

PANORAMIC

# TRANSFER PRICING

Armenia



LEXOLOGY

# Transfer Pricing

Contributing Editor

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## OVERVIEW

### Principal legislation

Identify the principal transfer pricing legislation.

The main legal act of Armenia that sets the rules of transfer pricing is the [Tax Code of the Republic of Armenia](#) (the Tax Code).

Law stated - 24 June 2024

### Enforcement agency

Which central government agency has primary responsibility for enforcing the transfer pricing rules?

[The State Revenue Committee](#) of Armenia is responsible for enforcing the transfer pricing rules.

Law stated - 24 June 2024

### OECD guidelines

What is the role of the OECD Transfer Pricing Guidelines?

The OECD Transfer Pricing Guidelines are not binding, they only have an advisory role for the tax authority in developing the methodology for enforcing transfer pricing rules.

Law stated - 24 June 2024

### Covered transactions

To what types of transactions do the transfer pricing rules apply?

The tax authority verifies the compliance of the controlled transactions with the arm's-length principle and the completeness of the calculation and payment of the profit tax and natural use fee royalty resulting from the implementation of the controlled transactions.

The transaction of supply of goods, alienation of intangible assets, provision (receipt) of the right to use intangible assets, granting (receipt) of loans, concession (transfer) of the right to claim money, alienation (acquisition) of a financial asset, performance of works and (or) provision of services is considered controlled if it is made between resident and non-resident persons deemed to be related.

Law stated - 24 June 2024

### Arm's-length principle

Do the relevant transfer pricing rules adhere to the arm's-length principle?

Yes, transfer pricing rules adhere to the arm's length prices or other financial indicators.

Law stated - 24 June 2024

### **Base erosion and profit shifting**

#### **How has the OECD's project on base erosion and profit shifting (BEPS) affected the applicable transfer pricing rules?**

On 23 March 2022, some systematic amendments were made to the transfer pricing chapter of the Tax Code keeping in mind the OECD's BEPS principles. The 2017 OECD Transfer Pricing Guidelines have an advisory role, however, to be as close as possible to the internationally recognised principles some changes are being made in the tax legislation considering the peculiarities of Armenian taxpayers as well.

Law stated - 24 June 2024

## **PRICING METHODS**

### **Accepted methods**

#### **What transfer pricing methods are acceptable? What are the pros and cons of each method?**

The transfer pricing methods are as follows.

- The comparable uncontrolled price method in which the price of the object of the controlled transaction is compared with the price of the object of the comparable uncontrolled transaction.
- The resale price method, in which the surplus obtained from the resale of the subject of the controlled transaction is compared with the surplus obtained from the resale of the subject of a comparable uncontrolled transaction.
- The cost plus method, in which the mark-up applied to the direct and indirect costs incurred during the supply of the subject of the controlled transaction is compared with the mark-up applied to the direct and indirect costs incurred during the supply of the subject of a comparable uncontrolled transaction.
- The net profit method, in which the net profit obtained in relation to the relevant base, in particular, costs, sales, and assets, as a result of a controlled transaction is compared with the net profit obtained in relation to the same base as a result of a comparable uncontrolled transaction.
- The profit-sharing method, in which each of the related taxpayers participating in the controlled transaction is allocated the share of the profit or loss received from the given transaction that a non-related person could have expected while participating in a comparable uncontrolled transaction. For the purposes of the application of this clause, profit from a transaction is considered to be the positive difference between the income received from the transaction and the expenses related to it.

We cannot address tangible property transactions, intangible property transactions, services transactions, and loans or advances separately, as the regulations refer to either controlled or non-controlled transactions.

Law stated - 24 June 2024

### **Cost-sharing**

**Are cost-sharing arrangements permitted? Describe the acceptable cost-sharing pricing methods.**

The Tax Code of the Republic of Armenia (the Tax Code) does not include any regulations regarding cost-sharing arrangements. Taxpayers must pay the tax amount specified by the Tax Code. However, civil law allows parties to agree that one party will reimburse the other for the tax arising from the transaction. In such cases, the recipient of the reimbursement is responsible for paying tax on the compensation received.

Law stated - 24 June 2024

### **Best method**

**What are the rules for selecting a transfer pricing method?**

Compliance with the arm's-length principle of the controlled transaction is determined by applying the most appropriate transfer pricing method under the circumstances. The most appropriate transfer pricing method is selected from the transfer pricing methods, taking into account the following criteria:

- the strengths and weaknesses of the respective transfer pricing method;
- the adequacy of the method, taking into account the characteristics of the controlled transaction;
- the availability of reliable information necessary to apply the appropriate method of transfer pricing; and
- the degree of comparability of controlled and uncontrolled transactions.

