Transfer Pricing Card

Effective 1 January 2021

Comparison of the main transfer pricing regulations in the Baltics and Belarus

SORAINEN

ESTONIA

GENERAL RULES

- Transfer pricing (TP) regulations are in line with the Organisation for Economic Cooperation and Development (OECD) TP Guidelines, while some provisions on TP documentation are borrowed from the EU Joint Transfer Pricing Forum recommendations. OECD TP Guidelines can be used to implement domestic TP regulations as long as they are in line with Estonian tax law.

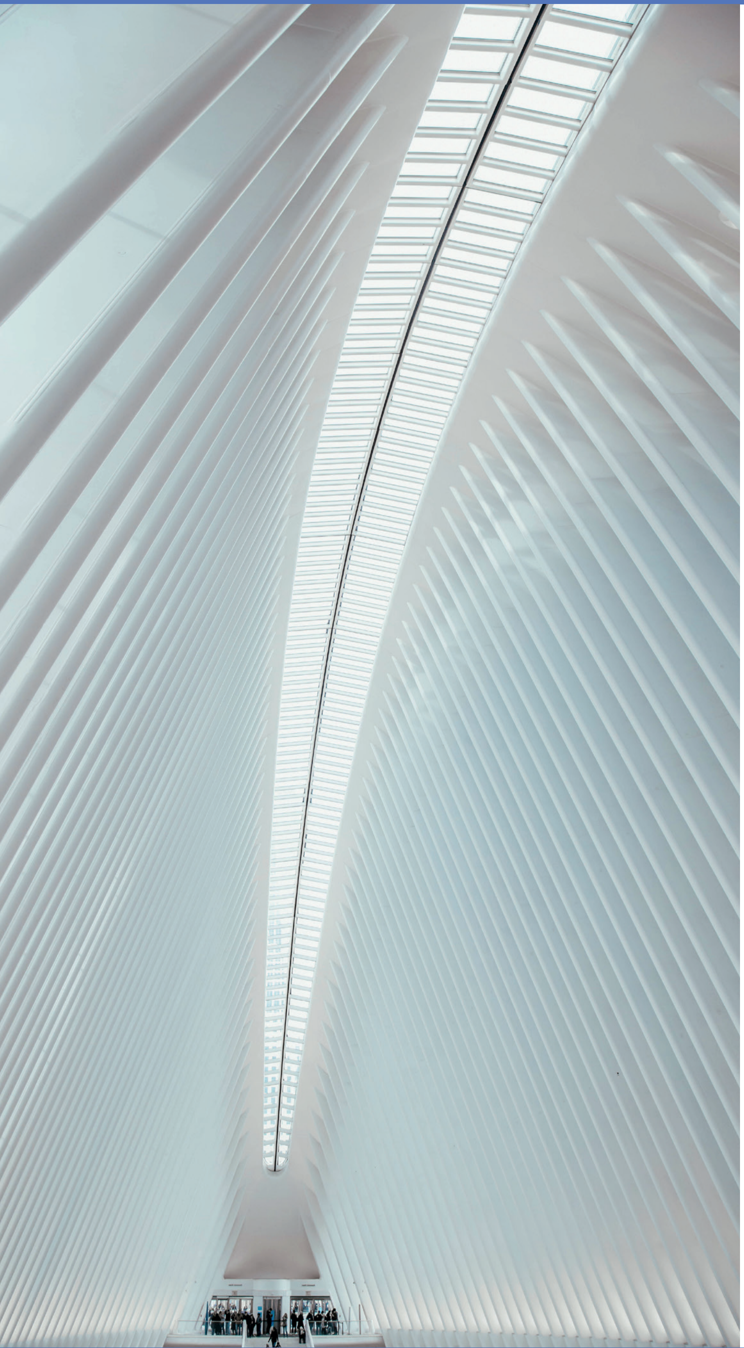
DEFINITION OF RELATED PARTY

- Persons are assumed to be related parties if they have common economic interests or if one person has a dominant influence over the other. The Income Tax Act lists persons that are considered as related parties in any case, such as:
    - companies that are members of one group;
    - individual and legal persons where more than 10% of the share capital, votes or right to profits belong to the same individual;
    - related individuals, employers and employees;
    - a company and a member of its controlling body;
    - legal persons where more than 50% of the share capital, votes or right to profits belong to one and the same person or associated persons;
    - persons who own more than 25% of the share capital, votes or right to profits in one and the same legal person;
    - legal persons where all management board members are one and the same;
    - transactions between subsidiaries if tax is charged on at least one of them for income received from international carriage of goods or passengers by sea.

