

United States

Transfer Pricing Country Profile

February 2022

		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	Treas. Reg. §§1.482-1 through 1.482-9
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	US transfer pricing regulations are consistent with the TPG. Neither the domestic legislation nor the regulations mention the TPG.	Treas. Reg. §§1.482-1 through 1.482-9
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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No “Controlled taxpayer means any one of two or more taxpayers owned or controlled directly or indirectly by the same interests, and includes the taxpayer that owns or controls the other taxpayers.” Treas. Reg. §1.482-1(i)(5) . This is a facts and circumstances analysis without pre-determined thresholds, as control includes “any kind of control, direct or indirect, whether legally enforceable or not, and however exercisable or exercised, including control resulting from the actions of two or more taxpayers acting in concert or with a common goal or purpose.” Treas. Reg. §1.482-1(i)(4) .	Treas. Reg. §§ 1.482-1(i)(4) and (i)(5)

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%; border-collapse: collapse; text-align: center;"> <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> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> </tr> </tbody> </table> <p>Others include variations of the methods listed above as well as income, market cap, and acquisition price methods.</p>	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"/>	<p>Treas. Reg. §§1.482-3(a), -4(a), -7(g)(1), and -9(a)</p>
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>The best method rule applies.</p>	<p>Treas. Reg. §1.482-1(c)</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 checked="" 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>The US does not have specific guidance on commodity transactions, but the guidance in Treas. Reg. §§1.482-3(b)(5) and 1.482-9(c)(5) is consistent with the guidance in the TPG paragraphs 2.18-2.22.</p>	<p>Treas. Reg. §§1.482-3(b)(5) and 1.482-9(c)(5)</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	Treas. Reg. §§ 1.482-1(c)(2) and (d) ; -3(b)(2) , (c)(3) , and (d)(3) ; -4(c)(2) ; -5(c) ; -6(c)(2)(ii) and (3)(ii) ; and 1.482-9(c)(2) , (d)(3) , (e)(3) , and (f)(2)(iii)
		US transfer pricing regulations emphasize performing a comparability analysis consistent with the TPG.	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Treas. Reg. §§ 1.482-1(c) and (d)
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	Treas. Reg. §§ 1.482-1(e) and 1.482-7(g)(2)(ix)
		Ranges or other statistical methods may be used to improve the reliability of the results.	
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Treas. Reg. §1.482-1(d)(2)
		Comparability adjustments must be made if they improve the reliability of the results with respect to material differences in the comparables.	

Intangible Property

12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Treas. Reg. §§ 1.482-4 , -3(f) , -7(g) and -9(m)(2)
		Treas. Reg. §1.482-4 provides general guidance for controlled transactions involving intangibles.	

		<p>Treas. Reg. §1.482-7(g) specifically addresses transfers of existing intangibles in connection with cost contribution arrangements.</p> <p>Treas. Reg. §1.482-3(f) is a coordination rule for tangible property transactions with an embedded intangible.</p> <p>Treas. Reg. §1.482-9(m)(2) addresses services transactions and coordination of rules for such transactions that effect a transfer of intangible property.</p>	
13	<p>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The HTVI concept corresponds to the “commensurate with income”, or “CWI” and “periodic adjustment” concepts.</p>	<p>IRC §482 (second sentence); Treas. Reg. §§1.482-4(f)(2) and (6) and 1.482-7(i)(6)</p> <p>HTVI Implementation Questionnaire</p>
14	<p>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Rules relating to the tax treatment of intangibles are too numerous to attempt to list here but one such rule of particular relevance is section 367(d). Section 367(d) requires income inclusions with respect to certain outbound transfers of intangible property in transactions that would otherwise qualify as tax-free reorganizations (in whole or in part). The regulations apply the arm’s length principle for purposes of determining the amount of such inclusions.</p>	<p>IRC §367(d) and Treas. Reg. §1.367(d)-1T</p>
Intra-Group Services			
15	<p>Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	<p>Treas. Reg. §1.482-9</p>
16	<p>Do you have any simplified approach for low value-adding intra-group services?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The Services Cost Method (“SCM”) is a specified transfer pricing method under which certain low value-adding intra-group services can be charged out at cost at the election of the taxpayer in certain circumstances.</p>	<p>Treas. Reg. §1.482-9(b)</p>
17		<p><input checked="" type="checkbox"/> Yes</p>	

