

Ukraine

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?	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Article 39, clause 39.1 of the Tax Code of Ukraine states that:</p> <p>“The taxpayer that participates in a controlled transaction must determine the amount of his taxable profit in accordance with the arm's length principle.</p> <p>The amount of taxable profit received by a taxpayer that participates in one or more controlled transactions is considered to be in accordance with the arm's length principle if the terms of those transactions do not differ from those applied between unrelated parties in comparable uncontrolled transactions.</p> <p>If the conditions in one or more controlled transactions do not comply with the arm's length principle, the profit that would be accrued to the taxpayer in a controlled transaction that complies with this principle is included in the taxable income of the taxpayer.</p> <p>Determining whether the conditions of the controlled transaction comply with the arm's length principle shall be performed according to the methods specified in sub-clause 39.3 of this Article, in order to verify the correctness, completeness of accrual and payment of corporate profit tax.”</p>	<p>Tax Code of Ukraine Article 39, clause 39.1</p>
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	<p>The OECD Transfer Pricing Guidelines are not incorporated in Ukrainian legislation, however, the TPG are considered as internationally accepted guidance providing explanation and clarification of the (application of the) arm's length principle.</p>	

3	<p>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.</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Related parties are legal entities and / or individuals and / or formations without legal entity status, the relationship between which may affect the conditions or economic results of their activities or the activities of the persons they represent, taking into account the following criteria:</p> <p>a) for the legal entities:</p> <p>one legal entity directly and / or indirectly (through related parties) owns the corporate rights of another legal entity in the amount of 25% or more, except for international financial organizations, which in accordance with international treaties of Ukraine are endowed with privileges and immunities, and business entities, which are owned by such international financial institutions in the amount of 75% or more);</p> <p>the same legal entity or individual directly and / or indirectly owns corporate rights in each legal entity in the amount of 25% or more;</p> <p>the same legal entity or individual makes decisions on the appointment (election) of sole executive body of each legal entity;</p> <p>the same legal entity or individual makes a decision on the appointment (election) of 50% or more of the collegial executive body or supervisory board of each legal entity;</p> <p>at least 50% of the collegial executive body and / or supervisory board of each legal entity shall be the same individuals;</p> <p>sole executive bodies of each legal entity are appointed (elected) by the decision of the same body (owner or his authorized body);</p> <p>a legal entity has the authority to appoint (elect) the sole executive body of another legal entity or to appoint (elect) 50% or more of its collegial executive body or supervisory board;</p> <p>the ultimate beneficial owner (controller) of such legal entities is the same individual;</p> <p>the powers of the sole executive body of such legal entities are exercised by the same body;</p> <p>the amount of all loans, repayable financial assistance from one legal entity (except for banks and international financial organizations, which in accordance with international treaties of Ukraine are endowed with privileges and immunities, and</p>	<p>Tax Code of Ukraine Article 14, clause 14.1, sub-clause 14.1.159</p>
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business entities, which are owned by such international financial institutions in the amount of 75% or more) and / or the amount of all loans, repayable financial assistance from other legal entities guaranteed by one legal entity (except for banks and international financial organizations, which in accordance with international agreements of Ukraine are endowed with privileges and immunities, and business entities, which are owned by such international financial institutions in the amount of 75% or more), in relation to another legal entity, exceeds the amount of equity more than 3.5 times (for financial institutions and companies engaged in leasing activities only - more than 10 times). The amount of such loans, repayable financial assistance and equity is defined as the arithmetic mean (at the beginning and the end of the reporting period). The provisions of this paragraph do not apply to the amount of loans raised under state guarantees;

b) for an individual and a legal entity:

an individual directly and / or indirectly (through related parties) owns corporate rights of a legal entity in the amount of 25% or more;

an individual has the right to appoint (elect) the sole executive body of such legal entity or to appoint (elect) at least 50% of its collegial executive body or supervisory board;

an individual exercises the powers of a sole executive body of such legal entity;

an individual has the authority to appoint (elect) a sole executive body of such legal entity or to appoint (elect) 50% or more of its collegial executive body or supervisory board;

an individual is the ultimate beneficial owner (controller) of a legal entity;

the amount of all loans, repayable financial assistance from an individual provided to a legal entity, and / or any loans, repayable financial assistance from other individuals provided to a legal entity, which are provided under the guarantees of this individual, exceeds the amount of equity more than 3.5 times (for financial institutions and companies engaged in leasing activities only - more than 10 times). The amount of such loans, repayable financial assistance and equity is defined as the arithmetic mean (at the beginning and the end of the reporting period);

c) for individuals - husband (wife), parents (including adoptive parents), children (adults / minors, including adopted children), full-siblings and partial-siblings, guardian, trustee, child under guardianship or custody.