TP DOCUMENTATION REQUIREMENTS

- A company and a non-resident operating in Estonia through a permanent establishment must prepare comprehensive TP documentation on its operations if the consolidated results with related parties meet at least one of the following criteria:
    - annual sales in the year preceding the relevant transaction exceeded EUR 50 million;
    - total assets exceed EUR 43 million;
    - employees number at least 250.
- Additional TP regulation documentation requirements apply to:
    - credit institutions, insurers, listed companies;
    - transactions with persons residing in low-tax territories.
- Local companies not reaching these thresholds are also required to prove the arm's length nature of related-party transactions and apply general documentation rules.

ESTONIA



MANDATORY TP DOCUMENTATION CONTENT

- Regulation No. 53 on TP provides the structure for TP documentation, which essentially follows the recommendations of the EU Joint Transfer Pricing Forum Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union, i.e. documentation should consist of two parts – a master file and a country-specific file. In practice the required information on a group or a particular taxpayer can be provided in a single TP documentation file.
- TP documentation does not have to be in Estonian; however, documents must be translated into Estonian if so requested by the tax authorities.
- TP documentation must be presented to the tax authorities within 60 days of the request.

RECOGNISED TP METHODS

- TP methods in use: comparable uncontrolled price (CUP) method, resale price, cost plus, profit split, transactional net margin method (TNMM), or any other sufficiently substantiated method.

TAX AUDITS AND PENALTIES

- In the case of failure to file a declaration as required or failure to correct errors in the declaration, the tax authority can impose a fine of EUR 3,200. Unpaid taxes due to not presenting data or presenting incorrect data to the tax authorities may lead to misdemeanour proceedings (if the amount of unpaid taxes does not exceed EUR 40,000) and a fine up to EUR 32,000 or to criminal proceedings (if the amount of unpaid taxes exceeds EUR 40,000) and a five-year prison term or a significant fine.
- If an audit by the tax authorities results in TP adjustments, late payment interest (daily rate 0.06%/yearly rate 21.9%) applies to the unpaid tax amount. Late payment interest is subject to corporate income tax at a rate of 20/80 (25% on the net payment).
- Upon deferral of tax debt payments, the tax authority has the right to reduce the interest rate by up to 50 per cent from that date the deferral decision is adopted, and in justified cases from the date of incurrence of the tax debt.
- Tax audits can go back three years from the date the tax becomes payable (five years in the case of international non-payment of taxes).

EXTENT OF ENFORCEMENT

- If the Tax and Customs Board finds that a transaction is not at arm's length, it will adjust the transaction values, determine the tax obligation and impose delay interest. Additionally, misdemeanour or criminal proceedings may be initiated.
- There have not been enough TP cases are not enough to generalise as to what extent penalties are enforced in practice.

ADVANCE PRICING AGREEMENTS (APA)

- APAs are not available in Estonia.

LATVIA

GENERAL RULES

Transactions with related parties should be at arm’s length. TP rules are set in accordance with Latvian tax law and OECD TP Guidelines.

DEFINITION OF RELATED PARTY

- Under domestic tax law the arm’s length requirement applies to transactions:
  - between parent and subsidiary companies;
  - with foreign related companies:
    - with at least a 20% shareholding; or
    - when a controlling interest belongs to the same individual/-s (up to 10 individuals); or
    - when a controlling interest in the other party belongs to a related individual (spouse, relatives up to the three degrees);
  - related individuals (spouses, relatives up to the three degrees) own more than 50% of the share capital or the share value of a commercial company;
  - any other person/-s if the main aim is reduction of the tax burden;
  - persons registered in low-tax or zero-tax territories.

