



## **2010 CFE Questionnaire on Transfer Pricing Documentation**

EDITORS: Piergiorgio Valente and Stella Raventos-Calvo

**2010 CFE QUESTIONNAIRE  
ON TRANSFER PRICING DOCUMENTATION**

**Editors:**

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## SECTION I

## 1. Introduction to the Survey by Piergiorgio Valente

***Dear Reader,***

The essence of a “*multinational*” enterprise may only be thoroughly grasped in the unity of an economic organism facing a multiplicity of juridical organisations through which the organism carries out an economic activity. In other words, in view of a unique decision-making organism, we find – as far as the actual carrying out of the business activity is concerned – a number of various connecting elements operating at a transnational level in a number of Countries.

The material unity of the economic form does not necessarily correspond to a similar unity when referred to a juridical organisation. To the contrary, the “*multinationality*” of enterprises emerges from the multiplicity of national companies in different Countries where the business activity is carried out during various phases of the life of the sole enterprise, so much so that, in a certain sense, it would be inappropriate to use the expression “*multinational enterprise*”, since companies in various legal regimes, by which means the activity of the multinational enterprise is structured, are (in any case) national<sup>1</sup>.

Within the current transfer pricing framework, what assumes a major role are the interconnections created within a multinational group structure with special reference to relations among the parent company and its subsidiaries and in turn between the single subsidiaries.

In these last few years, the documentation issue to support transfer pricing policies adopted by multinational groups has become a particularly topical item for practitioners.

In the Transfer Pricing Guidelines the documentation issue has been dealt with in Chapter V. Generally, the OECD does not provide comprehensive guidelines; nevertheless, it is required to provide Tax Authorities of the various Countries with a minimum amount of information in order to establish compliance with the arm’s length principle.

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<sup>1</sup> For further information, cfr. Valente P, “*Manuale del transfer pricing*” (i.e., “Transfer Pricing Manual”), Milan, 2009, Page 5 et seq. and Page 1807 et seq.

The significance of the above topic has been underlined also by the steps undertaken in that respect by organisations such as PATA (*Pacific Association of Tax Administrators*)<sup>2</sup> and by the ICC (*International Chamber of Commerce*)<sup>3</sup> that have proposed standard documentation, which specific purpose is to align information requirements of the relevant Tax Authorities and to avoid the levying of overly burdensome obligations (in terms of time and costs) at the level of associated enterprises.

If on the one hand, we are witnessing the attempts to create standards that are widely shared, on the other, the exercise of sovereignty and of taxing authority by the single national regimes determine the development of rules that reflect local specificities, opening thus a “breach” in the need to attain “uniform” (standard) models.

The foregoing ought to be interpreted also with a view to current trends at a worldwide level, as the present epitomizing globalization trait. As a consequence, the economy establishes its own independence vis-à-vis other States and State sovereignty falls thus apart.

Within such framework, a common approach at EU level on the issue of documentation requirements has been deemed convenient for taxpayers, in terms of the reduction of compliance costs and a minor exposure to penalties, also with regard to Tax Authorities in terms of major transparency and coherence.

This report offers a view of the current documentation requirements in some CFE Members and examines the quantitative outcomes of the survey. Practical insights include the description of transfer pricing laws in the respondent Countries with reference to a wide range of matters (legal control requirements, tax havens, documentation required for certain types of transactions or specific circumstances, documentation requirements for transactions carried out with tax havens, relationships between Tax Authorities and Customs Authorities, language, penalties).

The report concludes with the most relevant documentation concerning documentation requirements for associated enterprises in the EU.

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<sup>2</sup> Organisation between Australia, Canada, Japan and the United States.

<sup>3</sup> The current situation is well represented by the words expressed by the ICC Taxation Commission Chair, Robert Couzin within the context of the transfer pricing documentation requirements and dispute resolution seminar, held on 28 April, 2010: “*The often conflicting documentation requirements have become a significant challenge for international business, (...) Enterprises and governments should be working together to find practical and manageable solutions*”.

