out only of costs principally is not accepted but the lack of a mark up is qualified to be a deemed dividend.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

2%-12%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Principally a mark-up is required.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended but not required. Each method to determine the appropriate profit mark-up is accepted if giving evidence of a correct result.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

From a tax point of view not legally required but practically. Service level agreement and/or its attachments

should state details of service, determination of mark up and allocation method. The documentation is form free and depends on the complexity of the transactions and the size of the company. Documentation should be in an official Swiss language, i.e. German, French or Italian but also English is accepted.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Optional, practically recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges correspond to the dealing at arm's length-principle and the costs are economically justified.



Switzerland

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No withholding tax except and so far service charge is qualified to be a deemed dividend; in such case withholding tax of 35% becomes due.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Taxable where the recipient is located.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set at an amount not to be qualified at arm's length and remaining service charge qualified as economically justified costs are accepted. Profit level will be determined based on adequate experience and based on case-to-case-negotiations.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No. Advanced rulings are possible.

Are there any other important items you would like to mention?

No.

Main point of contact

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Thailand

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. Departmental Instruction No. Paw 113/2545 is based on TPG.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes. Intercompany transactions are mentioned in the Departmental Instruction No. Paw 113/2545 as a guideline for the Revenue Department Office to audit transfer pricing arrangements.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

There are no specific rules, generally, costs are tax deductible if the Company can prove that it has benefits out of it.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Indirect method can be used in case that the comparable uncontrolled price, resale price method, and cost plus method are not applicable.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. The cost plus method is commonly used in Thailand.

In addition, to the cost plus method, other methods that are applicable in Thailand are as follows:

1. Comparable Uncontrolled Price
2. Resale Price Method
3. Other methods, which is generally accepted in case that the comparable uncontrolled price, resale price method, and cost plus method are not applicable.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

10%-15% are generally accepted.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

In exceptional cases yes, if proper explanation can be provided.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended. There are no specific rules on databases but from our experience, any internationally recognised study/database will be acceptable for the Thai authorities. Due to the relative inexperience of the Thai tax authorities with regards to transfer pricing issues it is they tend

to accept documentation which has been approved by more advanced jurisdiction such as Europe, Australia or USA.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Recommended, but no specific format is required.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Yes. It is tax deductible, if reasonable



Thailand

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Normally, it is subject to 15% withholding tax. This withholding tax rate can be reduced or exempted according to the double taxation agreements between Thailand and the country where the related company registered in/providing the service from.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

In case that Thailand paid management fee to other country, it is subject to 7% VAT (reverse charge mechanism applies).

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Increasingly they do.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be reduced to an amount, so that the remaining service charge can be considered arm's length.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. On 23 April 2010, the Thai Revenue Department issued bilateral

advance pricing arrangement guidelines.

Are there any other important items you would like to mention?

No.

Main point of contact

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Trinidad and Tobago

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No. There are no specific laws on Transfer pricing enacted in Trinidad and Tobago. However, Taxpayers have been using the OECD Transfer pricing guidelines as persuasive authority in dealing with tax disputes with the Tax Authorities.

Does specific legislation exist in your country regarding transfer pricing in general?

No. There are no specific laws on Transfer pricing. However there is a general anti tax avoidance provision which enables the BIR to set aside a transaction that it considers to be 'artificial' or 'fictitious' designed solely for tax purposes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No transfer pricing cases per se. However, there is case law which deals with the types of payments that are captured under the statutory definition for "management charges" wherein head office allocation is a sub-category thereof.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

These are not generally deductible expenditure since they are considered capital in nature.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Since there are no laws, any accepted method may be used and relied on.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

"Cost plus" method is used but the Transactional Profit Split Method is common.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Varies drastically from sector to sector. However, mark ups may range from 6% to 20%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes. It is possible to do charge back without a mark up.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Benchmark studies are unusual.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

It is highly recommended. There is no specific format.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

It is highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

This is optional.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

It is optional but can be very useful to support the service charge claim.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Under general legislation, a limited portion of the expense is deductible. More specifically, the tax deductibility of management charges (i.e. charges made for the provision of



Trinidad and Tobago

management services and charges made for the provision of personal services and technical and managerial skills, head office charges, foreign research and development fees and other shared costs charged by the head office) is the lower of the management fee and 2% of total allowable expenses and allowances other than capital allowances and the management charge itself.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. Standard rate of withholding tax is 15% on such services. However, the rate may be varied by the presence and applicability of a Double Tax Treaty.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

These services would qualify as the provision of services which is a standard rated supply and therefore would be subject to VAT at 15%. Thus, to the extent that a T&T company.

