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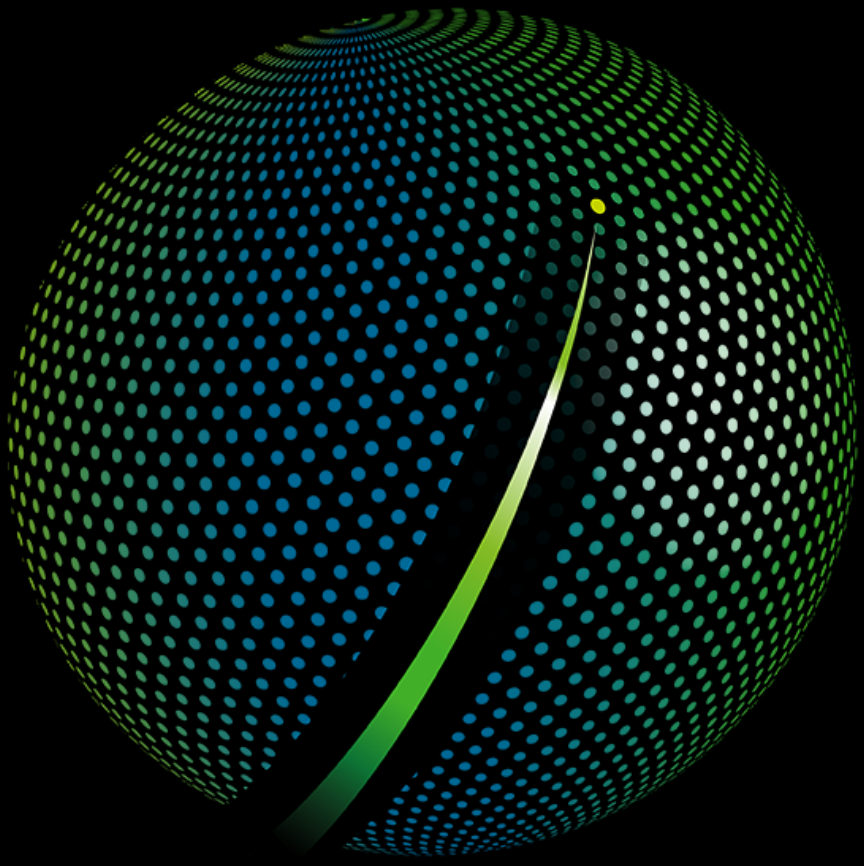

Transfer Pricing Country Guide 2022

Turkey

MAKING AN IMPACT THAT MATTERS since 1845

Turkey

Updated March 2022

1. Recent developments

a. Overview of recent major changes to the transfer pricing regime

Turkey adopted the three-tier transfer pricing documentation approach under the OECD's base erosion and profit shifting (BEPS) action 13 recommendations through Presidential Decree No. 2151 issued on 25 February 2020. The Turkish Revenue Authority (TRA) established its data transfer infrastructure (namely, the "BTRANS" platform within the website of the TRA (www.gib.gov.tr)), which is available to taxpayers for the submission of CbC report notification forms and CbC reports. The TRA issued several regulations, and some guidance also was issued both on the TRA and OECD websites, as summarized below:

- Transfer Pricing General Communiqué No. 4 (dated 1 September 2020): The communiqué provides further guidance on the new transfer pricing documentation obligations, including CbC reporting and notifications as from fiscal year of 2019. It also extended the deadline to submit the 2019 CbC report notification to 30 October 2020 (from 31 August 2020).
- Presidential Decree No. 3038 (dated 1 October 2020): The decree declared that the Multilateral Competent Authority Agreement on the Exchange of Country-By-Country Reports (MCAA), which had been signed in Ankara by Turkey on 30 December 2019, was approved.
- Transfer Pricing Circular No. TF-2/2020 (dated 17 December 2020): The circular extended the deadline to submit the first CbC reports for 2019 (which was 31 December 2020) as well as the CbC reports for the fiscal period ending on 31 January 2020, to 26 February 2021.
- OECD website guidance (dated 24 December 2020): The OECD provided a list of countries (47) that are authorized to send CbC reports to the TRA as from 24 December 2020. As of March 2022, the list included 64 countries. This list is subject to change; relevant updates may be found on the OECDs website at the following link: Activated exchange relationships for Country-by-Country reporting.
- Transfer Pricing Circular No. TF-3/2021-1 (dated 19 February 2021): The deadline to submit the CbC reports for 2019 was extended a second time, as follows:
    - For multinational enterprise (MNE) groups whose ultimate parent entity (UPE) or surrogate parent entity (SPE) is tax resident in Turkey (i.e., Turkish MNE group entities), the deadline to submit the first CbC reports electronically through BTRANS for the year 2019 and fiscal periods ending in January 2020 and February 2020 was extended to 31 March 2021; and
    - For MNE groups whose UPE or SPE is not tax resident in Turkey (i.e., foreign MNE group entities), the deadline to submit the first CbC reports electronically through BTRANS for the year 2019 and fiscal periods ending in January, February, March, April, and May 2020 was extended to 30 June 2021.
- Presidential Decree No. 5191 (dated 14 February 2022): The decree approved the "Bilateral Competent Authority Agreement (CAA) between Turkey and the U.S.A. on the Exchange of Country-by Country Reports." The bilateral CAA allows the direct exchange of CbC reports between the competent authorities (CAs) of Turkey and the US related to fiscal periods beginning on or after 1 January 2019.