## **2. About CFE**

The Confédération Fiscale Européenne (CFE) represents 180,000 professional tax advisers throughout Europe. It was founded in 1959 and now has 33 Member Organisations from 24 European states. These are Austria, Belgium, Bulgaria (observer), the Czech Republic, Croatia (observer), Finland, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Russia (observer), Slovakia, Slovenia, Spain, Switzerland and the United Kingdom.

CFE's functions are to safeguard the professional interests of tax advisers, to assure the quality of tax services provided by tax advisers, to exchange information about national tax laws and professional law and to contribute to the coordination of tax law in Europe.

Every year the CFE holds a Forum on current international tax issues which brings together professional tax advisers, senior officials from the Commission and from Member States, leading academics and other experts in the field of politics, business and public administration.

More information on CFE and its activities can be found on the CFE website: [www.cfe-eutax.org](http://www.cfe-eutax.org).

## **3. Acknowledgements**

The CFE would like to thank all of the contributors to this publication, and especially Stella Raventos and Piergiorgio Valente who has made this publication possible.



#### 4. Foreword

In the study *“Company Taxation in the Internal Market”*<sup>4</sup>, the Commission identified the increasing importance of transfer pricing tax matters as an Internal Market issue: although all Member States apply and acknowledge the merits of the OECD *“Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations”* the various interpretations given to these Guidelines often give rise to cross-border disputes which are detrimental to the smooth functioning of the Internal Market and which create additional costs for both, business and national tax administrations. Among the basic concepts of transfer pricing and the Internal Market, the Commission identified the issue of documentation requirements: according to the Company’s tax study *“A key issue is the question of what kind of documentation a group company needs to prepare to demonstrate it has applied the arm’s length principle”*.

The OECD Transfer Pricing Guidelines<sup>5</sup> states that *“The taxpayer should not be expected to have prepared or obtained documents beyond the minimum needed to make a reasonable assessment of whether it has complied with the arm’s length principle”*<sup>6</sup>.

Generally, the Guidelines aim at maintaining a balance between the right of tax administrations to obtain from taxpayers as much information as possible to ascertain whether the price is or is not of an arm’s length nature, and the compliance cost that any documentation rules imply for the taxpayer.

The Guidelines recognise that the taxpayer should make reasonable efforts, at the time transfer prices are set, to determine whether the arm’s length principle is satisfied, and that tax authorities can expect or require taxpayers to maintain documentation to support this. However, the amount and type of documentation required should be in proportion to the circumstances of each case. In this context, the Guidelines introduce the important concept of the *“prudent business manager”*. This implies that the process of considering transfer prices should be carried out in accordance with the same prudent business management principles as would govern the process of evaluating any other business decision of similar complexity and importance.

The Guidelines provide a list of items, which are likely to be useful in most cases, and other types of information that will be useful in many cases; but they do not include an exhaustive list of documents that the taxpayer should prepare. The Guidelines do explicitly mention that enterprises are not required to use more than one transfer pricing method, and also state that there should be no contemporaneous requirement for supporting documentation to be prepared either at the time the prices are set or when the tax return is filed (i.e., it is acceptable for the tax return to be prepared only upon request by the Tax Authorities).

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<sup>4</sup> (SEC(2001) 1681).

<sup>5</sup> OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, Paris, 1995.

<sup>6</sup> See OECD Guidelines, Para 5.7.