All corporate rights of a legal entity that belong (directly and / or indirectly) to another legal entity are calculated as the sum of shares of corporate rights, which: directly belong to such legal entity;

belong to any related parties of such a legal entity.

For the purpose of determining whether an individual directly and / or indirectly owns corporate rights of a legal entity in the amount of 25% or more, all corporate rights owned (directly and / or indirectly) by an individual are calculated as the sum of shares of corporate rights, which:

directly and / or indirectly belong to an individual through the possession of corporate rights;

belong to any related parties of such individual (excluding bodies related to such individual through direct and / or indirect ownership of corporate rights).

If an individual is recognized as a related party to other bodies in accordance with sub-clause 14.1.159, such bodies shall be recognized as related parties.

In the case of business transactions performed by formations without legal entity status with a related party of any of the participants of the joint venture agreement, if the amount of their contributions to the common property is 25% or more, formations without legal entity status (of the joint venture agreement) and such related party of any of the participants of such agreement are recognized as related parties.

The amount of shares of corporate rights is calculated in the case of:

indirect ownership (within one chain) - by multiplying the shares of ownership of corporate rights;

ownership within several chains - by summing the shares of ownership of corporate rights in each chain.

If the share of corporate rights of each body in the next legal entity within the chain is 20% or more, all bodies within such chain are related parties (regardless of the results of multiplication).

The direct or indirect participation of the state in legal entities is not a basis for recognizing such legal entities as related parties. Such taxpayers may be considered related parties for other reasons provided for in this sub-clause.

In case of the circumstances specified in the first paragraph of this sub-clause, legal entities and / or individuals who are the parties of a business transaction have the right to recognize themselves as related parties for tax purposes on a basis not provided for in sub-clauses “a” – “c”.

The controlling authority may prove in court the connection of bodies on the basis of facts and circumstances that one legal entity or individual had actual control over business decisions of another legal entity, formation without legal entity

status and / or that the same individual or legal entity had actual control over business decisions of each legal entity and / or formation without legal entity status.

Transfer Pricing Methods

4 **Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?**

- Yes
 No

If affirmative, please check those provided for in your legislation:

CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

There is also an opportunity to use valuation methodology based on discounted cash flow for controlled transactions with intangibles, other intellectual property and business restructuring transactions in case of lack of comparable uncontrolled transactions within the application of transfer pricing methods.

5 **Which criterion is used in your jurisdiction for the application of transfer pricing methods?**

- Please check all that apply:
- Hierarchy of methods
 Most appropriate method
 Other (if so, please explain)

The compliance of the controlled transactions with the arm's length principle is confirmed by applying the most appropriate transfer pricing method within the abovementioned hierarchy of methods due to the facts and circumstances of the case, unless the Tax Code of Ukraine determines the requirements for the application of specific transfer pricing method for a certain type of controlled transactions (e.g. application of the comparable uncontrolled price (CUP) method for commodity transactions).

[Tax Code of Ukraine](#) Article 39, clause 39.3, sub-clause 39.3.2, sub-clause 39.3.2.1