Do the tax authorities focus on the transfer pricing of services during tax audits?

It is not a key focus but they would generally require the Taxpayer to provide information as to support the charges.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

Generally, we would see a denial of the whole charge. Although partial disallowance is also used.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No. They do not. Generally tax rulings are rarely if ever given and secondly, there is no transfer pricing regime enacted by law.

Are there any other important items you would like to mention?

It is anticipated that transfer pricing legislation will be introduced based on the OECD guidelines. However, we are unsure as to when this enactment will be made.

Main point of contact

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Turkey

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes.

Are there any rules regarding the benefit test?

Yes.

Are shareholder expenses defined in the local legislation?

Yes.

How are the shareholder expenses treated in your country?

Shareholder expenses are non-deductible.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

It depends on the nature of the expenses to be allocated. Head count, transaction number, asset size in comparison to group's total asset size, sales vs. group sales and such similar keys are useable provided that used key can be supported with economic reasons.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Resale minus is also used for certain type of services that bear limited functions/risks.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Between 5% and 10%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Yes.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Yes. International databases such as Amadeus, Bankscope, Isis, Orbis, Oriana, Osiris, Compustat, Worldscope Disclosure, Edgarstat are used.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required in Turkish Language and in line with the TP documentation report's disposition announced by Ministry of Finance.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly Recommended. Required by tax inspectors although there is not legal obligation.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible w/o any restrictions.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. 20%. 183 days rule applies if there is a Double Tax Treaty.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Reverse Charge Applies. Rate is 18%.



Turkey

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The portion which is higher than arm's length charges is accepted as profit distribution and 15% profit distribution WHT is imposed. In case of applicable DTT, DTT rates are essential.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes. APA is applicable.

Are there any other important items you would like to mention?

Annual Documentation is mandatory for the related party transactions realised between international related parties. There is also a detailed TP table filled as an appendix to the Annual Corporate Tax Declaration.

Main point of contact

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Turkmenistan

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No. Turkmenistan does not officially recognise the OECD TPG.

Does specific legislation exist in your country regarding transfer pricing in general?

No. Turkmenistan does not have separate TP legislation. Some TP provisions are included in the Tax Code.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

N/A

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

N/A

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

No.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

N/A

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

N/A

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Highly recommended. This study should serve as an additional justification for the clients. The search type/geography is not specified by legislation.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended. This documentation should serve as an additional justification for the clients. Legislation does not set the required format for the documentation. Translation into Turkmen language is necessary.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Highly recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges: 1) can be regarded arm's length; 2) do not need to be capitalized as part of the acquisition costs of an asset; 3) do not qualify as non-deductible costs of a loan, and sufficiently documented.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Management services are subject to Turkmen withholding tax at 15%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Management services are subject to Turkmen VAT.



Turkmenistan

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Especially on whether a service actually has been provided.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment may be determined as the denial of the whole service charge.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

TP is a new area in Turkmenistan. In most cases the Turkmen tax authorities apply their own judgement in the absence of TP legislation. The clients are advised to prepare sufficient documentation.

Main point of contact

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Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No.

Does specific legislation exist in your country regarding transfer pricing in general?

No transfer pricing legislation currently in place.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

N/A

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

N/A

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

N/A

What is the level of profit mark-up on the costs of the services you see in practice in your country?

N/A

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

N/A

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

N/A

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

N/A

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

N/A

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

N/A

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

N/A

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

N/A

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

N/A

Do the tax authorities focus on the transfer pricing of services during tax audits?

N/A

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

N/A



Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

N/A

Are there any other important items you would like to mention?

UAE does not have corporation tax at the federal level with the exception of companies involved with oil and gas.

Main point of contact

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Ukraine

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Formally, no. There is no reference to the TPG made in normative acts of Ukraine. However, the methods of arm's length price determination, stipulated by Ukrainian Tax Code, are generally in line with those, stipulated by TPG.

Does specific legislation exist in your country regarding transfer pricing in general?

Ukrainian Tax Code envisages rules that regulate the cases when arm's length prices are applied and how such prices are to be determined.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation. But the case law exists that provide that the intragroup services should be properly documented and reasonably priced.

Are there any rules regarding the benefit test?

In order to be deductible any payments for goods (works, services) should be clearly related to the business activity of Ukrainian entity making the payment. Therefore, in case of intragroup charges the question with proving the benefit of the services for the Ukrainian entity often occurs. Yet, the legislation does not provide for any clear benefit test. This is determined on the case-by-case basis and with due consideration of the available evidences.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by the shareholder. The Tax Code of Ukraine provides for the direct prohibition on deduction of expenses made for maintaining head offices which are separate legal entities (paragraph 139.1.7 of Article 139).