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## Documentation Requirements According to the OECD Guidelines

*“The information relevant to an individual transfer pricing enquiry depends on the facts and circumstances of the case. For that reason it is not possible to define in any generalised way the precise extent and nature of information that would be reasonable for the tax administration to require and for the taxpayer to produce at the time of examination. However, there are certain features common to any transfer pricing enquiry that depends on information in respect of the taxpayer, the associated enterprises, the nature of the transaction, and the basis on which the transaction is priced (...)”<sup>7</sup>.*

*“An analysis under the arm’s length principle generally requires information about the associated enterprises involved in the controlled transactions, the transactions at issue, the functions performed, information derived from independent enterprises engaged in similar transactions or businesses, and other factors discussed elsewhere in this Report, taking into account as well the guidance in paragraph 5.4. Some additional information about the controlled transaction in question could be relevant. This could include the nature and terms of the transaction, economic conditions and property involved in the transactions, how the product or service that is the subject of the controlled transaction in question flows among the associated enterprises, and changes in trading conditions or renegotiations of existing arrangements. It also could include a description of the circumstances of any known transactions between the taxpayer and an unrelated party that are similar to the transaction with a foreign associated enterprise and any information that might bear upon whether independent enterprises dealing at arm’s length under comparable circumstances would have entered into a similarly structured transaction. Other useful information may include a list of any known comparable companies having transactions similar to the controlled transactions”<sup>8</sup>.*

*“In particular transfer pricing cases it may be useful to refer to information relating to each associated enterprise involved in the controlled transactions under review, such as:*

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<sup>7</sup> See OECD Guidelines, Para 5.16.

<sup>8</sup> See OECD Guidelines, Para 5.17.

- 
- i) *an outline of the business;*
  - ii) *the structure of the organisation;*
  - iii) *ownership linkages within the MNE group;*
  - iv) *the amount of sales and operating results from the last few years preceding the transaction;*
  - v) *the level of the taxpayer's transactions with foreign associated enterprises, for example the amount of sales of inventory assets, the rendering of services, the rent of tangible assets, the use and transfer of intangible property, and interest on loans”<sup>9</sup>.*

*“Information on pricing, including business strategies and special circumstances at issue, may also be useful. This could include factors that influenced the setting of prices or the establishment of any pricing policies for the taxpayer and the whole MNE group. For example, these policies might be to add a mark-up to manufacturing cost, to deduct related costs from sales prices to end-users in the market where the foreign related parties are conducting a wholesale business, or to employ an integrated pricing or cost contribution policy on a whole group basis. Information on the factors that lead to the development of any such policies may well help a MNE to convince tax administrations that its transfer pricing policies are consistent with the transactional conditions in the open market. It could also be useful to have an explanation of the selection, application, and consistency with the arm's length principle of the transfer pricing method used to establish the transfer pricing. It should be noted in this respect that the information most useful to establishing arm's length pricing may vary depending upon the method being used”<sup>10</sup>.*

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<sup>9</sup> See OECD Guidelines, Para 5.18.

<sup>10</sup> See OECD Guidelines, Para 5.19.

*“Other special circumstances could involve management strategy or the type of business. Examples are circumstances under which the taxpayer's business is conducted in order to enter a new market, to increase share in an existing market, to introduce new products into a market, or to fend off increasing competition”<sup>11</sup>.*

*“Information about functions performed (taking into account assets used and risks assumed) may be useful for the functional analysis that ordinarily would be undertaken to apply the arm's length principle. The functions include manufacturing, assemblage, management of purchase and materials, marketing, wholesale, stock control, warranty administration, advertising and marketing activities, carriage and warehousing activities, lending and payment terms, training, and personnel”<sup>12</sup>.*

## **Recommendations on Documentation**

*“Taxpayers should make reasonable efforts at the time transfer pricing is established to determine whether the transfer pricing is appropriate for tax purposes in accordance with the arm's length principle. Tax administrations should have the right to obtain the documentation prepared or referred to in this process as a means of verifying compliance with the arm's length principle. However, the extensiveness of this process should be determined in accordance with the same prudent business management principles that would govern the process of evaluating a business decision of a similar level of complexity and importance. Moreover, the need for the documents should be balanced by the costs and administrative burdens, particularly where this process suggests the creation of documents that would not otherwise be prepared or referred to in the absence of tax considerations. Documentation requirements should not impose on taxpayers' costs and burdens disproportionate to the circumstances. Taxpayers should nonetheless recognise that adequate record-keeping practices and voluntary production of documents facilitate examinations and the resolution of transfer pricing issues that arise”<sup>13</sup>.*

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<sup>11</sup> See OECD Guidelines, Para 5.21.