Impact of recent tax amnesty on transfer pricing audits

Based on a new tax amnesty program provided in Law No. 7326 of 9 June 2021, corporate taxpayers may be exempt from corporate income tax audits for tax years 2016 through 2020 if they have applied for a voluntary corporate income tax base increase for those years at the rates specified in the law and thus pay additional corporate income taxes. However, it should be noted that this exemption does not apply to the withholding tax imposed on disguised profit distributions.

2. General information

a. Tax authority and law

The Republic of Turkey Ministry of Treasury and Finance, Turkish Revenue Authority (TRA), Transfer Pricing Department

The relevant legislative provisions include:

- Article 13 of the Turkish Corporate Income Tax Law (Law No. 5520) effective as from 1 January 2007;
- Article 41/5 of the Individual Income Tax Law;
- Transfer Pricing General Communiqué No. 1 issued on 18 November 2007;

- Decree No. 2007/12888 issued on 6 December 2007;
- Decree No. 2008/13490 issued on 13 April 2008;
- Transfer Pricing General Communiqué No. 2 issued on 22 April 2008;
- Transfer Pricing General Communiqué No. 3 issued on 7 December 2017;
- Presidential Decree No. 2151 issued on 25 February 2020 (introducing the three-tier transfer pricing documentation requirement as from 2019, including the master file, CbC report, and CbC report notification, in addition to the local file obligation in effect since 1 January 2007); and
- Transfer Pricing General Communiqué No. 4 issued on 1 September 2020.

b. Relevant transfer pricing regulations, rulings, and/or guidelines and the effective date of applicability

Article 13 of the Turkish Corporate Income Tax Law governing "disguised profit distributions through transfer pricing" is effective as from 1 January 2007. It provides general principles that are mostly in line with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017 ("OECD transfer pricing guidelines"). Implementation is explained through examples in Transfer Pricing General Communiqués nos. 1, 2, 3, and 4 as well as in Decree No. 2007/12888, Decree No. 2008/13490, and Presidential Decree No. 2151.

Transfer Pricing Circular No. 1 issued on 24 April 2008 provides guidelines about the completion of the related party transaction form attached to the annual corporate income tax return. Another guideline issued in November 2010 includes detailed explanations regarding annual local documentation requirements and a sample report format.

Additionally, it is important to mention the Treasury loss test, a rule used to determine the arm's length nature of domestic related party transactions. According to paragraph 7 of article 13 of Turkey's corporate income tax law, as long as the prices used in a domestic related party transaction between two resident corporate entities in Turkey do not result in a loss of tax revenues to the Turkish Treasury (a "Treasury loss"), the prices applied between the domestic related parties will be deemed to be at arm's length. However, this rule is not applicable to the domestic related party transactions of companies whose shares are publicly traded (as per the relevant rules of the Turkish Capital Market Board governing disguised profit distributions in public companies).

c. Nature/extent of relationship between parties to a transaction required for transfer pricing rules to apply

Article 13 of The Turkish Corporate Income Tax Law defines related parties as:

i. Companies' shareholders and corporations and individuals related to those shareholders;
ii. Corporations and individuals that directly or indirectly control or are controlled by a corporation or its shareholders through management, supervision, or share capital; and,
iii. Spouses, siblings, and parents of shareholders as well as the shareholders' natural relatives and in-laws up to the third degree (inclusive).

Transactions with parties resident in countries deemed to engage in "harmful tax competition" (to be determined by the president) also are considered related party transactions. If the relatedness arises through direct or indirect ownership, the ownership percentage must be at least 10%. Additionally, as from 9 August 2016, in cases where there is, in the aggregate, a direct or indirect voting or dividend right of at least 10% without a shareholder relationship, the parties will still be deemed to be related.

Accordingly, in order to be considered a related party, voting and dividend rights of at least 10% will be considered, in addition to share ownership.

d. Is transfer pricing enforced only by the national government tax authority? Or can state and local government tax authorities also propose transfer pricing adjustments?

Transfer pricing is enforced only by the national government tax authority (i.e., by the Ministry of Treasury and Finance).

3. OECD guidelines

(All references are to the 2017 OECD transfer pricing guidelines, unless otherwise stated)

a. Extent of reliance on OECD transfer pricing guidelines, UN tax manual, or EU Joint Transfer Pricing Forum

Article 13 of the Turkish Corporate Income Tax Law recognizes, and is also in line with, the OECD transfer pricing guidelines. The legislative intent document for article 13 indicates that Turkish transfer pricing legislation was drafted by taking

into account international developments and, in particular, the OECD transfer pricing guidelines.