TP DOCUMENTATION REQUIREMENTS

- Taxpayers must prepare a master file and/or local file in line with content set by OECD Guidelines in the following situations:

Transaction party	When is a Master File required?	When is a Local File required?	Submission deadlines to tax authorities
Foreign related party or company registered in a blacklisted jurisdiction	If the transaction amount is > EUR 15m; or if turnover is > EUR 50m and the transaction amount is > EUR 5m.	If the transaction amount is > EUR 5m	Mandatory submission within 12 months of the end of the tax year.
	If turnover is < EUR 50m and the related party transaction amount is from EUR 5m to EUR 15m.	If the transaction amount is from EUR 250k to EUR 5m.	Prepared within 12 months of the end of the tax year and submitted to the tax authorities within 1 month of a request.
Latvian related party (only if transactions take place within one supply chain with a foreign related party)	N/A	If the transaction amount is > EUR 250k	Should be prepared only if required by tax authorities. Submission within 90 days of the receipt of a request (may be extended by 30 days).

LATVIA

- TP documentation must be revised and updated every year. However, if the taxpayer is not subject to mandatory submission of TP documentation to the tax authorities, it only has to update financial data used in the analysis every year, whereas all TP documentation must be revised once every three years. Additionally, TP documentation is not required for transactions below EUR 20,000.
- In the case of a tax audit, companies not reaching these thresholds must also be able to prove that their related-party transactions are arm’s length.
- The Latvian State Revenue Service (SRS) may require TP documentation from the taxpayer in order to ”verify the risks of TP adjustments, to advise on possible TP adjustment risks, to offer voluntary adjustment of the corporate income tax (CIT) return or to invite the taxpayer to initiate the advance agreement procedure (APA)“. In this case the TP documentation should be submitted within 90 days of the date of the request (with the possibility to extend the deadline by 30 days).
- Although the SRS generally requires taxpayers to submit any tax-related information in Latvian, the master file may be submitted in English.

MANDATORY TP DOCUMENTATION CONTENT

- Mandatory TP documentation should include the following information:
  - company analysis;
  - functional analysis;
  - economic analysis of transactions between related parties, including a description of the transaction, selection of the TP method and a benchmarking study (if applicable).

RECOGNISED TP METHODS

- OECD TP guidelines may be used for application of TP methods.
- Five TP methods are recognised:
  - CUP method;
  - resale price;
  - cost-plus;
  - TNMM; and
  - profit split.

TAX AUDITS AND PENALTIES

- If a taxpayer does not comply with the TP documentation submission and if it significantly violates the TP documentation preparation rules, a penalty of up to 1% of the related party transaction value (for which the taxpayer is obligated to prepare the TP documentation) may be applied, but no more than EUR 100,000.
- A “significant violation” includes incomplete TP documentation (information requested is not included in the TP documentation) meaning that it is not possible to conclude whether the agreed price is arm’s length.
- Late payment penalty is applied at 0.05% daily.
- TP adjustments made during audit might trigger value added tax (VAT) adjustments, without the right to adjust corresponding input VAT.
- Tax audits can go back 3 years, except for TP transactions with persons that are not Latvian tax residents, where a tax audit can go back 5 years.

EXTENT OF ENFORCEMENT

- If the SRS thinks that a transaction is not arm’s length, it will adjust transaction values and impose penalties.
- When TP documentation and other supporting documents have been prepared, the SRS examines the contents and challenges applicability of the analysis.

ADVANCE PRICING AGREEMENTS (APA)

- A taxpayer at its own initiative or by agreement with the SRS can enter into an APA with the SRS on determining the market price for a transaction or certain types of transaction with a related foreign company if the transaction amount (actual or planned) exceeds EUR 1.43 million annually. APA may be issued for 5 previous or 5 future tax years.
- The SRS charges a fee of EUR 7,114 for evaluating a taxpayer’s application for APA.

LITHUANIA

GENERAL RULES

- Lithuania follows the OECD TP Guidelines and the provisions of double taxation treaties. Taxpayers may follow the OECD TP Guidelines unless these contradict domestic law.