In the case of equal reliability of applying the comparable uncontrolled price and other transfer pricing methods, the comparable uncontrolled price method is used when determining compliance with the arm's-length principle.

Law stated - 24 June 2024

### **Taxpayer-initiated adjustments**

**Can a taxpayer make transfer pricing adjustments?**

According to the general rule, in the case of self-discovery of errors in the tax calculation submitted to the tax authority, corrected tax calculations can be submitted.



Adjusted transfer pricing tax calculations can be submitted in the event that in the case of transactions that do not comply with the established arm's-length principle, the taxpayer can independently recalculate the profit tax base and (or) the royalty base and submit transfer pricing tax calculations to the tax authority, (including adjusted) if, in the case of compliance with the established arm's length principle, an additional basis of taxation with profit tax and (or) an additional basis of royalty could be formed.

Law stated - 24 June 2024

### Safe harbours

Are special 'safe harbour' methods available for certain types of related-party transactions? What are these methods and what types of transactions do they apply to?

The transfer pricing regulations are applied to the transactions considered to be controlled, if the total of all controlled transactions carried out by the taxpayer during the tax year exceeds 200 million drams (excluding value added tax, excise tax and environmental tax).

Law stated - 24 June 2024

## DISCLOSURES AND DOCUMENTATION

### Documentation

Does the tax authority require taxpayers to submit transfer pricing documentation? Regardless of whether transfer pricing documentation is required, does preparing documentation confer any other benefits?

Yes, the taxpayers are required to submit transfer pricing documentation.

A taxpayer can submit three types of documentation: a local document, a master document, and an exchange report between countries.

All taxpayers who notified a controlled transaction must submit a local document, which includes in particular the following information:

- a detailed description of the taxpayer's business functions, including the analysis of the impact of economic factors on the pricing processes of products, intangible assets, works and (or) services;
- a description of the controlled transactions, including an analysis of comparability factors, as well as the functions performed, the assets used and the risks borne by the parties to the controlled transaction;
- a description of the transfer pricing methods used and the rationale for the chosen method;
- a list of parties to controlled transactions, including information on the party's residency for tax purposes;
- a description of the sources of information on comparable uncontrolled transactions;
- calculated hand distance range (where applicable); and

- financial and other necessary information about the party to be analysed.

The master document includes in particular the following information:

- multinational organisation structure;
- description of the activities of the multinational organisation;
- description of the intangible assets of the multinational organisation;
- financial operations carried out with organisations that are members of a multinational organisation or with an organisation that does not have the status of a legal entity under the legislation of the country of residence of a foreign organisation; and
- financial statements of a multinational organisation, general information about the global distribution of income and economic activity.

The report exchanged between the countries (country-by-country report) includes in particular the following information:

- the global distribution of the multinational's revenues by country;
- taxes paid by the multinational organisation by country;
- information on the economic activity of the multinational organisation by country; and
- asset information by country.

The taxpayer shall submit the documents to the tax authority in paper or electronic form in Armenian, English or Russian, provided that the documents in English or Russian are translated into Armenian at the request of the tax authority and submitted to the tax authority within 10 working days after receiving the written notification.

Preparing and submitting the transfer pricing documentation is an obligation for the taxpayer, consequently, not submitting the documentation or failing to submit the complete information incurs tax liability. To avoid penalties or other tax liability measures, the transfer pricing documents need to be submitted within the due date.

**Law stated - 24 June 2024**

### **Country-by-country reporting**

**Has the tax authority proposed or adopted country-by-country reporting? What are the differences between the local country-by-country reporting rules and the consensus framework of Chapter 5 of the OECD Transfer Pricing Guidelines?**

Yes, in Armenia there is a country-by-country reporting system effective since 23 March 2022 due to amendments [No. HO-86-N \(N N -86-10\)](#) the Tax Code of the Republic of Armenia.

Overall, the country-by-country reporting rules in Armenian tax legislation correspond to the consensus framework of Chapter 5 of the OECD Transfer Pricing Guidelines.

**Law stated - 24 June 2024**

### **Timing of documentation**

#### **When must a taxpayer prepare and submit transfer pricing documentation?**

The taxpayer shall submit the information defined by the master and local documents to the tax authority within 30 working days after the date of receipt of the written notification sent by the latter.

The taxpayer shall submit the information specified in the report exchanged between the countries to the tax authority immediately after the end of each tax year, within a 12-month period.