	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> No Rules relating to the tax treatment of services are too numerous to attempt to list here.	
Financial Transactions			
18	[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Treas. Reg. §1.482-2 provides rules regarding pricing intercompany loans.	Treas. Reg. §1.482-2
19	[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No IRC Section 163(j) limits interest deductions as described in Action 4. IRC Section 267A limits deductions for interest and certain other payments in hybrid situations as described in Action 2. Additional rules relating to the tax treatment of financial transactions are too numerous to attempt to list here.	IRC §§163(j) and 267A, among others
Cost Contribution Agreements			
20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Treas. Reg. §1.482-7 provides rules for cost sharing arrangements (“CSAs”). The CSA regulations are consistent with the guidance on cost contribution arrangements in Chapter 8 of the OECD TPG.	Treas. Reg. §1.482-7
Transfer Pricing Documentation			
21	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If affirmative, please check all that apply:</i> <input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG	

		<input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input checked="" type="checkbox"/> Other (specify): <p>Certain documentation requirements are voluntary (but necessary to ensure penalty protection); while in certain cases particular documentation is required in order to take advantage of certain regulatory protections. In addition, certain information relevant to controlled transactions must be reported on Form 5472 information returns and provided upon request.</p>	
22	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	For penalty protection, documentation must be in existence when the return is filed and must be provided to the IRS within 30 days after it is requested.	Treas. Reg. §1.6662-6(d)(2)(iii)(A)
23	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>Taxpayers are generally not required to create or file transfer pricing documentation. However, there are penalties for inaccurate transfer pricing as specified in IRC §6662 of 20% for substantial valuation misstatements and 40% for gross valuation misstatements. Transfer pricing documentation that meets certain requirements may reduce or eliminate those penalties.</p>	IRC §6662(e) and (h); Treas. Reg. §1.6662-6(d)(2)(iii)(A)
24	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	An ultimate parent entity of a US MNE group is not required to file a Country-by-Country Report if its annual revenue for the immediately preceding reporting period was less than \$850 million.	Treas. Reg. §1.6038-4(h)
Administrative Approaches to Avoiding and Resolving Disputes			
25	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	Please check those that apply: <input type="checkbox"/> Rulings <input checked="" type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (APA)	Rev. Procs. 2015-40 and 2015-41 United States OECD MAP Profile

		<input checked="" type="checkbox"/> Unilateral APAs <input checked="" type="checkbox"/> Bilateral APAs <input checked="" type="checkbox"/> Multilateral APAs <input checked="" type="checkbox"/> Mutual Agreement Procedures <input checked="" type="checkbox"/> Other (<i>please specify</i>):	
		The US IRS participates in the OECD ICAP. For further information on MAP and APAs, please refer to the US's OECD MAP Profile.	
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 For certain loans there is a “safe haven interest rate” of 100% to 130% of the Applicable Federal Rate under the conditions specified in Treas. Reg. §1.482-2(a)(iii) . There is also a special rule for certain low value-adding intra-group services (not specifically referred to as a “safe harbour”) in Treas. Reg. §1.482-9(b) as described in item 16.	Treas. Reg. §§ 1.482-2(a)(2)(iii) and 1.482-9(b)
27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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 Such adjustments are permitted subject to the limitation in Treas. Reg. § 1.482-1(a)(3) .	
29		<input checked="" type="checkbox"/> Yes	Treas. Reg. §1.482-1(g)(3) and Rev. Proc. 99-32

	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> No Treas. Reg. §1.482-1(g)(3) provides that conforming adjustments may include treatment as a dividend or capital contribution (as appropriate). In addition, Rev. Proc. 99-32 provides an elective method to treat a conforming adjustment as a loan.	
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 As of January 2021, seven US treaties (ratified and in force) have adopted the AOA: Belgium, Bulgaria, Canada, Germany, Iceland, Japan, United Kingdom. The United States does not view the AOA as applicable to treaties with the old version of Article 7.	US Tax Treaties
		<input checked="" type="checkbox"/> No For the United States' remaining 57 treaties, the United States attributes profits based on the business profits article in the applicable treaty.	
31	[NEW] Does your jurisdiction follow also another approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No The US Model tax treaty follows the AOA, which is the US preferred position when establishing new tax treaties.	
Other Relevant Information			
32	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
33	Other relevant information (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i>)	N/A	