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Only direct-charge method, i.e. where an associate entity is charged for specific services, is accepted. Thus, Ukrainian currency control rules require the license for most of payments abroad in foreign currency with exception of the limited types of payments, including payments for specific goods, works, services. Also, Ukrainian entity should be able to show that it actually received the specific services for which the payment was made within 90 days from the day of payment. Otherwise, the sanctions in the form of penal interest may be applied. Indirect charge method is also likely to result in tax implications such as denial of deductible expenses of the whole amount paid.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. Cost plus method is used most often in case of such services.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

When the services are charged to an associate entity, established in Ukraine, the fee for the services may not include any mark-up although it should be clear from the documents that it is service fee and not just reimbursement of costs (i.e. this concerns formal representation of the amount charge but not the substance as such). Thus, in this case it would be indifferent for Ukrainian tax authorities whether a mark-up is charged by foreign entity. However, in the opposite situation, i.e. when the services are charged by Ukrainian entity, it is advisable to impose mark-up.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Optional. If the value of services charged to Ukrainian entity exceeds EUR 100'000 then mandatory pricing expertise of the services shall be passed as pre-condition of remittance the payment. This pricing expertise is conducted by the specialized state agency (DZI).



Ukraine

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Recommended. There is no requirement to have such documentation. However, Ukrainian tax authorities have the right to request explanations of the approach to pricing and therefore it is recommended to have such documentation in order to be able to immediately answer the request. No specific format of transfer pricing documentation is established, yet in order to be accepted by the tax authorities such documents should be composed in Ukrainian language.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Recommended. Such request may be used as an evidence that Ukrainian entity is provided with specific service which is beneficial for its business activity.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Optional.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided that they are related to the business activity of Ukrainian legal entity and their price is at arm's length. It is recommended also to be able to confirm that the services have actually been provided and this is not just payment for covering the costs of a holding company which deduction is directly banned.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Depends on the substance of the services. Is subject to Ukrainian VAT if the place of supply of the services is deemed to be Ukraine. In most of the practical cases the place of supply of such services is in Ukraine. If provided by non-resident to Ukrainian entity the VAT will be charged by the latter entity under the reverse charge mechanism.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Especially starting from January 1, 2013 when the new rules of the Tax Code regarding arm's length prices came into force.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The tax authorities have the right to determine additional tax liabilities by way of adjusting the price to the level of arm's length prices. In other words, only a part of the service charge will be denied. There is no clear rules followed by the tax authorities in setting a mark-up. In some of the cases, known to us, the tax authorities have set the mark-up on the level of the discount rate of the National Bank.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

The Tax Code provides the large taxpayers with the possibility to enter APA with the tax authorities. However, these rules are new (applicable since the beginning of this year) and there is no developed practice of their implementation as yet.



Ukraine

Are there any other important items you would like to mention?

Currently the possible amendments of transfer pricing rules are considered by Ukrainian Parliament. These amendments if introduced will profoundly change the transfer pricing system in Ukraine. Among other things, periodic submission by some categories of taxpayers of transfer pricing documentation is envisaged.

Main points of contact

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United Kingdom

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. Explicitly so.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No. There is some brief comment on the policy of the tax authority, but this is not binding on the taxpayer.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

OECD principles apply.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Both accepted. Common keys are sales, headcount, number of network users.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

C+ is the most common. CUP is also used.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Usually 5-10%.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

If the service provider is in the UK, there is no safe harbour or general practice under which it would be allowed to have no mark up.

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Not mandatory, but advisable. If sufficient UK comparables are not available, taxpayers would normally use European comparables, but there is no official UK rule or policy on this. UK taxpayers use the normal commercial databases, such as those of Bureau van Dijk.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Documentation is not mandatory, but without it the tax authority would presume that the taxpayer has been negligent in applying the TP rules and would therefore apply penalties on any TP adjustments. They would be likely to require translation of any non-English docs.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Not mandatory, but advisable.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Not required. Not common.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided not in excess of arm's length amount and provided not disallowed under general tax rules (e.g., capital, not wholly and exclusively for purpose of business, entertainment).

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Not unless it is a royalty.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Normal EU rules apply.



United Kingdom

Do the tax authorities focus on the transfer pricing of services during tax audits?

Often.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

If service recipient is in UK, excess above arm's length amount is non deductible. If the mark-up exceeds the arm's-length mark-up, it would most likely be adjusted to the top of the range of arm's-length mark-ups. However, it should be noted that the UK tax authorities do not accept that the interquartile range is necessarily the same thing as the arm's-length range. In practice, they would be much more likely to argue about whether costs should be excluded, rather than worrying about the mark-up percentage.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes.