In recent tax audits, tax inspectors have referred to the rules recommended in the OECD transfer pricing guidelines whenever they deem it necessary, such as when the local rules are unclear or do not sufficiently address a particular transfer pricing situation.

b. Is your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, Turkey is a member of the OECD/G20 Inclusive Framework on BEPS.

c. Adoption of authorized OECD approach (AOA) to permanent establishments

The OECD approach is generally treated as a recommendation; however, there is no official adoption of the AOA to permanent establishments.

d. Has the AOA been incorporated into all of your jurisdiction's tax treaties or does it only apply to certain treaties?

No, it has not been incorporated into Turkey's tax treaties.

e. Are there low value-adding intragroup rules in place?

There is no direct reference to low value-adding intragroup services in the current Turkish transfer pricing legislation. However, considering that Turkish transfer pricing legislation generally recognizes and is in line with the OECD transfer pricing guidelines, in practice, this approach is taken into consideration in the preparation of annual local transfer pricing documentation reports.

f. Has your jurisdiction issued guidance or comments on the OECD Pillar One or Pillar Two blueprints?

Turkey has not yet issued any guidance or comments on the OECD Pillar One or Pillar Two blueprints.

4. Methods and comparables

a. Do your jurisdiction's transfer pricing laws describe transfer pricing methods that are not included in the OECD transfer pricing guidelines?

No. Turkish transfer pricing regulations recognize all traditional and transactional transfer pricing methods that are described in the OECD transfer pricing guidelines. Based on local rules, in cases where it is not possible to determine the arm's length price by using these methods, taxpayers are allowed to use other methods that they find to be more appropriate given the nature of the related party transaction concerned.

b. Are there any transfer pricing methods described in the OECD transfer pricing guidelines that your jurisdiction's tax authority will not accept?

No

c. Does your jurisdiction follow the "most appropriate method" standard in the OECD transfer pricing guidelines? If not, please describe the differences.

Turkey follows the "most appropriate method" standard in line with the OECD transfer pricing guidelines.

d. What is the availability of benchmarking/comparative data?

Limited local public data is available. Databases used include Amadeus (Orbis) and Thomson Reuters.

e. Are foreign comparables acceptable to the local tax authority?

There is no specific rule in the local legislation. Turkish transfer pricing legislation neither provides any clear guidance on benchmarking nor prohibits the use of foreign comparables. In practice, pan-European comparables should be acceptable in the absence of local comparable data unless the tested party is located outside the EMEA region.

f. Must comparables be refreshed or a new search performed each year?

There is no specific guidance on this. However, because a local transfer pricing documentation report must be prepared every year, comparables should be updated on an annual basis according to the most recently available data. Performing a new search may also be advised depending on the particular circumstances of the related party transaction to be documented.

g. Are comparability adjustments allowed in your jurisdiction?

Yes. Depending on the facts and circumstances of the case, comparability adjustments that strengthen the analysis are allowed.

h. Can foreign associate enterprises be selected as the tested party?

There is no specific guidance on this issue. In practice, foreign associate enterprises may be selected as the tested party. In this case, the financial statements of the foreign associated enterprise selected as the tested party, and the information used in the application of the transfer pricing method, should be provided as the supporting document to be included in the local file.

5. Transfer pricing documentation requirements

a. Is documentation mandatory for penalty protection? Do transfer pricing provisions apply to domestic related party transactions? Are there any exemptions, and if so, what are the thresholds/criteria? Do transfer pricing regulations apply to domestic controlled transactions?

Local annual transfer pricing documentation has been required in Turkey since 2007. The scope of related party transactions subject to the local documentation requirement varies according to the taxpayer's tax office.

Taxpayers and related party transactions within the scope of the annual transfer pricing report preparation requirement include the following:

a) Corporate income taxpayers that are registered with the Large Taxpayers' Tax Office are required to prepare an annual local transfer pricing documentation report with respect to both their domestic and their foreign related party transactions;
b) All other Turkish corporate income taxpayers (i.e., those not registered with the Large Taxpayers' Tax Office) are required to prepare a local transfer pricing documentation report only with respect to their cross-border related party transactions in the relevant fiscal year;
c) Corporate income taxpayers that are operating in free trade zones (FTZ) in Turkey are required to prepare a local transfer pricing documentation report with respect to their transactions with their related parties in Turkey (i.e., domestic related party transactions); and
d) All corporate income taxpayers with branches in other countries (including branches in Turkish FTZs) and/or related party transactions with related parties that are operating in Turkish FTZs, are required to prepare a local transfer pricing documentation report with respect to their related party transactions with their foreign branches (including those in Turkish FTZs) and their related entities operating in Turkish FTZs.

The only threshold that has been introduced and applies as from 2020 is the minimum of TRY 30,000 to be considered when preparing the "Form regarding Transfer Pricing, Controlled Foreign Corporation and Thin Capitalization," filed together with the annual corporate income tax return. If the annual net sales or purchases of goods or services with a related party are for an amount lower than TRY 30,000, it is no longer necessary, as from 2020, to indicate the amounts of such related party transactions and the name of the related party on the form.

b. Has your jurisdiction adopted or implemented BEPS action 13 for transfer pricing documentation in local regulations?