<sup>12</sup> See OECD Guidelines, Para 5.23.

<sup>13</sup> See OECD Guidelines, Para 5.28.

*“Tax administrations and taxpayers alike should commit themselves to a greater level of co-operation in addressing documentation issues, in order to avoid excessive documentation requirements while at the same time providing for adequate information to apply the arm's length principle reliably. Taxpayers should be forthcoming with relevant information in their possession, and tax administrations should recognise that they can avail themselves of exchange of information articles in certain cases so that less need be asked of the taxpayer in the context of an examination. The Committee on Fiscal Affairs intends to study the issue of documentation further to develop additional guidance that might be given to assist taxpayers and tax administrations in this area”<sup>14</sup>.*

## **5. The Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the EU**

The Council on 27th June, 2006 adopted a Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (EUTPD) which was part of a Communication of the European Commission adopted on 10 November 2005. This Code of Conduct aims to standardise the documentation that multinationals must provide to the Tax Authorities on their pricing of cross-border intra-group transactions (*“transfer pricing documentation”*).

The Code which has been developed on the basis of work in the EU Joint Transfer Pricing Forum, aims to significantly reduce the tax complications that companies face when trading with associated enterprises in other Member States. Companies frequently complain about the onerous and differentiated documentation obligations with which they have to comply in such cases in the different Member States involved.

The Code is a political commitment and will not affect Member States’ rights and obligations or the respective spheres of competence of the Member States and the EU.

### **5.1 Masterfile**

The *“masterfile”* concept is an enhanced version of the centralised, standardised documentation concept. According to the EU Joint Transfer Pricing Forum the main advantage for taxpayers of a standardised documentation is less compliance costs in preparing transfer pricing documentation, because they would have to deal with only one set of rules. For tax administrations the main benefit of standardised documentation would be a coordination of documentation requirements and thus, a level of playing field.

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<sup>14</sup> See OECD Guidelines, Para 5.29.

The centralised documentation concept goes one step further than the standardised documentation. In this approach a multinational group would prepare a single set of documentation that could serve as the basis for preparing specific local country documentation.

The masterfile concept means that a multinational group has a standardised set of documentation (the “*masterfile*” supplemented by “*country specific documentation*”) at company level for all associated enterprises in all Countries.

The masterfile should follow the economic reality of the enterprise and provide a “*blue print*” of the company and its transfer pricing system that would be relevant for all Member states concerned.

The masterfile should contain the following items:

- a. Description of the business and business strategy including changes in the business strategy compared to previous tax years;
- b. the group’s organisational, legal and operational structure where relevant for EU Member States (including an organisation chart, a list of group members and a description of the participation of the parent company in the subsidiaries);
- c. identification of the associated enterprises engaged in controlled transactions with and within the EU;
- d. general description of the controlled transactions with and within the EU, i.e.:
  - i. transaction flows (tangibles, intangibles, services);
  - ii. invoice flows;
  - iii. values of transaction flows;
- e. general description of functions performed and risks assumed including description of changes in respect of functions and risks compared to previous tax years, e.g., the change from a full-fledged distributor to a commissionaire;
- f. ownership of intangibles (patents, trademarks, brand names, know-how, etc.) and royalties paid or received;
- g. substantiation of the arm’s length nature of the company’s transfer pricing, e.g., by providing the group’s intercompany transfer pricing instructions or a description of the group’s transfer pricing system;
- h. commitment by the taxpayer to provide supplementary information upon request within a reasonable time frame according to the national rules;
- i. Cost Contribution Agreements, APAs and Rulings as far as group members in the EU are concerned.

## 5.2 Country-specific Documentation

The content of country-specific documentation is a supplement to the masterfile. Both jointly constitute the documentation file for the respective EU Member State.