DEFINITION OF RELATED PARTY

- For transfer pricing purposes, the following parties are regarded as related:
    - an entity and its shareholders and members;
    - an entity and the members of its managing bodies;
    - an entity and the spouses, fiancés, cohabitees, relatives (up to the fourth degree) and in-laws (an individual's spouse's relatives (up to the fourth degree) and the relatives (up to the second degree) of the spouses of the individual's relatives (up to the second degree)) and the testamentary heirs of the members of the entity or the members of the entity's managing bodies;
    - the members of a group of entities;
    - an entity and the members of another entity controlling over 25% of that other entity's shares, if the latter entity and its members comprise one group of entities;
    - an entity and the members of the managing bodies of another entity if these entities comprise one group of entities;
    - an entity and the spouses, fiancés, cohabitees, relatives (up to the fourth degree) and in-laws (an individual's spouse's relatives (up to the fourth degree) and the relatives (up to the second degree) of the spouses of the individual's relatives (up to the second degree)) and the testamentary heirs of the members of the managing bodies of another entity if both taxable entities make up one group of entities;
    - an entity and the spouses, fiancées, cohabitants and other natural persons of the participants of another entity controlling over 25% of the shares in that other entity, or members of the management bodies related to the participants of another entity or members of the management bodies to the first degree (direct lineage), collateral relationship line up to the second degree of consanguinity or as in-laws (a natural person and his spouse's relatives (a direct line to the first degree, an indirect line to the second degree)), as well as relatives up to the first degree cohabiting with members of another unit or with the spouses of members of management bodies, in a indirect line up to the second degree), and spouses or cohabitants of participants in another unit or members of management bodies (direct relationship up to the first degree, indirect line up to the second degree), if those taxable units form one group of units;
    - two entities if one of them directly or indirectly (through one or several entities or individuals) controls over 25% of the shares (ownership interests) in the other entity, or has over 25% of the voting rights in the other entity, or has an obligation to coordinate its business decisions with the other entity, or has assumed the obligations to third parties of that other entity, or has assumed an obligation to transfer to that other entity all or part of its profits, or has conferred on that other entity the right to use over 25% of its assets;
    - two entities if the same members or their spouses, fiancés, cohabitees, relatives (up to the fourth degree) or in-laws (an individual's spouse's relatives (up to the fourth degree), and the relatives (up to the second degree) of the spouses of the individual's relatives (up to the second degree)) or testamentary heirs directly or indirectly controlling over 25% of the shares (ownership interests) in each entity;
    - an entity and its permanent establishment; and
    - two entities if one of them has a decision-making right in respect of the other entity.
- TP rules also apply to transactions with associated parties, which are broadly defined as other entities having an influence on each other.

LITHUANIA

TP DOCUMENTATION REQUIREMENTS

- Taxpayers must prepare a master file and/or local file in line with the content set out by the OECD Guidelines in the following situations:
  - a master file is mandatory for Lithuanian companies and foreign companies operating in Lithuania through a permanent establishment whose income in the previous tax period exceeded EUR 15 million and if they belong to an international group of companies;
  - a local file must be prepared by Lithuanian companies and foreign companies operating in Lithuania through a permanent establishment whose income in the previous tax year exceeded EUR 3 million, as well as financial companies, credit institutions and insurance companies irrespective of their level of income.
- The obligation to file form FR0528 with the tax authorities arises if the value or total value during the tax year of transactions or economic operations with associated parties equals or exceeds EUR 90,000.
- Transfer pricing documentation is not mandatory if the transaction value does not exceed EUR 90,000, unless:
  - the total value of all transactions with the same person exceeds EUR 90,000;
  - the transaction is inseparably related to another transaction with a value exceeding EUR 90,000;
  - the transaction is concluded with a person registered in a target territory (“offshore jurisdictions”).
- TP documentation can be submitted in a language other than Lithuanian; however, the documents must be translated into Lithuanian if so requested by the tax authorities.

TERMS

- The deadline for preparing transfer pricing documentation is 15 June of the next tax period. Upon a request from the tax administrator, documentation must be submitted within 30 days.
- Transfer pricing documentation (including comparative transaction data) may be updated every three years if the terms and conditions of controlled transactions do not change significantly;
- The data of a controlled transaction must itself be updated annually.