Yes, it was adopted through Presidential Decree No. 2151 issued on 25 February 2020 (introducing the three-tier transfer pricing documentation obligation as from 2019, including the master file, CbC report/CbC report notification, in addition to the local file). Implementation was further explained in Transfer Pricing General Communiqué No. 4 issued on 1 September 2020.

c. What is the acceptable language for documentation?

The acceptable language for documentation is Turkish. Documentation reports in English are not accepted.

d. Are the documentation requirements annual requirements? If so, what do they involve each year?

Yes. Preparation of a complete/full scope annual transfer pricing documentation report in Turkish is required for each relevant year. Although there is no specific guidance in the current local legislation, refreshing/updating comparables every year is advised. Performing a new search may also be necessary, or searches may have to be revised at certain periods, depending on the particular circumstances of the related party transaction to be documented.

6. Tax return filings

a. Does your jurisdiction allow transfer pricing adjustments to be made before year end?

For corporate income tax purposes, transfer pricing adjustments can be made before year end. Turkish corporate income taxpayers are required to submit advance corporate income tax returns on a quarterly basis. Accordingly, transfer pricing adjustments can be made during the fiscal year, on a quarterly basis, in line with quarterly advance corporate income tax declarations. Value added tax (VAT) returns are filed on a monthly basis. When making a transfer pricing adjustment (either during the year or at the end of the year), indirect tax (customs and VAT) implications should also be considered.

b. Must the transfer prices reflected in an income tax return be the same as those reflected in financial statements? In other words, are book/tax differences allowed?

In principle, the transfer prices reflected on an income tax return must be the same as those in the statutory financial statements attached to the annual corporate income tax return. However, some book/tax differences may be allowed depending on specific circumstances.

7. Transfer pricing documentation and disclosure timelines

a. By when must transfer pricing documentation be prepared?

The local file/annual transfer pricing documentation report must be prepared by the deadline for submitting the annual corporate income tax return (i.e., by 30 April of the following year for calendar-year corporate taxpayers).

b. What is the deadline to submit the transfer pricing documentation and the local file?

Currently, there is no obligation to submit the local annual transfer pricing documentation report to the tax office together with the annual corporate income tax return. However, documentation must be submitted within 15 days if there is an official request.

c. What is the deadline for CbC report preparation, submission, and notification?

CbC report preparation and submission

For those MNE groups whose UPE or SPE is a Turkey tax resident (i.e., Turkish MNE group entities) and those MNE groups whose UPE or SPE is not tax resident in Turkey (i.e., foreign MNE group entities), CbC reporting for a particular accounting period is to be prepared and submitted electronically to the TRA by the end of the following accounting period (i.e., after 12 months from the last day of the reporting period). For example, the CbC report preparation and submission deadline for 2021 is 31 December 2022. Similarly, the CbC report preparation and submission deadline with regard to a fiscal period ending on 31 March 2022 is 31 March 2023.

The UPE of an MNE group that is resident in Turkey will still be required to prepare and submit the CbC report to the TRA, even if the report has already been filed in accordance with local reporting requirements in another jurisdiction/country by the SPE.

CbC report notification form

Members of an MNE group that must prepare and submit a CbC report are required to electronically submit a CbC report notification form to the TRA on an annual basis via the TRA's internet tax office by 30 June of the year following the reporting period.

For the calendar year accounting period starting on 1 January 2021 and ending on 31 December 2021, and for fiscal periods (or special accounting periods) starting after 1 January 2021 (including the special accounting period starting on 1 December 2021 and ending on 30 November 2022), the CbC report notification form must be submitted by 30 June 2022. In other words, regardless of whether a calendar year accounting period or a special accounting/fiscal period is used, the CbC report notification form must be submitted to the TRA electronically by 30 June every year.

d. What is the deadline to file an income tax return?

The deadline to file a corporate income tax return is the end of the 30th day of the fourth month following the end of the fiscal year (i.e., by the end of 30 April of the following year for calendar-year fiscal periods).

e. What is the deadline to file master file documentation?

The master file must be prepared by Turkish corporate income taxpayers who are subject to this obligation by the end of the fiscal year following the fiscal year when the obligation arises.

There is no obligation to submit the master file to the tax office unless it is officially requested by the TRA and/or authorized tax inspectors.

f. What is the deadline to file transfer pricing disclosures and returns?

All corporate income taxpayers are required to complete a "Form Relating to Transfer Pricing, Controlled Foreign Corporation and Thin Capitalization," the format of which is provided in appendix 3 of Transfer Pricing General Communiqué No. 1. The form must be submitted every year to the tax office, together with the corporate income tax return.

g. What is the deadline to file any other statutory forms?

There is no other statutory form apart from the "Form Relating to Transfer Pricing, Controlled Foreign Corporation and Thin Capitalization," which is prepared and submitted together with the corporate income tax return.

h. Does preparation of transfer pricing documentation before the deadline protect the taxpayer from a penalty perspective?

A 50% partial penalty protection applies if all transfer pricing documentation obligations are satisfied (i.e., the documentation is prepared completely and on time). Accordingly, preparation of transfer pricing documentation before the deadline is one of the conditions required to benefit from partial penalty protection.

i. Are there additional requirements under local tax law that must be satisfied to obtain penalty protection?

