

CROATIA

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

Article 13 of Croatian Profit Tax Act Consolidated text, "Official Gazette" no. 177/04, 90/05, 57/06, 146/08, 80/10, 22/12, 148/13, 143/14, 50/16, 115/16) describes the tax base in the case of business relations between associated resident and non-resident persons.

According to the Article 13 Paragraph 1: "If agreed prices or other conditions between associated parties in their business dealings are different than prices or other conditions that would be agreed between non-associated parties, all profit in the amount in which it would be realised if it was a relationship of non-associated parties shall be included in the tax base of associated parties."

2. Reference to the OECD Transfer Pricing Guidelines

Croatian regulation (Profit Tax Act and Profit Tax Act Ordinance) accepted OECD Transfer pricing Guidelines, however there is no direct reference.

3. Definition of related parties

According to Profit Tax Act Article 13 Paragraph 2: „Associated parties from paragraph 1 of this article shall mean parties wherein one party participates directly or indirectly in management, supervision, or capital of the other party, or both parties participate directly or indirectly in management, supervision or capital of the company. “

The General Tax Act "Official Gazette" No. 115/16 in Article 49 Paragraph 1 defines Associated Persons as follow:

„Within the meaning of this Act, associated persons are persons who meet at least one of the following conditions:

1. two or more natural or legal persons who, for the purpose of fulfilling obligations from a tax creditor-debtor relationship, constitute a single risk because one of them has, directly or indirectly, control over the other or others,
2. two or more natural or legal persons who, for the purpose of fulfilling obligations from a tax creditor-debtor relationship, constitute a single risk because one of them has, directly or indirectly, significant influence over the other or others,
3. two or more natural or legal persons between whom there is no relationship of control as referred to in item 1 of this paragraph or significant influence as referred to in item 2 of this paragraph, but they do represent a single risk in fulfilling the obligations ensuing from the tax creditor-debtor relationship as they are affiliated to each other, thus there is a high probability that the deterioration or improvement of the economic and financial situation of one person can cause the deterioration or improvement of the economic and financial condition of one or more other persons, because a transfer, or the possibility to transfer losses, profits or ability to pay is applicable among them"

4. Transfer pricing methods

According to Profit Tax Act Article 13 Paragraph 3, the following methods can be used:

„(a) The method of comparable uncontrolled prices in which prices for sold products, merchandise, or services in controlled dealings are compared to those in uncontrolled dealings and comparable circumstances.

(b) The method of commercial prices on the basis of which price is determined for which the merchandise procured from associated parties is sold to non-associated parties. The determined price

is reduced by the appropriate gross commercial margin which can be achieved in the existing market conditions. The resulting difference is the price for which the merchandise could have been procured from non-associated parties.

(c) The method of adding gross profit on top of costs, firstly determining the costs of the product, half-product or services of the person that sold the products, half-products, or services to another related party. The determined costs are increased by the appropriate gross profit which can be achieved in the existing market conditions. The resulting amount is the price for which the product, half-product, or service could have been procured from non-associated parties.

(d) The method of profit sharing, eliminating the effect of special conditions for profit in dealings between associated parties. This elimination is conducted through determining the profit sharing that non-associated parties would expect for participating in one or more dealings. In the profit sharing method, profit sharing between associated parties in one or several dealings in which these parties are participating is calculated first. After that, profit sharing that would arise if, in the existing market conditions, non-related persons had participated in the dealings is assessed, and the determined profit shares are distributed to associated parties.

(e) Net gain method, in which the realised net gain is examined in relation to some basis such as total costs, sales revenue, assets, or own capital which one person realises in dealings with one or several associated parties. The realised net gain is compared to net gain of similar parties in similar circumstances.”

5. Transfer pricing documentation requirements

According to Profit Tax Act Article 13 Paragraph 4: „Business dealings between associated parties shall be approved only if the taxpayer possesses and, at the demand of the Tax Administration, provides data and information on associated parties and business dealings with these parties, through methods used for determining comparable market prices and reasons for choosing those concrete methods.”

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

There are no special transfers pricing audit procedures that differ from the regular tax audit procedures and there are no special transfer pricing penalties.

7. Information for Small and Medium Enterprises on TP

Profit Tax Act in Article 13 does not have special provisions for Small and Medium enterprises.

8. Information on dispute resolution

<https://www.oecd.org/tax/dispute/Croatia-Dispute-Resolution-Profile.pdf>

9. Relevant regulations on Advance Pricing Arrangements

According to Profit Tax Act Article 14a:., (1) A previous transfer pricing and contractual relations arrangement from article 13 and 14 of this Act is an arrangement between the taxpayer and Ministry of Finance, Tax Administration, and tax bodies from other countries in which associated parties are residents or perform business activities through a business unit, through which, for transactions between associated parties, before their commencement, an appropriate set of criteria is determined, such as methods, comparative criteria, appropriate harmonisation, or key suppositions related to future events, in order to determine transfer pricing for these transactions during a given time period.

(2) A previous transfer pricing arrangement is obligatory for the taxpayer and for the Ministry of Finance, Tax Administration, for the time in which it is concluded.

(3) Costs for concluding the previous transfer pricing arrangement are entirely covered by the

taxpayer.

(4) The method of conclusion, contents, validity deadlines and costs of concluding previous transfer pricing arrangements are laid down by the Minister of Finance by virtue of an ordinance.”

10. Links to relevant government websites

www.porezna-uprava.hr

11. Other relevant information

<https://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-croatia.pdf>