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 checked="" 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 Tax Code of Ukraine mandates the use of comparable uncontrolled price (CUP) method for commodity transactions.</p> <p>The concept of commodity transactions covers controlled transactions with commodities included to the List, which is settled by the Resolution of the Cabinet of Ministers of Ukraine.</p> <p>The taxpayers may use the recommended (non-exhaustive) List of sources of information for obtaining commodity quoted prices to analyse the compliance of the commodity transactions with the arm's length principle. The List of sources of information is published on the official website of the State Tax Service of Ukraine.</p>	<p>Tax Code of Ukraine Article 39, clause 39.3, sub-clause 39.3.3, sub-clauses 39.3.3.4 – 39.3.3.8</p> <p>The list of commodities is settled by the Resolution of the Cabinet of Ministers of Ukraine No. 1221 dated 09.12.2020 “On approval of the List of Commodities”</p> <p>The recommended (non-exhaustive) list of sources of information for obtaining commodity quoted prices is published on the official website of the State Tax Service of Ukraine</p>
Comparability Analysis			
7	<p>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <hr/> <p>The Tax Code of Ukraine contains the provisions on comparability analysis, which largely follow the guidance of the OECD TPG.</p>	<p>Tax Code of Ukraine Article 39, clause 39.2, sub-clause 39.2.2</p> <p>Tax Code of Ukraine Article 39, clause 39.3, sub-clause 39.3.2</p>
8	<p>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <hr/> <p>Due to the lack or insufficiency of information on uncontrolled transactions, the financial information of legal entities engaged in activities comparable to the controlled transaction may be used for the determination of profitability indicators in case that such legal entities do not perform transactions with related parties.</p> <p>Preference for domestic comparables follows from the Tax Code provisions on comparability. Taxpayers need to prove that foreign comparables are more reliable than local comparables.</p>	<p>Tax Code of Ukraine Article 39, clause 39.2, sub-clause 39.2.2, sub-clause 39.2.2.2</p>

9	<p>Does your tax administration use secret comparables for transfer pricing assessment purposes?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>According to the provisions of the Tax Code of Ukraine, the tax authority has no right to use information that is not publicly available (in particular, information with limited access or information which is available only to public authorities).</p> <p>The abovementioned does not apply to information obtained by tax authorities during the audit on the taxpayer's compliance with the arm's length principle according to the sub-clause 39.5.2.13 of the Tax Code of Ukraine.</p>	<p>Tax Code of Ukraine Article 39, clause 39.5, sub-clause 39.5.3, sub-clause 39.5.3.3</p>
10	<p>Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The Tax Code of Ukraine mandates the use of price (profitability) range to define the compliance of the controlled transactions with the arm's length principle.</p> <p>The procedure of the arm's length principle determination is settled by the Resolution of the Cabinet of Ministers of Ukraine.</p>	<p>Tax Code of Ukraine Article 39, clause 39.3, sub-clause 39.3.2, sub-clause 39.3.2.2</p> <p>Tax Code of Ukraine Article 39, clause 39.3, sub-clause 39.3.2, sub-clause 39.3.2.3</p> <p>The procedure of the arm's length principle determination is settled by the Resolution of the Cabinet of Ministers of Ukraine No 381 dated 04.06.2015 «On approval of the Procedure for calculating the price (profitability) range and the median of such range for transfer pricing purposes».</p>
11	<p>Are comparability adjustments required under your domestic legislation or regulations?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>According to the provisions of the Tax Code of Ukraine, the controlled transactions are recognized as comparable to the uncontrolled transactions in case of absence of significant differences between them. Such differences may be mitigated with adjustments in order to avoid the impact of such differences on comparability.</p>	<p>Tax Code of Ukraine Article 39, clause 39.2, sub-clause 39.2.2, sub-clause 39.2.2.1</p>
Intangible Property			
12	<p>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The Tax Code of Ukraine provides an opportunity to use valuation methodology based on discounted cash flow for controlled transactions with intangibles, other</p>	<p>Tax Code of Ukraine Article 39, clause 39.3, sub-clause 39.3.10</p>

		intellectual property and business restructuring transactions in case of lack of comparable uncontrolled transactions within the application of transfer pricing methods.	
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Tax Code of Ukraine Article 140, clause 140.5, sub-clause 140.5.6 Tax Code of Ukraine Article 140, clause 140.5, sub-clause 140.5.7
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 <p>According to the sub-clause 140.5.6 of the Tax Code of Ukraine, the financial result of the tax (reporting) period shall increase for the amount of royalties (except for transactions recognized as controlled in accordance with the provisions of Article 39 of this Code) accrued to the non-resident (including non-resident registered in the states (territories) specified in sub-clause 39.2.1.2 of this Code), which exceeds the amount of royalty income, increased by 4 percent of net income from sales of products (goods, works, services) according to the financial statements for the year preceding the reporting year (except entities operating in the field of television and radio broadcasting in accordance with the Law of Ukraine «On Television and Radio Broadcasting»), for banks - in excess of 4 percent of operating income (excluding value added tax) for the year preceding the reporting year.</p> <p>The requirements of this sub-clause shall not apply to the taxpayer if the transaction is not controlled and the amount of such expenses is confirmed by the taxpayer with arm's length prices in accordance with the procedure established by Article 39 of this Code.</p> <p>The provisions of sub-clause 140.5.6 are applied based on the results of the tax (reporting) year.</p>	Tax Code of Ukraine Article 39, clause 39.3, sub-clause 39.3.10