A 50% partial penalty protection applies if all transfer pricing documentation obligations are complied with fully and on a timely basis.

Please see the response to question 12.b. below.

8. Tax authority audit adjustments and amended returns

a. What are the limitations on assessment for transfer pricing adjustments imposed by statute?

The statute of limitations is five years from the end of the tax year.

b. May a taxpayer file an amended tax return to report transfer pricing adjustments to increase and decrease income? Are there any special procedures that need to be followed?

Based on the relevant provisions of the Turkish Tax Procedures Code, adjustments that result in an increase in the corporate income tax base can be made through a "regret filing" procedure. In such a case, the taxpayer will not incur a tax loss penalty but will have to pay delay interest. Adjustments that result in a decrease in the corporate income tax base may also be made using "correction" procedures. However, these adjustments are likely to trigger a tax audit.

c. Are taxpayer setoffs for other related party transactions allowed?

Although there are no specific provisions in the local legislation addressing this issue, the TRA will not accept the offset of different types of related party transactions because the arm's length nature of each type of related party transaction is to be analyzed separately based on the current local rules. In case different types of related party transactions are offset, tax inspectors are expected to restore the transactions and evaluate each related party transaction separately when conducting a comparability analysis and making adjustments or assessments.

d. Does the tax authority use the information gathered through exchange of information during audits?

The Turkish tax authorities can, in principle, use the information gathered through exchange of information during tax audits.

e. Has the tax authority in your jurisdiction used BEPS action 13-related information in audits?

Since BEPS action 13 implementation is very recent in Turkey (2020), this has not yet been observed in tax audits. However, we expect that the information obtained through BEPS action 13-related documentation could certainly be used by Turkish tax inspectors during tax audits in the future.

f. Does the tax authority in your jurisdiction use secret comparables in transfer pricing audits?

Yes, secret comparables may be used by tax inspectors in Turkey in transfer pricing audits. However, the frequency of use has decreased compared to previous years.

g. Are there joint audits, e.g., with the customs authority or with foreign tax authorities?

Although there may be an official exchange of information between the TRA and the customs authority, no joint audits have been observed. There is no alignment between the customs authority and the TRA with regard to the treatment of a related party transaction and the application of the transfer pricing rules. The customs authorities have their own legislative guidance for the treatment of intercompany transfers of imported/exported goods.

Turkey is a member of the OECD's Forum on Tax Administration (FTA). However, the Turkish tax administration has not yet participated in the International Compliance Assurance Program (ICAP) under the FTA.

h. Does the customs authority accept transfer pricing as the basis for the valuation of imports?

The customs rules are not in line with the transfer pricing rules. Although customs inspectors do request and examine transfer pricing documentation reports during their audits (usually for the purpose of understanding the nature of related party transactions), they follow different rules based on the customs legislation in determining the customs duty base in case of related party transactions.

9. Intangibles

a. Is there specific legislation or guidance regarding the pricing of controlled transactions involving intangibles?

Yes. Section 10 of Transfer Pricing General Communiqué No. 1 includes specific provisions related to intangibles.

b. How often does the tax authority make an intangible adjustment?

Payments made by Turkish companies to foreign related entities for the use of intangibles are one of the most prevalent tax audit topics currently. License fee/royalty payments by Turkish companies to related foreign entities are frequently examined and may be challenged by tax inspectors as well as customs inspectors. Variable royalty arrangements incur the most scrutiny.

c. Will the tax authority respect an intercompany agreement providing for a rate royalty?

Generally, Turkish tax inspectors respect and follow the "substance over form" principle based on the relevant rules of the Turkish Tax Procedures Code. Some inspectors may also focus on the form (i.e., the wording used in the intercompany agreements) in addition to the substance. The existence of a signed intercompany agreement is respected; however, it is not sufficient to defend an audit. It is up to the parties to indicate the rate of the royalty on the agreement. Applying a fixed royalty rate is preferred. However, the substance (i.e., the arm's length nature of the royalty amount actually incurred and paid) is more important than the indication of a rate in the agreement ("form") when defending a tax audit.

d. Does the tax authority follow the OECD hard to value intangible guidance? If not, does the jurisdiction have transfer pricing rules that have a similar effect?

Turkey does not have specific transfer pricing rules or specific measures regarding hard to value intangibles. The Turkish tax authorities usually treat the OECD guidance as a recommendation. In practice, there may be deviations from the OECD guidance.

10. Intragroup services (IGS)

a. Does the local jurisdiction follow the intercompany service transactions guidance described in the OECD transfer pricing guidelines? Are there any material differences?

Section 10 of Transfer Pricing General Communiqué No. 1 includes specific provisions regarding IGS. The local rules generally follow the intercompany service transactions guidance described in the OECD transfer pricing guidelines. However, there are certain deviations. For example, "shareholder activities" are not defined and the "low value-added services" approach is not recognized explicitly.

b. Does the need and benefit test need to be satisfied in respect of any IGS payment?