**Law stated - 24 June 2024**

### **Failure to document**

#### **What are the consequences for failing to submit documentation?**

In the case of failure to submit the transfer pricing documentation to the tax authority within the specified time limits, the taxpayer shall pay a fine of 10 per cent of the value of each controlled transaction subject to documentation. If the transfer pricing documentation is not submitted to the tax authority by the taxpayer within 30 days after the date of the fine, a penalty of 0.04 per cent of the value of each controlled transaction subject to documentation is calculated for each overdue day.

**Law stated - 24 June 2024**

## **ADJUSTMENTS AND SETTLEMENT**

### **Limitation period for authority review**

#### **How long does the tax authority have to review an income tax return?**

A violation of transfer pricing rules cannot be considered, and no additional tax liability can arise from it if five tax years have passed since the violation was discovered.

**Law stated - 24 June 2024**

### **Rules and standards**

#### **What rules, standards or procedures govern the tax authorities' review of companies' compliance with transfer pricing rules? Does the tax authority or the taxpayer have the burden of proof?**

The tax authorities review the companies' compliance with transfer pricing rules by obliging the taxpayer to notify the tax authority about the controlled transactions and to present the transfer pricing documentation in the time frames stipulated by law.

The tax authority may require the taxpayer to submit additional information or conduct an interview with the taxpayer, and in the event that the taxpayer's controlled transactions are found to be non-compliant with the arm's-length principle, the tax authority may offer the taxpayer to adjust the financial index of the controlled transaction to the median, adjust the base of taxation with profit tax and (or) the royalty base and submit transfer pricing tax calculations (including verified) to the tax authority within one month.

In the event that the financial figure obtained by applying the most appropriate method of transfer pricing for a controlled transaction or a combined controlled transaction is outside the determined arm's-length range, the tax authority may adjust it to the median, with the tax authority bearing the burden of proving the accuracy of the adjustment.

If the taxpayer does not agree to the proposal to adjust the financial indicator to the median, which is outside the range of the arm's length determined by the tax authority, the burden of proving the correctness of the application of the financial indicator different from the median is borne by the taxpayer.

**Law stated - 24 June 2024**

### **Disputing adjustments**

**If the tax authority asserts a transfer pricing adjustment, what options does the taxpayer have to dispute the adjustment?**

In the case the tax authority makes a decision that will be considered an administrative act in the meaning of the law on administration and administrative proceeding it may be disputed through an administrative way or through judicial review. The relevant court will be the Administrative Court of the Republic of Armenia.

**Law stated - 24 June 2024**

## **RELIEF FROM DOUBLE TAXATION**

### **Tax-treaty network**

**Does the country have a comprehensive income tax treaty network? Do these treaties have effective mutual agreement procedures?**

There is no specific income tax treaty network; all relations between countries are regulated by double taxation treaties.

**Law stated - 24 June 2024**

### **Requesting relief**

**How can a taxpayer request relief from double taxation under the mutual agreement procedure of a tax treaty? Are there published procedures?**

The disputes concerning double taxation relief are being resolved between tax authorities during the application of the provisions of international agreements on the elimination of double taxation concluded on behalf of the Armenian state or the government.

A mutual agreement procedure can be initiated at the proposal of the Armenian state or a foreign tax authority if there is an existing agreement on the exclusion of double taxation between the two countries.

**Law stated - 24 June 2024**

### **When relief is available**

#### **When may a taxpayer request assistance from the competent authority?**

The Tax Code of the Republic of Armenia does not restrict when a taxpayer can seek advisory assistance from the tax authority. However, the law allows the tax authority to refuse assistance if the application is aimed at obtaining a certificate verifying the correctness of specific tax calculations or payments, or at conducting an examination of the taxpayer's activities and (or) documents

**Law stated - 24 June 2024**

### **Limits on relief**

#### **Are there limitations on the type of relief that the competent authority will seek, both generally and in specific cases?**

The amount of foreign tax credit is limited to the amount of Armenian tax that would arise from the equivalent income in Armenia.

**Law stated - 24 June 2024**

### **Success rate**

#### **How effective is the competent authority in obtaining relief from double taxation?**

There are no statistics in this field.

**Law stated - 24 June 2024**

## **ADVANCE PRICING AGREEMENTS**

### **Availability**

**Does the country have an advance pricing agreement (APA) programme? If so, is the programme widely used? Are unilateral, bilateral and multilateral APAs available?**

Yes, the taxpayer may apply to the tax authority for an advance pricing arrangement regarding transactions with a non-resident-related party. The agreement is concluded between the taxpayer and the tax authority. Concerning the wide use of APAs, no statistics are available.

**Law stated - 24 June 2024**

### **Process**

**Describe the process for obtaining an APA, including a brief description of the submission requirements and any applicable user fees.**

The process of obtaining the APA is regulated by the Decree of the President of the State Revenue Committee [No. 943-L of 09.09.2022](#).