New transfer pricing requirements were introduced at the end of 2020:

- A simplified approach for low value-adding group services, by allowing taxpayers to apply a mark-up of 5% of the allocated costs without the need to perform a benchmarking study.
- Simplified tax administration processes with regard to controlled transactions related to hard-to-value intangibles and provisions, allowing the tax administrator to retroactively adjust the price of the controlled transaction on the basis of information received after the transaction.
- Simplified procedures for documenting controlled transactions, with the elimination of a requirement to prepare transfer pricing documentation for transactions between Lithuanian taxpayers. Clarification of the procedure for applying the transactional profit-split method.
- The updated requirements relating to documentation of low value-adding intra-group services and transactions between Lithuanian taxpayers will apply with regard to the calculation of corporate income tax for 2020 and for subsequent tax periods.
- In a related development, the Lithuanian tax authorities have announced there will be increased focus on controlled international transactions, with special attention paid to financing and services transactions.

LITHUANIA

MANDATORY TP DOCUMENTATION CONTENT

- TP documentation should include:
  - industry analysis;
  - company analysis;
  - functional analysis;
  - economic analysis of transactions between related parties, including a description of the transaction, selection of TP method, and a benchmarking study (if applicable).
- As well as the usual information, it is necessary to disclose the group's functional analysis, to provide data on the group's intangible assets, to explain the group's funding policy, reorganisations, agreements with the tax administrator and other aspects in the master file.
- Additional information on an international group of companies (as far as it is relevant to the controlled transaction is concerned), and performance analysis of the company, as well as detailed information on the reorganisation (and its alternatives), agreements with the tax administrator should be described in the local file.

RECOGNISED TP METHODS

- TP methods in use: CUP method, resale price and cost-plus methods, TNMM and profit split methods. If equal opportunities exist for the application of each of these methods, priority is given to traditional methods, i.e. the first 3 methods (especially the CUP method). A combination of methods may be used in all cases to support transfer prices. The possibility of using financial valuation techniques has been introduced.

TAX AUDITS AND PENALTIES

- For TP the tax audit term will remain the same, at five years.
- A fine of 10-50% of underpaid tax is imposed.
- Late payment interest applies, at 0.03% daily.
- Failure to file TP documentation will incur a warning or a fine of EUR 1,820 to 6,000. The fine is imposed on the head of the company.

EXTENT OF ENFORCEMENT

- The tax authorities mainly target companies with significant cross-border related party transactions.
- If the tax authorities think that a transaction is not at arm's length, they will adjust the transaction values and impose fines and late payment interest.
- Where an administrative sanction for failure to have TP documentation is imposed, there is a risk that the Company could be listed as an unreliable taxpayer. Taxpayers that fail to meet the "reliable taxpayer" criteria will not be able:
  - to participate in public procurement under Lithuanian law
  - to receive beneficiary status under Lithuanian law on charities and sponsorships
- Information about unreliable taxpayers will be listed publicly
- In line with the memorandum signed between the State Tax Inspectorate and the Association of Lithuanian Banks, compliance with the "reliable taxpayer" criteria will also be taken into account when the company is seeking bank financing.

ADVANCE PRICING AGREEMENTS (APA)

- APAs are available free of charge.
- An application for an APA may be filed only in respect of a future transaction or an operation to be carried out after the application is filed, and if the situation and TP issues are complex.
- The deadline for the tax authorities to issue an APA is 60 days, and is extendable by 60 days.
- An APA binds the tax authorities throughout the entire period of the transaction but for no longer than five calendar years from the year in which the decision was adopted.
- The APA is not binding on the taxpayer.

BELARUS

GENERAL RULES

- Transactions subject to local transfer pricing rules are:

Controlled transactions	Threshold – the sum of all sales to a counterparty out of indirect taxes or the sum of all purchases from a counterparty out of indirect taxes in a calendar year	
	Standard threshold	Threshold for large taxpayers*
Transactions involving the sale or purchase of real estate and housing bonds with related parties or parties enjoying a special tax regime	No threshold	No threshold
Transactions with related parties concluded in the course of foreign trade activity	BYN 400,000 (approx. EUR 130,000)	BYN 2,000,000 (approx. EUR 645,000)
Transactions with offshore residents (even with those that are not related) concluded in the course of foreign trade activity**	BYN 400,000 (approx. EUR 130,000)	
Transactions on sale/purchase of strategic goods determined by the Government (mostly natural resources) in the course of foreign trade activity	BYN 2,000,000 (approx. EUR 645,000)	
Domestic transactions with parties exempted from corporate income tax	BYN 400,000 (approx. EUR 130,000)	BYN 2,000,000 (approx. EUR 645,000)

*Belarusian companies are treated as large taxpayers if their income in the previous calendar year was not less than BYN 180,000,000 (approx. EUR 60,000,000) and if at least one of the following criteria is met:

- total taxes and duties accrued in the previous calendar year exceeded BYN 14,000,000 (approx. EUR 4,505,000);
- the difference between total input VAT for the previous calendar year and total output VAT for the previous calendar year is more than BYN 14,000,000 (approx. EUR 4,505,000).