Yes. In addition to the need and benefit test, the pricing of the intragroup service transaction must also be proved to be at arm's length.

c. What is the extent of the required documentary evidence?

Documentation must be provided to prove the following:

a) Whether the services have actually been rendered;
b) Whether there exists a valid commercial reason for soliciting the services from the point of view of the service recipient ("benefit test"); and
c) Whether the charge for the services rendered is at arm's length.

Agreements signed between the related parties and invoices issued for the services are helpful but insufficient. The mere existence of a service invoice does not necessarily constitute proof that services have actually been rendered. The provision of intra-group services should be supported by additional information and documents, depending on the nature of the services provided. The contribution of the services provided to the income-generation capacity of the service recipient should be proved to help satisfy the benefit test. Finally, the amount charged for the services must be proved to be at arm's length through a benchmarking study, as applicable.

11. Financing transactions

a. List any relevant regulations, rulings, and guidelines with respect to thin capitalization or debt capacity in your jurisdiction

Turkish transfer pricing legislation or regulations do not provide guidance specific to financial transactions. General rules that are relevant for the tax treatment of financial transactions are as follows:

Thin Capitalization Rules

Thin capitalization rules apply when loans from shareholders or related parties exceed a 3:1 debt-to-equity ratio at any time during the accounting period (six times shareholder equity for loans from related party banks or financial institutions).

Related parties for these purposes are defined as shareholders and persons related to shareholders that own, directly or indirectly, 10% or more of the shares, voting rights, or rights to receive dividends of the company. The amount of equity to be used as the denominator in the determination of the 3:1 ratio is the balance of shareholders' equity based on the Turkish Tax Procedures Code at the beginning of the accounting period.

If the debt-to-equity ratio of 3:1 is exceeded, any interest amounts, relevant expenses, and foreign exchange losses accrued or paid corresponding to the thin capital amount (i.e., the exceeding portion) will not be deductible from the corporate income tax base. Furthermore, interest amounts accrued or paid that correspond to thin capital will be deemed to constitute a hidden profit distribution for companies or a remittance of profits (for Turkish branches of foreign entities) as of the last day of the accounting period in which the conditions for application of the thin capitalization rules are satisfied. Accordingly, these amounts will be subject to a 10% dividend withholding tax (the domestic dividend withholding tax rate has been reduced from 15% to 10% for dividend distributions made on or after 22 December 2021).

Limitation of deduction of financing expenses

A financing expense deduction limitation can apply to all short-term and long-term borrowings (effective as from 1 January 2021). If total short-term borrowings and long-term borrowings exceed the shareholders' equity of a corporate income taxpayer, 10% of the total financing expenses (charged under such names as interest, commission, due date difference, dividend, foreign exchange loss, and the like) corresponding to the exceeding portion will be treated as a non-deductible expense in the determination of the corporate income tax base. Financing expenses that are to be capitalized as part of the cost of investment are not within the scope of this limitation.

The limitation on deductibility does not apply to banks, insurance companies, factoring companies, financial leasing companies, and other financial institutions.

List of relevant regulations:

- Article 11 of the Corporate Income Tax (CIT) Law governing non-deductible expenses;
- Article 12 of the CIT Law governing thin capitalization;
- Presidential Decree No. 3490 issued in the Official Gazette dated 4 February 2021; and
- CIT Law General Communiqué No. 1, sections 11.2., 11.3., 11.13., and 12.

12. Interest and penalties

a. What is the deadline for additional assessment payments?

The statute of limitations is five years from the end of the tax year.

b. What is the penalty on transfer pricing assessments?

There are no specific transfer pricing penalties. The following general penalty provisions in the Turkish Tax Procedures Code apply:

i. Tax loss penalty of 100% of the additional tax assessment; and
ii. Monthly delay interest rate, applied on the additional tax assessment for the period between the normal due date of the additional tax assessed and the date of assessment.

However, a taxpayer may get partial penalty protection and be able to deduct 50% of the tax loss penalty amount imposed as a result of a transfer pricing adjustment, as long as all transfer pricing documentation obligations are satisfied fully and on a timely basis. The latter condition is deemed to have been satisfied when all of the following five documentation obligations are met fully and on a timely basis, as required by the relevant legislation:

i. Master file;
ii. Annual transfer pricing documentation report;
iii. Country-by country report;
iv. Country-by-country report notification form; and
v. Form regarding Transfer Pricing, Controlled Foreign Corporation and Thin Capitalization.

Compliance "on a timely basis" is deemed to have been satisfied in cases where:

a) There is a period or deadline specified in the relevant legislation and the relevant documentation is submitted/presented within the specified time period or by the specified deadline; or
b) There is no time period or deadline specified but the relevant documentation is submitted/presented within the time period or by the deadline that is determined/provided by the TRA or tax inspectors.

A further reduction of the tax loss penalty may be possible through settlement procedures with the TRA either before or after the imposition of the assessment.

c. Are there any penalties resulting from failure to submit, late submissions, or wrong disclosures?

A fixed, special procedural non-compliance penalty applies based on repeated article 355 of the Turkish Tax Procedures Code. The fixed penalty amount is subject to increase every year depending on the inflation rate.

d. Is interest charged on penalties?