The first step in reaching an advance pricing agreement is a preliminary discussion of the key terms of the advance pricing agreement.

After receiving a positive position from the tax authority regarding the expediency of concluding the agreement, within 30 working days, the Armenia resident organisation submits the application specified in Form 2 of this order to the tax authority to conclude the agreement. The following documents are also submitted with the application, in particular:

- the draft agreement;
- Documents on the activities of the Armenia resident organisation related to the transaction;
- a copy of the charter of the Armenia resident organisation;
- the financial report of the Armenia resident organisation for the last reporting period; and
- Documents related to the transaction, which can be the basis for concluding the agreement.

**Law stated - 24 June 2024**

### **Time frame**

**How long does it typically take to obtain a unilateral and a bilateral APA?**

According to the time frames specified by Decree No. 943-L, the obtaining of the APA may take approximately four months; however, it should be taken into account that the overall time limit may vary depending on the speed of the decisions of the State Revenue Committee, so the time frame mentioned above may be prolonged.

**Law stated - 24 June 2024**

### **Duration**

**How many years can an APA cover prospectively? Are rollbacks available?**

The agreement may be concluded for a period of no more than three years for one or more controlled transactions.

In the case of compliance with all the terms of the agreement, the Armenia resident organisation has the right to apply to the tax authority three months before the end of the validity period of the agreement to extend the validity period of the agreement. The term of the agreement may be extended by agreement of the parties for a period not exceeding two years, in accordance with the provisions set forth in the agreement.

The agreement shall enter into force on 1 January of the calendar year following the date of signing, unless otherwise provided for in the agreement.

**Law stated - 24 June 2024**

### **Scope**

#### **What types of related-party transactions or issues can be covered by APAs?**

The APA may cover the following transactions:

- the transaction of supply of goods;
- alienation of intangible assets;
- provision (receipt) of the right to use intangible assets;
- granting (receipt) of loans;
- assignment (transfer) of the right to claim money;
- alienation (acquisition) of a financial asset; and
- performance of works and (or) provision of services.

**Law stated - 24 June 2024**

### **Independence**

#### **Is the APA programme independent from the tax authority's examination function? Is it independent from the competent authority staff that handle other double tax cases?**

No, the APA programme is not independent of the tax authority, as the APA is concluded between the resident taxpayer and the tax authority represented by the tax authority head. There is no other sub-authority that has the capacity to examine the APA. If the tax authority undertakes tax examinations or studies the APA is to be taken into consideration to avoid tax conflicts or resolve them at an earlier stage.

**Law stated - 24 June 2024**

### **Advantages and disadvantages**

## What are the key advantages and disadvantages to obtaining an APA with the tax authority?

The advantages are set by the Decree of the President of the State Revenue Committee No. 966-L.

The advantages are the following:

- it enables the taxpayer to gain clarity regarding compliance with the established arm's-length principle of the controlled transaction to be carried out in the future;
- it ensures a low level of risk in relation to the controlled transaction in the case of compliance with the conditions of the achieved initial pricing agreement;
- the resolution of potential tax disputes related to the controlled transaction at the earliest stage; and
- it provides an opportunity to extend the initial pricing agreement if no significant changes have occurred in the given controlled transaction.

Law stated - 24 June 2024

## SPECIAL TOPICS

### Recharacterisation

Is the tax authority generally required to respect the form of related-party transactions as actually structured? In what circumstances can the tax authority disregard or recharacterise related-party transactions?

In general, the tax authority is required to respect the form of related-party transactions as actually structured. However, as a result of the analysis of transfer pricing documents, additional information requested by the tax authority and submitted by the taxpayer, and the interview conducted with the taxpayer at the request of the tax authority, if the taxpayer's controlled transactions do not comply with the arm's length principle, the tax authority may offer the taxpayer to adjust the financial index of the controlled transaction, adjust the profit tax base and (or) the royalty base and submit transfer pricing tax calculations to the tax authority within one month.

Law stated - 24 June 2024

### Selecting comparables

What are some of the important factors that the tax authority takes into account in selecting and evaluating comparables? In particular, does the tax authority require the use of country-specific comparable companies, or are comparables from several jurisdictions acceptable?

To determine the comparability of two or more transactions, the following factors are taken into account, in particular, to the extent that they relate to the facts and circumstances of the transactions from an economic point of view:

- the description of the object of the transaction;



- functions performed, assets used and risks incurred by the transaction parties;
- contractual terms of transactions;
- the economic circumstances under which the transactions were carried out; and
- business strategies adopted by related taxpayers in terms of transactions.