** Since 2021 transactions of Belarusian companies with owners of the international payment systems VISA, MasterCard and American Express registered in offshore zones are not subject to transfer pricing rules.

BELARUS

DEFINITION OF RELATED PARTY

- The definition of related party includes:
  - parties that are founders (shareholders) of one company, if the direct and/or indirect participation share of each party in that company is not less than 20%;
  - a party (together with individuals mentioned in the last paragraph below) that is a founder (shareholder) of another company, if its direct and/or indirect participation share in that company is not less than 20%;
  - companies, if one party directly and/or indirectly participates in those companies and their participation share is not less than 20%, and when their beneficial owner is the same individual;
  - companies where more than 50% of the collective body or board of directors (supervisory board) consists of the same individuals (as well as individuals mentioned in the last point in this definition);
  - relationships of one party are directly or indirectly controlled by another party;
  - individuals in marital relations, proximity of blood or in-law relationships, or relationships of adoption or custody.

TP DOCUMENTATION REQUIREMENTS

- TP documentation requirements include notifying and preparing an economic rationale for the transaction price and/or TP documentation. These must be submitted to the tax authority on request.
- Taxpayers of corporate income tax must notify the tax authority of each controlled transaction and transaction with a related party by entering information on those transactions into an electronic invoice and sending the invoice to the Ministry of Taxes and Duties by means of a special portal.

MANDATORY TP DOCUMENTATION CONTENT

- TP documentation should include:
  - information on the parties to the transaction;
  - a description of the economic activity of the parties to the controlled transaction and the functions influencing the pricing that the parties performed in the transaction;
  - information on the taxpayer's field of activity (tendencies, competitive situation in the market);
  - group structure of the taxpayer, with information on the managing company;
  - information on the controlled transaction (price, aim, payment methods);
  - information on the price of identical (or similar) goods/works/services, including those posted on the web, for which a link to the site or a screenshot of the page would suffice;
  - information on the interdependence between the taxpayer and the other party to the transaction, including information on their participation share;
  - description of the transaction subject, including the trade nomenclature of foreign trade activity;
  - transfer pricing methods used;
  - other information that could prove that the transaction was carried out in line with the arm`s length principle.

RECOGNISED TP METHODS

- The following TP methods are used in Belarus:
  - comparable uncontrolled price method;
  - resale price method;
  - cost plus method;
  - transactional net margin method;
  - profit split method
- A combination of two or more methods can be used.

TAX AUDITS AND PENALTIES

- Tax audits normally go back 5 years.
- No special liability is set for breach of transfer pricing rules. General norms apply to administrative liability for non-payment of corporate income tax. Administrative fines vary depending on the circumstances accompanying the administrative offence of non-payment of taxes, and may be up to 40% of the unpaid corporate income tax.

EXTENT OF ENFORCEMENT

- The tax authorities monitor all controlled transactions carried out by taxpayers and may decide on an audit or require additional TP documentation from the taxpayer if prices in controlled transactions do not comply with the arm's length principle.
- If an audit reveals that the tax base of corporate income tax to be paid by the taxpayer is not in line with that calculated by the tax authorities under the arm`s length principle, the tax authorities may calculate additional amounts of corporate income tax and late payment interest to be imposed on the taxpayer.

ADVANCE PRICING AGREEMENTS (APA)

- Large taxpayers and/or taxpayers that exceeded the transfer pricing threshold of BYN 2,000,000 (approx. EUR 645,000) in a calendar year can apply for an APA with the tax authorities.
- The tax authorities charge a fee of 500 Belarusian basic units, which is currently YN 14,500 (approx. EUR 4,700) for evaluating a taxpayer's application for APA.

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