Delay interest is charged on the additional tax amount assessed but not on the tax loss penalty amount.

e. Is interest payable when a refund is due to the taxpayer?

Yes, interest is payable on refunds of overpaid taxes determined either by the application of the taxpayer or under other circumstances, as defined in the relevant provisions of the Turkish Tax Procedures Code. The applicable interest rate is determined according to article 48 of Law No. 6183 governing collection procedures of public receivables.

f. Has there been a reduction in transfer pricing penalties?

There is a partial (50%) penalty protection available under certain conditions, as explained in response to question 12.b. above.

g. Are there any secondary adjustment provisions?

Paragraph 6 of article 13 of the CIT Law and section 9 of Transfer Pricing General Communiqué No. 1 govern secondary adjustments with regard to domestic related party transactions. Accordingly, in case there is an assessment on a Turkish company due to a disguised profit distribution through transfer pricing, the corresponding adjustment can be made at the level of the other domestic party to the transaction, provided that the taxes assessed for the party who is found to have been engaged in the disguised profit distribution are finalized and paid.

Secondary adjustments in the case of cross-border related party transactions can be made in accordance with the relevant provisions of the income tax treaties applicable to the related party transactions concerned.

13. Permanent establishments, safe harbors, exit tax, and litigation

a. Do the local transfer pricing rules or tax authority allow the use of transfer pricing analyses to calculate profits attributable to a permanent establishment or branch?

Tax inspectors may use both local tax and transfer pricing rules to determine profits attributable to a permanent establishment or branch, depending on the particular circumstances of each case.

b. What, if any, unilateral safe harbors exist in your country?

Different local transfer pricing documentation obligations apply to different types of taxpayers. Corporate income taxpayers that are registered with the Large Taxpayers' tax office are required to prepare annual transfer pricing documentation reports for both domestic and cross-border related party transactions. Those that are registered with other tax offices are required to prepare an annual transfer pricing documentation report only for their cross-border related party transactions.

A minimum of TRY 30,000 also has been introduced as from 1 September 2020 when preparing the "Form relating to Transfer Pricing, Controlled Foreign Corporation and Thin Capitalisation," which is to be attached to the annual corporate income tax return. If the amounts of annual net sales or purchases of goods or services with a related party are lower than TRY 30,000, it is no longer necessary to declare the amounts of the related party transactions and the name of the related party on the form.

There are no other safe harbor rules with respect to certain industries, types of taxpayers, or types of transactions.

c. Is there a formal "exit tax" regime or similar provisions in law?

There is no specific "exit tax" regime in Turkey. Turkish transfer pricing rules do not provide any specific guidance about restructurings and no specific exit charge is imposed. Each case is to be evaluated depending on its particular circumstances, based on the current rules in effect.

d. List any recent court decisions

In a High Court decision dated 15 October 2018, it was held that the transfer pricing assessment made by using secret comparables violated the principles of equality and the right of fair treatment. As such, the tax inspector's examination was considered incomplete and the taxpayer's claim to be released from the assessment was granted.

14. Advance pricing agreements (APAs)

a. Are APAs available?

Yes. The scope of APAs is limited to cross-border related party transactions.

b. What kind of APAs are available?

Corporate taxpayers may apply for a unilateral, bilateral, or multilateral APA.

c. Is rollback available? If so, what is the period covered?

The rollback of an APA is possible for fiscal years that are still open under Turkey's domestic statute of limitations (i.e., five years) provided that the relevant facts and circumstances in the previous tax years are the same. However, the implementation of an APA for previous years only covers adjustments that are to be made in favor of the TRA.

d. What is the APA filing fee?

Currently, there is no longer any application or renewal fee for APAs.

e. What are the APA terms of agreement?

APAs are entered into for a maximum period of five years. An APA enters into effect as from the fiscal year in which the APA is concluded with the TRA. Retroactive implementation (rollback) of APAs is possible under certain conditions and needs to be evaluated and decided depending on the particular circumstances of each taxpayer applying for the APA.

Renewal of an existing APA is possible. The taxpayer is required to apply at least six months before the expiry of the APA period.

Revision of an existing APA is possible provided that one or more of the following conditions are satisfied:

a) One of the critical assumptions included in the APA is not realized;
b) A material change in the conditions of the APA has occurred or the conditions determined in the APA are no longer valid;

c) The relevant legislation has been modified, including the provisions of tax treaties that affect the APA; or
d) The APA has been revised, repealed, or cancelled by the CA(s) of the other jurisdiction(s) in the case of bilateral or multilateral APAs.

Additionally, in cases where the annual APA reports are not submitted on time, the TRA may cancel the APA effective from the beginning of the relevant tax period.

f. When is the deadline for submitting an APA request?

There is no deadline to submit an APA request. The APA process starts, and negotiations are initiated, upon the submission of the written application by the taxpayer.

15. Mutual agreement procedure (MAP)

a. Has there been any MAP-related guidance?

Yes. The discussion below is based on recent changes that are effective as from 1 January 2022.