Law stated - 24 June 2024

### **Secret comparables**

**What is the tax authority's position and practice with respect to secret comparables? If secret comparables are ever used, what procedures are in place to allow a taxpayer to defend its own transfer pricing position against the tax authority's position based on secret comparables?**

Sources of information on uncontrolled transactions can be used, in particular:

- the information submitted to the tax authority in accordance with the procedure established by legal acts regulating tax relations;
- financial and other information available in reputable international trade databases defined by the tax authority, used to carry out transfer pricing comparability analysis;
- published customs statistics on foreign trade;
- the information published in official information sources of state administration bodies, local self-government bodies;
- the physical volumes of production and circulation of minerals and their products, goods included in the list defined by the government, as well as the actual sales prices (including average);
- information published by the National Statistical Service of the Republic of Armenia;
- the value of immovable property determined in accordance with the law;
- reports on financial and (or) transfer pricing policies posted on official websites of organisations; and
- information published by metal and (or) stock exchanges.

Law stated - 24 June 2024

### **Secondary adjustments**

**Are secondary transfer pricing adjustments required? What form do they take and what are their tax consequences? Are procedures available to obtain relief from the adverse tax consequences of certain secondary adjustments?**

Due to non-compliance with the arm's-length principle, as a result of the adjustment of the tax base or royalty base by the taxpayer and (or) the tax authority, the taxpayer's tax liabilities (including advance payments) are not recalculated for any accounting period.

In the case of non-compliance with the arm's-length principle of a controlled transaction between the natural use royalty payer and another resident taxpayer, only the royalty calculation of the natural use royalty payer is adjusted.

Law stated - 24 June 2024

### **Non-deductible intercompany payments**

#### **Are any categories of intercompany payments non-deductible?**

According to the Tax Code of the Republic of Armenia (the Tax Code), the goods transferred to the reporting participant of the joint activity, the works performed for them and (or) the services rendered to them are not considered expenses by the joint activity participant, as an investment in the joint activity.

Law stated - 24 June 2024

### **Anti-avoidance**

#### **What legislative and regulatory initiatives (besides transfer pricing rules) have the government taken to combat tax avoidance with respect to related-party transactions? What are the penalties or other consequences for non-compliance with these anti-avoidance provisions?**

The Tax Code establishes tax liability for the following activities, as a result of which an attempt is made to reduce tax evasion:

- failure to comply with the duty to notify a controlled transaction;
- violating transfer pricing documentation rules;
- understating the tax amount; and
- overstating the tax loss, etc.

The consequences may be expressed as fines up to 5 million drams or penalties of 10 per cent of the value of each controlled transaction subject to documentation etc.

Law stated - 24 June 2024

### **Location savings**

#### **How are location savings and other location-specific attributes treated under the applicable transfer pricing rules? How are they treated by the tax authority in practice?**

There are no specific regulations for location savings.

Law stated - 24 June 2024

### **Branches and permanent establishments**

How are profits attributed to a branch or permanent establishment (PE)? Does the tax authority treat the branch or PE as a functionally separate enterprise and apply arm's-length principles? If not, what other approach is applied?

Branches and permanent establishments are not considered independent legal entities so they cannot be treated as independent legal entities. They are considered as a part of the main legal entity and the arm's-length principles apply to the legal entity in its wholeness.

**Law stated - 24 June 2024**

### **Exit charges**

Are any exit charges imposed on restructurings? How are they determined?

No exit charges are imposed, however, if after the restructurings the transaction becomes non-controlled and the transfer pricing rules can no longer be applied to them, there may be some changes in the taxing mechanisms, and the taxpayer and (or) the tax authority may initiate to submit an adjustment.

**Law stated - 24 June 2024**

### **Temporary exemptions and reductions**

Are temporary special tax exemptions or rate reductions provided through government bodies such as local industrial development boards?

No such temporary tax exemptions are available.

**Law stated - 24 June 2024**

## **UPDATE AND TRENDS**

### **Tax authority focus and BEPS**

What are the current issues of note and trends relating to transfer pricing in your country? Are there particular areas on which the taxing authority is focused? Have there been any notable legislative, administrative, enforcement or judicial developments? In particular, how is the OECD's project on base erosion and profit shifting affecting both policymakers and tax administrators?

The latest major legislative amendments refer to the introduction of a structure for receiving bank account statements and summary information, through which the tax authority gets the opportunity to monitor risky transactions, with the aim of reducing tax evasion cases.

Concerning the documentation, there have also been major changes in the tax legislation, due to which the legislation has been amended according to the OECD's relative BEPS policy.

**Law stated - 24 June 2024**