

Switzerland

Transfer Pricing Country Profile

July 2021

		SUMMARY	REFERENCE
The Arm's Length Principle			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>According to the case law of the Swiss Federal Supreme Court (see the specific Reference), Article 58 of the Federal Law on Federal Direct Tax of December 14, 1990 (FDTL) and Article 24 of the Federal Law on Harmonization of the Cantonal and Communal Taxes of December 14, 1990 (FTHL) create the necessary legal basis for application of the Arm's Length Principle. Both articles deal with the taxable basis for corporations.</p>	<p>Article 58(1)(b or c) of the FDTL</p> <p>Article 24(1)(a or b) of the FTHL</p> <p>And case law (see notably):</p> <ul style="list-style-type: none"> • 2C_1089/2018 of December 20, 2019, para. 11.2 • ATF 140 II 88, para. 4.2. • 2C_1082 and 1083/2013 of January 14, 2015, para. 5.1 • 2C_644/2013 of October 21, 2013, para. 3.1, or 2C_834/2011 of July 6, 2012, para. 2.1
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	Switzerland relies on the OECD Transfer Pricing Guidelines (OECD TPG) as a source for the interpretation of the arm's length principle.	
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <p>The Swiss Federal Supreme Court has in its jurisprudence (see the reference to the Revue de Droit Administratif et Fiscal) defined this expression. Accordingly, an entity is considered related if primarily a commercial or secondarily a personal close relationship exists between the two entities. Therefore, direct or indirect participation in the management, control or capital is not required. The crucial question is if the tested transaction was conducted only as a consequence of the associated relationship or not.</p>	<p>Case law (see the Revue de Droit Administratif et Fiscal - RDAF):</p> <p>RDAF 2004 II 41</p>

Transfer Pricing Methods

4	<p>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; text-align: center; border-collapse: collapse;"> <thead> <tr> <th style="padding: 5px;">CUP</th> <th style="padding: 5px;">Resale Price</th> <th style="padding: 5px;">Cost Plus</th> <th style="padding: 5px;">TNMM</th> <th style="padding: 5px;">Profit Split</th> <th style="padding: 5px;">Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> </tr> </tbody> </table>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	<input checked="" type="checkbox"/>						
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)										
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>										
5	<p>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</p>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p> <hr/> <p>Switzerland relies on the methods suggested in the OECD TPG without having any direct reference to any method in its domestic legislation. In order to select the appropriate method, Switzerland will typically look at the nature of the controlled transactions through a functions, assets and risks (FAR) analysis. The availability of reliable information and uncontrolled comparables will then be assessed and compared to the controlled transactions. Finally Switzerland will evaluate the need of comparability adjustments.</p>													
6	<p>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</p>	<p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p> <hr/> <p>Swiss domestic legislation does not contain specific guidance on commodity transactions.</p>													

Comparability Analysis

7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		In practice, Switzerland relies upon the OECD TPG and follow the guidance on comparability analysis outline in Chapter III.	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10	Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		In practice, statistical tools that take into account central tendencies like the interquartile range or other percentiles are usually used to narrow the range.	
11	Are comparability adjustments required under your domestic legislation or regulations?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Intangible Property

12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Swiss domestic legislation does not contain specific guidance on the pricing of controlled transactions involving intangibles and tends to rely on the OECD TPG.	
13	Does your domestic legislation or regulation provide for transfer pricing	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	HTVI Implementation Questionnaire

	rules or special measures regarding hard to value intangibles (HTVI)?		
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Intra-group Services			
15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Swiss domestic legislation does not contain specific guidance on the pricing of controlled intra-group services transactions and tend to rely on the OECD TPG.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No The Swiss competent authority has advised the Swiss tax administrations to apply the simplified approach for low value-adding intra-group services as described by the OECD TPG.	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Financial transactions			
18	[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Swiss domestic legislation does not contain specific guidance on the pricing of controlled financial transactions and tend to rely on the OECD TPG.	

19	<p>[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>No additional measure. However, The Federal Tax Administration had already issued circulars containing rules concerning thin capitalization and intra-group interest rate (see point 26 below).</p>	
Cost Contribution Agreements			
20	<p>Does your jurisdiction have legislation or regulations on cost contribution agreements?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Swiss domestic legislation does not contain specific guidance on Cost Contribution Agreements and tend to rely on the OECD TPG.</p>	
Transfer Pricing Documentation			
21	<p>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><i>If affirmative, please check all that apply:</i></p> <p><input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</p> <p><input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</p> <p><input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</p> <p><input type="checkbox"/> Other (specify):</p>	<p>Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinational Enterprise Groups (CbCR law; entry into force 1st December 2017)</p> <p>Ordinance on the International Automatic Exchange of Country-by-Country Reports of Multinationals (CbCR ordinance; entry into force 1st December 2017)</p>
22	<p>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</p>	<p>Besides the obligation to file a Country-by-Country report, there is no additional specific requirement concerning transfer pricing documentation. Swiss domestic legislation (Please, see the specific Reference) requires the taxpayer to provide all documents necessary for properly assessing the taxable income. In the case of related transactions, the taxpayer has to demonstrate that the transfer prices used are based on the arm's length principle.</p> <p>In the case of MAPs and APAs, Master file, Local file and all relevant information for the resolution of the case are usually required.</p>	<p>Article 124 FDTL</p> <p>Article 42 FTHL</p>