		<p>According to the sub-clause 140.5.7 of the Tax Code of Ukraine, the financial result of the tax (reporting) period shall increase for the full amount of royalties accrued to:</p> <p>non-resident, which is not the beneficial (actual) recipient (owner) of the royalty, except in cases the beneficiary (beneficial owner) has granted the right to receive royalties to other persons;</p> <p>non-resident in respect of objects for which intellectual property rights firstly arose from a resident of Ukraine;</p> <p>non-resident, which is not taxed in respect of royalties in the state of residency;</p> <p>person, who pays tax as part of other taxes, except for individuals taxed in the manner prescribed by Section IV of this Code;</p> <p>the legal entity, which is exempt from paying this tax in accordance with this Code or pays this tax with a rate other than established in clause 136.1 of this Code.</p>	
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	
		<p>Ukrainian domestic legislation does not contain specific guidance or special measures regarding intra-group services transactions and tend to rely on the OECD TPG.</p> <p>Sub-clause 39.4.7 of the Tax Code of Ukraine contains the requirements for Master File, including an obligation to provide a list and brief description of important service arrangements between members of the MNE group, other than research and development (R&D) services, including a description of the capabilities of the principal locations providing important services and transfer pricing policies for allocation services costs and determining prices to be paid for intra-group services.</p>	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<p>Ukrainian domestic legislation does not contain specific provisions on simplified approach for low value-adding intra-group services and tend to rely on the OECD TPG.</p>	

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 Ukrainian domestic legislation does not contain specific guidance or special measures regarding financial transactions and tend to rely on the OECD TPG.	
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 The Tax Code of Ukraine contains provisions on thin capitalization rules. Under the thin capitalization rules, expenses of resident entities in the current tax period include the amount of interest paid on loans, which does not exceed 30% of profits, and expenses on repayment of interests. It should be noted that for the purposes of thin capitalization rules application the amount of taxpayer's liabilities with a non-resident shall exceed the equity ratio by more than 3.5 times. However, if the amount of interest expenses within a controlled transaction exceeds the amount determined in accordance with the arm's length principle, then thin capitalization rules will apply only to the amount of interest that corresponds with the arm's length principle.	Tax Code of Ukraine Article 140, clause 140.2
Cost Contribution Agreements			
20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Ukrainian domestic legislation does not contain specific guidance or special measures regarding cost contribution agreements and tend to rely on the OECD TPG. Sub-clause 39.4.7 of the Tax Code of Ukraine contains the requirements for Master File, including a list of important agreements among identified associated	

enterprises related to intangibles, including cost contribution arrangements, principal research service agreements and licence agreements.

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 <input type="checkbox"/> No</p> <p><i>If affirmative, please check all that apply:</i></p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input checked="" 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 checked="" type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input checked="" type="checkbox"/> Other (specify): <p>According to the provisions of the Tax Code of Ukraine, taxpayers, which carried out controlled transactions in the reporting year, are required to file a Report on controlled transactions and a Notification on participation in the International group of companies by October 1 of the year following the reporting year.</p> <p>A Report on controlled transactions and a Notification on participation in the International group of companies are filed to the Central executive body that ensures the implementation of state tax policy by electronic means in electronic form in compliance with the requirements of the Laws of Ukraine “On Electronic Documents and Electronic Document Management” and “On Electronic Trust Services”.</p> <p>The requirements for a local transfer pricing documentation are presented in sub-clause 39.4.6 of clause 39.4 of Article 39 of the Tax Code of Ukraine.</p>	<p>Tax Code of Ukraine Article 39, clause 39.4</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><u>Transfer pricing documentation</u></p> <p>At the request of the Central executive body that ensures the implementation of state tax policy, taxpayers shall submit transfer pricing documentation for controlled transactions specified in the request within 30 calendar days from the request receipt date.</p> <p>Transfer pricing documentation is submitted by the taxpayer to the controlling authority specified in the request.</p>	<p>Tax Code of Ukraine Article 39, clause 39.4</p>

The request shall be sent no earlier than October 1 of the year following the calendar year in which such controlled transaction (transactions) was performed.