Are there any other important items you would like to mention?

No.

Main points of contact

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United States

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

Yes.

Are there any rules regarding the benefit test?

Yes.

Are shareholder expenses defined in the local legislation?

Yes.

How are the shareholder expenses treated in your country?

To be borne by the shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Yes. Both direct- and indirect-charge methods are accepted. Examples include, sales, headcount, time spent, square footage, number of computers/email addresses, etc.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

The comparable profits method ("CPM") is the most commonly used method, with a net cost plus ("NCP")

profit level indicator ("PLI"), where NCP is defined as operating profit divided by total costs.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

Case by case.

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

The U.S. Regulations do not follow the OECD Guidelines. However, there is a list of low margin services for which no mark-up may be required, provided that certain conditions are met.

Is a benchmark study required/ highly recommended/recommended/ optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

For all services that are determined to confer a benefit to the recipient and pass the other requirements for a mark-up to be applied, a benchmarking analysis should be performed. There are a number of U.S. databases that may be used to perform such a study. The most common database is Standard & Poors' Research Insight (Compustat) North American Database.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/ optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required in English.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/ optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/ optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/ optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

In the U.S., an emphasis is placed on testing the ex-post results rather than ex-ante expectations/policies. It is advisable to maintain a legal agreement outlining the contractual terms of the arrangement. However, the economic substance of the transaction and the arm's length nature of the actual results form the most important elements of support for an intercompany transaction.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible provided that they meet the requirements set forth in the Regulations (e.g., benefit test, non-shareholder expenses, non-duplicative, etc.).



United States

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

No.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

N/A

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

It depends on the nature of the challenge by the tax authority. The mark-up may be challenged or the substance and economic rationale of the entire charge may be challenged.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Yes.

Are there any other important items you would like to mention?

No.

Main point of contact

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Uruguay

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

Yes. The transfer pricing regulations in Uruguay, generally followed the OECD guidelines, with some differences (e.g.. the concept of related companies is more comprehensive than the concept of "associated enterprise" (OCDE)) that have an impact on the problem of services.

Does specific legislation exist in your country regarding transfer pricing in general?

Yes.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No specific legislation and/or case law. Please note that transfer pricing regulations in Uruguay are in force since 2007. The Uruguayan Tax Law only recognizes one type of services, technical services.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by that shareholder.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

The methods provided by the internal regulations (both the direct and indirect charge methods) are the same as those contained in the OECD guidelines, with the difference that a hierarchy is not established in the application of the methods.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Yes. The cost plus method is the commonly used to TP to charge service costs. Also the transactional net margin method is used to assess the price of services.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

5%-10%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

Not expressly established the situations in which it is possible to bill services at cost without a profit margin (a profit mark-up).

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

A benchmark study is required. The comparability analysis and justification of the PT can be performed about the

situation of the foreign entity. The current legislation on transfer pricing contains no reference or indication of the databases that can be used. We understand there is freedom in this sense to the extent that would achieve the objectives set (arm's length price).

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required. The Uruguayan authorities may ask for a Spanish translation, if necessary and legalization.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Highly recommended.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Recommended.



Uruguay

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

There are specific restrictions.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. In specific cases. 0,6% to 12%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Services rendered (localized) abroad are not subject to indirect taxation.

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. In particular if the service was effectively provided and proof of the arm 's length remuneration.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment will be set at an amount. Profits levels outside the interquartile range will in principle be adjusted to the median (decreased or increased by 5%).

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

APA agreements (unilateral, bilateral or multilateral) can be concluded with the tax authorities in Uruguay

on all transfer pricing related matters. No fees are due to the Uruguayan authorities for such APA.

Are there any other important items you would like to mention?

Since late last year Uruguayan legislation on transfer pricing provides a significant financial penalty applicable to infringements of formal duties (which can reach up to USD 250,000).

Main point of contact

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Uzbekistan

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

No. Uzbekistan does not officially recognise the OECD TPG.

Does specific legislation exist in your country regarding transfer pricing in general?

No. Uzbekistan does not have separate TP legislation. Some TP provisions are included in the Tax Code.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No.

Are there any rules regarding the benefit test?

N/A

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

To be borne by that shareholder

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

N/A

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

No.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

N/A

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

N/A

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual?

What benchmark study/database can be used if local benchmark studies/databases are not available?