23	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The Country by Country Reporting (CbCR) law contains notification mechanisms that will apply to Ultimate Parent Entities and Surrogate Parent Entities in Switzerlandⁱ. Furthermore, there are also penalties in relation to the filing and registration obligations of CbC reportingⁱⁱ: (i) penalties for non-filing or late filing (ii) penalties for incorrect or inaccurate filing, and (iii) general penalties for non-compliance with the Swiss Federal Tax Administration's orders. Switzerland may also conduct inspections to verify that the obligations of the Constituent Entities are fulfilledⁱⁱⁱ.</p> <p>Besides the obligation to file a Country-by-Country report, Switzerland does not have specific transfer pricing legal documentation requirements, but if requested by the Swiss Federal Tax Administration or the cantonal tax authorities, taxpayers must demonstrate that the transfer prices applied to rely on sound economic and commercial reasoning and comply with the arm's length principle. Sanctions may apply if the taxpayer does not collaborate with the tax authorities.</p>	<p>Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals (CbCR law; entry into force 1st December 2017)</p> <p>Circular Letter of the Federal Tax Administration of 4 March 1997 (not available online)</p>
24	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>The CbCR law provides for exemptions only consistent with Annex III to Chapter V of the TPG (e.g. for MNE with total consolidated group revenue of 900 million Swiss Francs or less [see Article 6 CbCR law and Article 2 CbCR ordinance]).</p>	<p>Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals (CbCR law; entry into force 1st December 2017)</p> <p>Ordinance on the International Automatic Exchange of Country-by-Country Reports of Multinationals (CbCR ordinance; entry into force 1st December 2017)</p>
Administrative Approaches to Avoiding and Resolving Disputes			
25	<p>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</p>	<p>Please check those that apply:</p> <p><input checked="" type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p>	<p>Switzerland's MAP Profile</p>

		<input checked="" type="checkbox"/> Mutual Agreement Procedures <input type="checkbox"/> Other (<i>please specify</i>):	
		<p>Switzerland does not have a formal APA programme in place but it is authorised to enter into bilateral or multilateral APAs on the basis of the MAP provision in the applicable tax treaty. It allows for roll-back of APAs if it is within Switzerland's domestic time limit of 10 years. Usually, Switzerland seeks to agree on a 5 years' agreement but it can vary in practice.</p> <p>Moreover, Switzerland has a long experience in the resolution of MAPs. All the details can be found in Switzerland's MAP profile and Peer review Report.</p>	
Safe Harbours and Other Simplification Measures			
26	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>Circular No. 6 of the Federal Tax Administration of 6 June 1997 on hidden capital (not available online)</p> <p>Circular-letters of the Federal Tax Administration on the admissible interest rate for the loans in Swiss francs or foreign currencies (updated regularly and published on the website of the Federal Tax Administration)</p>
		<p>The Federal Tax Administration has issued circulars containing safe harbours rules concerning thin capitalization and intra-group interest rate.</p>	
27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		<p>The financial statements of a company can be changed, among other things to make year-end adjustments, until they are formally approved by the competent organ.</p>	
Other Legislative Aspects or Administrative Procedures			
28	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		<p>Switzerland allows but does not require taxpayers to make year-end adjustments. In the APAs for example, Switzerland could agree on a term test solution if required by the taxpayer and agreed with the other Competent Authority.</p>	

29	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		The tax administrations in Switzerland usually perform secondary adjustments.	
Attribution of Profits to Permanent Establishments			
30	[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input checked="" type="checkbox"/> Yes <i>In how many tax treaties?</i> <i>If yes, how do you implement it in cases, where the old tax treaties do not contain the new version of Article 7 (OECD MTC 2010 and later)</i> In practice and if the other Competent Authority agrees, Switzerland will tend to follow the AOA even if the treaty has not been updated with the new version of Article 7.	
		<input type="checkbox"/> No	
31	[NEW] Does your jurisdiction follow also another approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Other Relevant Information			
32	Other legislative aspects or administrative procedures regarding transfer pricing		
33	Other relevant information (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire)	A total revision of the Federal Act on the execution of International Double Tax Agreement is in front of the Swiss parliament. The main purpose of this law is to provide a legal framework for mutual agreement procedures in line with the current practice.	Dispatch of 4 November 2020 on the Federal Act on the execution of international DTA including the new law project.

ⁱ See Article 10 of the CbCR law.

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- ii See Articles 12, 25 and 26 of the CbCR law. Article 12 of the CbCR law contains a penalty for late filing or failure to file of 200 Swiss Francs per day after the filing deadline (with a maximum of 50 000 Swiss Francs). Article 25 of the CbCR law contains a maximum penalty of 100 000 Swiss Francs for willfully incorrect or incomplete CbC reports. Article 26 of the CbCR law contains a maximum penalty of 10 000 Swiss Francs for not following the administrative order of the Swiss Federal Tax Administration issued according to Article 22 of the CbCR law.
- iii See Article 22 of the CbCR law.

For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>