In October 2019, MAP guidelines were issued by the TRA. However, based on recent changes, the rules regarding implementation of MAP have been further clarified and explained through new addendum articles 14-18 added to the Turkish Tax Procedures Code. These rules apply as from 1 January 2022.

b. Does your jurisdiction provide a period within which a MAP application can be filed by the taxpayer?

According to new addendum article 14 of the Turkish Tax Procedures Code, a MAP application can be filed within the period specified in the relevant provisions of the tax treaty. In case there is no MAP application period specified in the relevant tax treaty or the tax treaty refers to local legislation, the MAP application must be filed within three years from the date the taxpayer is informed about the tax assessment that is deemed to be against the provisions of the tax treaty, i.e., from the date the taxpayer is officially notified in writing by the TRA as a result of a tax audit, or from the date tax is accrued on a tax return declared by the taxpayer with reservation.

c. Does requesting the MAP suspend tax collections?

No. Applying for/requesting the MAP does not suspend the collection of taxes or penalties.

d. Are there requirements under local law that can negatively affect a taxpayer's ability to request access to the MAP or to implement a MAP settlement?

In case there is a MAP application after a court procedure starts, the court must first wait for the MAP to be finalized. If the MAP takes longer than expected, the court process also will take longer than expected compared to a case where there was no MAP application.

If the taxpayer applied for a settlement, the date of settlement also will be delayed until the MAP is finalized. However, if the taxpayer requests the MAP and then decides to settle without waiting for the MAP to be finalized, then the taxpayer will be deemed to have given up the MAP application and, if the taxpayer enters into the settlement and agrees with the amount to be settled, then the taxpayer will not be able to subsequently apply for the MAP again.

e. Does your jurisdiction stipulate the time to resolve the MAP?

Although there is no time limit to finalize the negotiations with the other jurisdiction's CA, according to the MAP guidelines issued in October 2019, the general tendency (also recognized by the TRA) is that a MAP application should be finalized within a period not longer than two years from the date of application.

f. When may taxpayers submit tax adjustments to the competent authority (CA)?

The taxpayer may apply to the CA within the period indicated in response to question 15.b. above, from the date the taxpayer is informed in writing about the tax assessment (e.g., as a result of a tax audit), or from the date the tax considered to be unfair is accrued on a tax return declared by the taxpayer with reservation.

g. Can the CA develop new settlement positions?

Yes. However, this has not been tested to date.

h. Can taxpayers go to the CA before paying tax?

The taxpayer may, in principle, go to the CA after being officially notified in writing by the TRA of the amount of a proposed adjustment, before paying the tax. However, it should be noted that a MAP application does not suspend the collection of taxes and penalties accrued (based on new addendum article 18 of the Turkish Tax Procedures Code).

i. Is your jurisdiction a signatory to the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (MCAA)?

Turkey signed the MCAA on 30 December 2019 and it entered into force on 18 December 2020 (through Presidential Decree No. 4026). It applies to fiscal years beginning on or after 1 January 2019.

16. Other noteworthy information

a. Does the local tax authority follow the OECD COVID-19 guidance?

No. The TRA has not published any domestic guidance on the transfer pricing implications of COVID-19.

b. Are management fees deductible?

Yes, provided all the following conditions are satisfied:

a) The management service is actually performed and the performance is verifiable;
b) The management service is necessary and beneficial for the recipient's business operations in Turkey (i.e., it contributes to the income-generating activity in Turkey); and
c) The management service fee is at arm's length.

Stewardship costs are not deductible.

In practice, tax inspectors tend to recharacterize management service fees as fees paid for the use or transfer of know-how (i.e., royalty) depending on the circumstances of the case (e.g., the wording used in service agreements, the scope of services, etc.).

Deduction of management service fees may still be denied during a tax audit on the grounds that they fail to satisfy the benefit test even though it is proved that the service is actually performed and that the service fee is at arm's length.

c. Are intercompany services transactions that satisfy the requirements of the OECD transfer pricing guidelines subject to audit adjustments under other provisions of the local tax laws?

Yes. Although the OECD transfer pricing guidelines are generally recognized, there may be deviations in practice during a tax audit and adjustments may be made based on the interpretation of the relevant local legislation.

d. Are management fees subject to withholding?

Management service fees are normally subject to domestic withholding tax at 20% in the absence of a tax treaty between the country of residence of the service provider and Turkey, where the service recipient is resident. However, relevant tax treaty provisions may eliminate the 20% withholding tax under certain conditions (depending on the nature of the service, the location where the service is provided, the duration of the service providers' physical visits to Turkey, etc.).

e. May stock option costs be included in the cost base for intercompany service charges?

There is no specific regulation, no formal guidance, no tax audit experience, or case law currently available on this issue.

Stock option costs may be included in the cost base for a Turkish outbound intercompany service charge.

In the case of inbound intercompany service charges, the deductibility of stock option costs depends on whether the stock option costs are directly related to the intercompany services actually performed and whether they pass the benefit test. When stock options are taxed and whether they are actually a part of "shareholder services" performed are also important factors to consider for the purpose of deductibility. The tax deductibility of stock option costs included in an inbound intercompany service charge ultimately depends on the circumstances of each case.

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