Master file

The Central executive body that ensures the implementation of state tax policy has the right to send a request with requirement to provide Global documentation on transfer pricing (Master file) to the taxpayer that is part of the International group of companies, if the total consolidated income of the International group of companies for the financial year, preceding the reporting year, calculated in accordance with the accounting standards applied by the parent company of the International group of companies, is equal to or exceeds the equivalent of EUR 50 million.

The request for submission of Global documentation (Master file) could be sent no earlier than twelve months and no later than thirty-six months from the end of the financial year, that is established by the International group of companies to which such taxpayer belongs, and in the absence of information regarding financial year, that is established by the International group companies, – no earlier than twelve months and no later than thirty-six months after the end of the reporting year.

Global transfer pricing documentation (Master file) must be submitted by the taxpayer to the Central executive body that ensures implementation of state tax policy, within 90 calendar days from the date of request receipt.

Country-by-Country Reporting

Taxpayer – a resident of Ukraine, which belongs to the International group of companies, in the cases specified in this sub-clause, is obliged to file to the Central executive body, that ensures implementing of state tax policy, a Country-by-Country Report of the International group of companies in electronic form in compliance with the requirements of the Laws of Ukraine «On Electronic Documents and Electronic Document Management» and «On Electronic Trust Services».

A Country-by-Country Report of the International group of companies is filed if the total consolidated income of the International group of companies, which includes the taxpayer, for the financial year preceding the reporting year, calculated in accordance with accounting standards applied by the parent company of the International group (and in the absence of information – in accordance with international accounting standards), exceeds the equivalent of 750 million and if one of the following circumstances exists:

the taxpayer is the parent company of the International group of companies;

		<p>the parent company of the International group of companies authorizes the taxpayer – a resident of Ukraine to file a Country-by-Country Report to the controlling authority;</p> <p>in accordance with the law of the location of the parent company of the International group of companies the filing of a Report from such an International group of companies is not required, and the parent company of such group does not authorize another participant of the International group to file a Report in another foreign jurisdiction, where such filing is required;</p> <p>an international agreement that provides for the exchange of tax information is signed between Ukraine and the relevant foreign jurisdiction of location of the parent company of the International group of companies or [of location of] another member of this group, authorized by the parent company of such group to file a Country-by-Country Report, but the procedure on exchange of Country-by-Country Reports did not yet come into force or there are facts of systemic non-compliance with this procedure. The Central executive body that ensures implementation of state tax policy, shall publish the list of such foreign jurisdictions on its official web portal no later than 60 calendar days before the deadline for filing of a Report on controlled transactions for the relevant reporting year.</p> <p>A Country-by-Country Report of the International group of companies is prepared for the financial year determined by the parent company of the International group of companies, which may not coincide with the calendar year, and is filed within twelve months after the end of such financial year (within twelve months after the end of the calendar year – in the absence of information on the financial year determined by the parent company of the International group of companies).</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</p> <p><input type="checkbox"/> No</p> <p><u>Failure of filing</u></p> <p>Failure by the taxpayer to file the Report on controlled transactions and / or the transfer pricing documentation, and / or the Global documentation on transfer pricing (Master file), and / or the Country-by-Country Report of the International group of companies, and / or the Notification on participation in the International group of companies in accordance with the requirements of Article 39 of the Tax Code of Ukraine entails the imposition of a penalty (penalties) in the amount of:</p> <p>300 times the subsistence minimum for an able-bodied person, established by law as of 1 January of the tax (reporting) year – in case of failure to file the Report on controlled transactions;</p>	<p>Tax Code of Ukraine Article 120, clauses 120.3 – 120.6</p>

3 % of the amount of controlled transactions for which no documentation was submitted, defined by sub-clauses 39.4.6 and 39.4.9 of clause 39.4 of Article 39 of the Tax Code, but no more than 200 times the subsistence minimum for able-bodied persons established by law as of 1 January of the tax (reporting) year;

300 times the subsistence minimum for an able-bodied person, established by law as of 1 January of the tax (reporting) year – in case of failure to file the Global documentation on transfer pricing (Master file), defined by sub-clauses 39.4.7 and 39.4.9 of clause 39.4 of Article 39 of the Tax Code;

1,000 times the subsistence minimum for an able-bodied person, established by law as of 1 January of the tax (reporting) year – in case of failure to file the Country-by-Country Report of the International group of companies;

50 times the subsistence minimum for an able-bodied person, established by law as of 1 January of the tax (reporting) year – in case of failure to file the Notification on participation in the International group of companies.