Highly recommended. This study should serve as an additional justification for the clients. The search type/geography is not specified by legislation.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Highly recommended. This documentation should serve as an additional justification for the clients. Legislation does not set the required format for the documentation. Translation into Uzbek (or Russian) language is necessary.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Highly recommended.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

Highly recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible, provided the charges:
1) can be regarded arm's length;
2) do not need to be capitalized as part of the acquisition costs of an asset;
3) do not qualify as non-deductible costs of a loan, and sufficiently documented.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Management services could be subject to Uzbek withholding tax at 20%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Management services could be subject to Uzbek VAT.



Uzbekistan

Do the tax authorities focus on the transfer pricing of services during tax audits?

Yes. Especially on whether a service actually has been provided.

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

A transfer pricing adjustment may be determined as the denial of the whole service charge.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

No.

Are there any other important items you would like to mention?

TP is a new area in Uzbekistan. In most cases the Uzbek tax authorities apply their own judgement in the absence of TP legislation. The clients are advised to prepare sufficient documentation.

Main point of contact

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Vietnam

Do the OECD Transfer Pricing Guidelines ("TPG") form the basis of the transfer pricing legislation in your country?

They are implemented in the Vietnamese Regulations, esp. "Circular 66 Providing Guidelines on Calculation of Market Prices in Business Transactions between affiliated Parties, dated 22 April 2010".

Does specific legislation exist in your country regarding transfer pricing in general?

Yes. Circular 66.

Does specific legislation/regulations and/or case law exist in your country regarding the transfer prices of head offices/intra group services?

No. Covered by Circular 66.

Are there any rules regarding the benefit test?

No.

Are shareholder expenses defined in the local legislation?

No.

How are the shareholder expenses treated in your country?

Following the regulation on CIT laws.

Are both the direct- and indirect-charge methods accepted in your country and what allocation keys do you mainly see in practice when the indirect-charge method is applied?

Vietnam does not specifically mention about these methods.

Is the cost plus method the commonly used TP method to charge service costs or are other methods applicable?

Methods covered by Circular 66 are: Comparison of prices of independent transactions; reselling Prices; Prime Cost plus Profits; Profit Division.

What is the level of profit mark-up on the costs of the services you see in practice in your country?

2%-5%

Given paragraph 7.37 TPG, is it possible to not impose a profit mark-up when the actual costs are charged?

-

Is a benchmark study required/highly recommended/recommended/optional/not necessary/unusual? What benchmark study/database can be used if local benchmark studies/databases are not available?

Recommended.

Is transfer pricing documentation to document the (management) service charges of a head office or group company required/highly recommended/recommended/optional/not necessary? Does it need to have a specific format and should it be in a local language?

Required, must be in Vietnamese.

Is a legal agreement documenting the terms and conditions of the services provided required/highly recommended/recommended/optional/not necessary?

Required, must be in Vietnamese.

Is an annual upfront request by the service recipient to the service provider for the provision of the services required/highly recommended/recommended/optional/not required?

Not required.

To ensure the acceptability of the type of costs included in the service charge to the service recipient, is an audit statement required/highly recommended/recommended/optional/not necessary (that the charge is in line with the TP policy/legal agreement)?

highly Recommended.

Are (management) service charges tax deductible in your country, or are there any specific restrictions according to local law?

Deductible.

Is (withholding) tax due on the payment of (management) service charges to the head office/a group company, and against which rate(s)?

Yes. Effective VAT-Rate 10% and CIT Rate 5%.

What would be the VAT/indirect tax treatment of the head office/intra groups service charge?

Withholding Tax is applied, see above.

Do the tax authorities focus on the transfer pricing of services during tax audits?

increasingly yes.



Vietnam

How will a transfer pricing adjustment be determined? Denial of the whole service charge or only of a part of the service charge? Where in the range will the profit mark-up be set?

The adjustment will effect part of the service charge.

Do the tax authorities have a well developed unilateral/bilateral/multilateral Advance Pricing Agreement (APA) program in your country, providing certainty on transfer pricing matters in advance?

Will be available in near future.

Are there any other important items you would like to mention?

Transfer Pricing will have considerable importance for all foreign invested companies in VN.

Main point of contact

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This International TP Survey and Country Guide provides a comprehensive overview of the tax regimes in 79 countries as particularly relevant for transfer pricing. All details and information contained herein are accurate and correspond to the legal status as of July 2103, unless otherwise indicated.

The list provides at-a-glance TP tax information for each country surveyed. This publication is written as a general guide only providing an overview of selected information based on applicable laws and regulations which may change in the course of time. Therefore, this guide should not be relied upon as a substitute for specific tax and/or legal advice which the offices of the WTS Alliance firms in the respective countries are gladly available to provide at any time.

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