Payment of such financial sanctions (penalties) does not release the taxpayer from the obligation to file the Report on controlled transactions and / or transfer pricing documentation, and / or the Global documentation on transfer pricing (Master file), and / or the Country-by-Country Report of the International group of companies, and / or the Notification on participation in the International group of companies.

Failure by the taxpayer to file the Report on controlled transactions and / or transfer pricing documentation, and / or the Global documentation on transfer pricing (Master file), and / or the Country-by-Country Report of the International group of companies, and / or the Notification on participation in the International group of companies after the expiration of 30 calendar days following the last day of the deadline for payment of the penalty (penalties) prescribed above entails the imposition of a fine of 5 times the subsistence minimum for able-bodied persons, established by law as of 1 January of the tax (reporting) year, for each calendar day of failure to file the Report on controlled transactions and / or transfer pricing documentation, and / or the Global documentation on transfer pricing (Master file), and / or the Country-by-Country Report of the International group of companies, and / or the Notification on participation in the International group of companies, but no more than 300 times the subsistence minimum for able-bodied persons established by law as of 1 January of the tax (reporting) year.

Incomplete filing

Non-inclusion in the filed Report on controlled transactions of information on all controlled transactions performed during the reporting period and / or non-inclusion in the filed Country-by-Country Report of the International group of

companies information in accordance with the requirements of Article 39 of the Tax Code entails the imposition of a penalty (penalties) in the amount of:
1% of the amount of controlled transactions not declared in the filed Report on controlled transactions, but no more than 300 times the subsistence minimum for able-bodied persons established by law as of 1 January of the tax (reporting) year, for all undeclared controlled transactions carried out in the reporting year;

1% of the amount of income (revenue) of a member of the International group of companies, information about which in violation of this Code is not reflected in the Country-by-Country Report of the International group of companies, but no more than 1 000 times of a subsistence minimum for able-bodied persons established by law as of 1 January of the tax (reporting) year.

Failure of the taxpayer to file an adjusted Report on controlled transactions after the expiration of 30 calendar days following the last day of the deadline for payment of the penalty (penalties) prescribed above entails the imposition of a penalty of one time the subsistence minimum for able-bodied persons, established by law as of 1 January of the tax (reporting) year, for each calendar day of failure to file an adjusted Report on controlled transactions, but no more than 300 times the subsistence minimum for able-bodied persons established by law as of January 1 of the tax (reporting) year.

Inaccurate filing

Provision of an inaccurate information in the Notification on participation in the International group of companies and / or in the Country-by-Country Report of the International group of companies entails the imposition of a penalty (penalties) in the amount of:

50 times the subsistence minimum for an able-bodied person, established by law as of 1 January of the tax (reporting) year – in case of providing inaccurate information in the Notification on participation in the International group of companies;

200 times the subsistence minimum for an able-bodied person, established by law as of 1 January of the tax (reporting) year – in case of providing inaccurate information in the Country-by-Country Report of the International group of companies regarding the member of the International group of companies.

Late filing

Untimely submission by the taxpayer of the Report on controlled transactions and / or transfer pricing documentation, and / or the Global documentation on transfer pricing (Master file), and / or the Country-by-Country Report of the International group of companies, and / or the Notification on participation in the International group of companies or untimely declaring controlled transactions in the filed

		<p>Report in accordance with the requirements of clause 39.4 of Article 39 of the Tax Code entails the imposition of a penalty (penalties) in the amount of:</p> <p>one time the subsistence minimum for able-bodied persons established by law as of 1 January of the tax (reporting) year, for each calendar day of untimely [late] filing of the Report on controlled transactions, but no more than 300 times the subsistence minimum for able-bodied persons established by law as of 1 January of tax (reporting) year;</p> <p>one time the subsistence minimum for able-bodied persons, established by law as of 1 January of the tax (reporting) year, for each calendar day of untimely declaring of controlled transactions in the filed Report on controlled transactions in case of filing of an adjusted Report, but no more than 300 times the subsistence minimum for able-bodied persons, established by law as of 1 January of the tax (reporting) year;</p> <p>two times the subsistence minimum for an able-bodied persons, established by law as of 1 January of the tax (reporting) year, for each calendar day of late submission of transfer pricing documentation specified in subparagraphs 39.4.6 and 39.4.9 of paragraph 39.4 of Article 39 of the Tax Code, but no more than 200 times the subsistence minimum for an able-bodied person, established by law as of 1 January of the tax (reporting) year;</p> <p>three times the subsistence minimums for an able-bodied persons established by law as of 1 January of the tax (reporting) year, for each calendar day of late submission of the Global transfer pricing documentation specified in subparagraphs 39.4.7 and 39.4.9 of paragraph 39.4 of Article 39 of the Tax Code, but no more than 300 times the subsistence minimum for able-bodied persons, established by law as of 1 January of the tax (reporting) year;</p> <p>ten times the subsistence minimum for an able-bodied persons established by law as of 1 January of the tax (reporting) year, for each calendar day of untimely [late] filing of Country-by-Country Report of the International group of companies, but no more than 1 000 times the subsistence minimum for an able-bodied person established by law as of 1 January of the tax (reporting) year;</p> <p>one time the subsistence minimum for an able-bodied persons established by law as of 1 January of the tax (reporting) year, for each calendar day of untimely [late] filing of the Notification on participation in the International group of companies, but not more than 100 times the subsistence minimum for able-bodied persons established by law as of 1 January tax (reporting) year.</p>	
24	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p><u>Transfer pricing documentation</u></p> <p>TPD is prepared for the controlled transactions carried out during the tax (reporting) year.</p>	<p>Tax Code of Ukraine Article 39, clause 39.2, sub-clause 39.2.1, sub-clauses 39.2.1.1 – 39.2.1.7</p>

	<p>Business transactions prescribed by sub-clauses 39.2.1.1 (except for transactions carried out between a non-resident and its permanent establishment in Ukraine) and 39.2.1.5 shall be recognized as controlled if the following conditions are simultaneously met:</p> <p>the annual income of the taxpayer from any activity, determined by accounting rules, exceeds UAH 150 million (net of indirect taxes) for the relevant tax (reporting) year;</p> <p>the volume of such business transactions of the taxpayer with each counterparty, determined according to the accounting rules, exceeds UAH 10 million (net of indirect taxes) for the relevant tax (reporting) year.</p> <p>Business transactions between a non-resident and its permanent establishment in Ukraine are recognized as controlled if the volume of such business transactions, determined by accounting rules, exceeds UAH 10 million (net of indirect taxes) for the relevant tax (reporting) year.</p> <p>If these conditions are not met, the taxpayer is not obliged to prepare TPD.</p> <p><u>Master file</u></p> <p>The Central executive body that ensures the implementation of state tax policy has the right to send a request with requirement to provide Global documentation on transfer pricing (Master file) to the taxpayer that is part of the International group of companies, if the total consolidated income of the International group of companies for the financial year, preceding the reporting year, calculated in accordance with the accounting standards applied by the parent company of the International group of companies, is equal to or exceeds the equivalent of EUR 50 million.</p> <p>If this condition is not met, the taxpayer is not obliged to submit a Master file.</p> <p><u>Country-by-Country Reporting</u></p> <p>A Country-by-Country Report of the International group of companies is filed if the total consolidated income of the International group of companies, which includes the taxpayer, for the financial year preceding the reporting year, calculated in accordance with accounting standards applied by the parent company of the International group (and in the absence of information – in accordance with international accounting standards), exceeds the equivalent of EUR 750 million.</p> <p>If this condition is not met, the taxpayer is not obliged to submit Country-by-Country Report.</p>	<p>Tax Code of Ukraine Article 39, clause 39.4, sub-clause 39.4.7</p> <p>Tax Code of Ukraine Article 39, clause 39.4, sub-clause 39.4.10</p>
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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><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p> <hr/> <p>The large taxpayer* has an opportunity to apply for Advanced Pricing Agreement procedure. Unilateral, Bilateral and Multilateral APAs can be concluded.</p> <p>The general provisions on APA procedure are presented in clause 39.6 of Article 39 of the Tax Code of Ukraine.</p> <p>The specific provisions and peculiarities of APA procedure are prescribed by the Resolution of the Cabinet of Ministers of Ukraine No. 1114 dated 28.10.2021 “On approval of the Advanced Pricing Agreement procedure in controlled transactions, as a result of which agreements of unilateral, bilateral and multilateral nature are concluded for the purposes of transfer pricing”.</p> <p>Advanced Pricing Agreement is valid for 5 years and can be prolonged for additional 5 years due to Application of the taxpayer.</p> <p>The Agreement may be extended for the entire reporting period in which it is concluded, and / or for the reporting periods preceding its entry into force (if such reporting periods aren’t the object of arm’s length tax audits).</p> <p>There are no special fees for Application of APA.</p> <p>The taxpayer has an opportunity to apply for Mutual Agreement Procedure if the actions of one or both of the authorities led, or are likely to lead, to taxation that is inconsistent with the relevant Double Tax Treaties of Ukraine.</p>	<p>Tax Code of Ukraine Article 39, clause 39.6</p> <p>Tax Code of Ukraine Article 52</p> <p>Tax Code of Ukraine Article 108¹</p> <p>Resolution of the Cabinet of Ministers of Ukraine No. 1114 dated 28.10.2021 “On approval of the Advanced Pricing Agreement procedure in controlled transactions, as a result of which agreements of unilateral, bilateral and multilateral nature are concluded for the purposes of transfer pricing”</p> <p>Order of the Ministry of Finance of Ukraine No. 820 dated 30.12.2020 “On approval of the application procedure for MAP and the requirements for such application”</p>
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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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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 <p>According to the provisions of the Tax Code of Ukraine, if during the performance of controlled transactions the taxpayer applies conditions that do not comply with the arms-length principle and / or do not meet a reasonable economic reason (business purpose), the taxpayer has the right to adjust the price of the controlled</p>	Tax Code of Ukraine Article 39, clause 39.5, sub-clause 39.5.4

		<p>transaction and the amounts of tax liabilities provided that this does not lead to a reduction in the amount of tax payable to the budget, by doing the following:</p> <p>calculating their tax liabilities in accordance with:</p> <p>the maximum value of the arm's length price range (profitability), if the price / profit level indicator of the controlled transaction was higher than the maximum value of the arm's length price range (profitability); and / or</p> <p>the minimum value of the arm's length price range (profitability), if the price / profit level indicator of the controlled transaction was below the minimum value of the arm's length price range (profitability).</p> <p>Self-adjustment is an adjustment by the taxpayer of the price of a controlled transaction, as a result of which the calculated price corresponds to the arm's length principle, even if such price differs from the actual price, which was set during the controlled transaction.</p> <p>The amount of tax liability calculated as a result of self-adjustment shall be paid according to the terms specified in Article 57 of the Tax Code of Ukraine.</p> <p>The taxpayer does not have the right to perform self-adjustment of the price of controlled transactions and / or the amounts of tax liabilities during an audit on issues regarding the taxpayer's compliance with the arm's length principle on such transactions.</p>	
29	<p>Does your jurisdiction make secondary adjustments?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The concept of constructive (deemed) dividends is used for payment, income or compensation exceeding the amount calculated under the arm's length principle.</p>	<p>Tax Code of Ukraine Article 14, clause 14.1, sub-clause 14.1.49</p> <p>Tax Code of Ukraine Article 141, clause 141.4, sub-clause 141.4.2</p>
<p>Attribution of Profits to Permanent Establishments</p>			
30	<p>[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Ukraine's tax treaties do not contain the new version of Article 7 (OECD Model Tax Convention 2010 and later). It means that provisions of the relevant Ukraine's tax treaties are applied and the Authorized OECD Approach for the attribution of profits to PEs (AOA) is not applied.</p> <p>According to the provisions of sub-clause 141.4.7 of the Tax Code of Ukraine, the profit of a permanent establishment shall be considered as the profit of an</p>	<p>Double Tax Treaties of Ukraine</p> <p>Tax Code of Ukraine Article 141, clause 141.4, sub-clause 141.4.7</p>

		independent enterprise for taxation purposes. Such profit shall comply with the arm's length principle.	
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	N/A	
33	Other relevant information (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire)	N/A	

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