In order to meet the EU TP documentation requirements, a country-specific documentation should contain, in addition to the contents of the masterfile, the following items:

- a. Details of country specific controlled transactions;
- b. Comparability analysis, i.e.:
  - i. characteristics of property and services;
  - ii. detailed functional and risk analyses;
  - iii. contractual terms;
  - iv. economic circumstances;
  - v. specific business strategies; and
  - vi. Benchmark studies, if available.
- c. An explanation about the selection and application of the transfer pricing method, i.e., why a specific transfer pricing method was selected and how it was applied.



## SECTION II



## **6. The Code of Conduct on Transfer Pricing Documentation: Evidence from practice**

The Code of Conduct is soft law and it is not mandatory for individual Member States to introduce its provisions: they are free to adopt the Code of Conduct if they wish to do so.

CFE would like to discover the extent and manner in which the Code of Conduct has been adopted by individual Countries so that it can report back to the EU Transfer Pricing Forum which developed the Code of Conduct.

The responding Countries are:

Country	Tax Authority	Web site of the Tax Authority	Note
Austria	Bundesministerium für Finanzen	<a href="https://www.bmf.gv.at/">https://www.bmf.gv.at/</a>	
Belgium	Federale belastingadministraties	<a href="http://fiscus.fgov.be">http://fiscus.fgov.be</a>	
Croatia	Ministarstvo Financija	<a href="http://www.porezna-uprava.hr/">http://www.porezna-uprava.hr/</a>	CFE observer
Czech Republic	Ministerstvo Financí	<a href="http://www.mfcr.cz">http://www.mfcr.cz</a>	
France	Direction Générale des Impôts	<a href="http://www.impots.gouv.fr">http://www.impots.gouv.fr</a>	
Germany	Bundesministerium der Finanzen	<a href="http://www.bundesfinanzministerium.de">http://www.bundesfinanzministerium.de</a>	
Ireland	Irish Tax and Customs	<a href="http://www.revenue.ie/en/index.html">http://www.revenue.ie/en/index.html</a>	
Italy	Agenzia delle entrate	<a href="http://www.agenziaentrate.it">http://www.agenziaentrate.it</a>	
Latvia	Latvijas Republikas Finanšu Ministrija	<a href="http://www.fm.gov.lv">http://www.fm.gov.lv</a>	
Luxembourg	Ministère des Finances	<a href="http://www.mf.public.lu/index.html">http://www.mf.public.lu/index.html</a>	
Malta	Ministry of Finance, the Economy and Investments	<a href="http://finance.gov.mt/">http://finance.gov.mt/</a>	
Netherlands	Belastingdienst	<a href="http://www.belastingdienst.nl/">http://www.belastingdienst.nl/</a>	
Poland	Ministerstwo Finansów	<a href="http://www.mofnet.gov.pl/">http://www.mofnet.gov.pl/</a>	
Portugal	Direcção-Geral dos Impostos	<a href="http://www.portaldasfinancas.gov.pt/pt/home.action">http://www.portaldasfinancas.gov.pt/pt/home.action</a>	
Romania	Ministerul Finantelor Publice	<a href="http://www.mfinante.ro">http://www.mfinante.ro</a>	
Russia	Ministry of Finance of the Russian Federation	<a href="http://minfin.ru">http://minfin.ru</a>	CFE observer
Slovakia	Ministerstvo Finančí Slovenskej republiky	<a href="http://www.finance.gov.sk/">http://www.finance.gov.sk/</a>	
Slovenia	Ministrstvo za Finance	<a href="http://www.mf.gov.si/angl/index.htm">http://www.mf.gov.si/angl/index.htm</a>	
Spain	Agencia Tributaria	<a href="http://www.aeat.es">http://www.aeat.es</a>	
Switzerland	Swiss Federal Tax Administration FTA	<a href="http://www.estv.admin.ch/index.html?lang=en">http://www.estv.admin.ch/index.html?lang=en</a>	
UK	HMRC	<a href="http://www.hmrc.gov.uk/index.htm">http://www.hmrc.gov.uk/index.htm</a>	

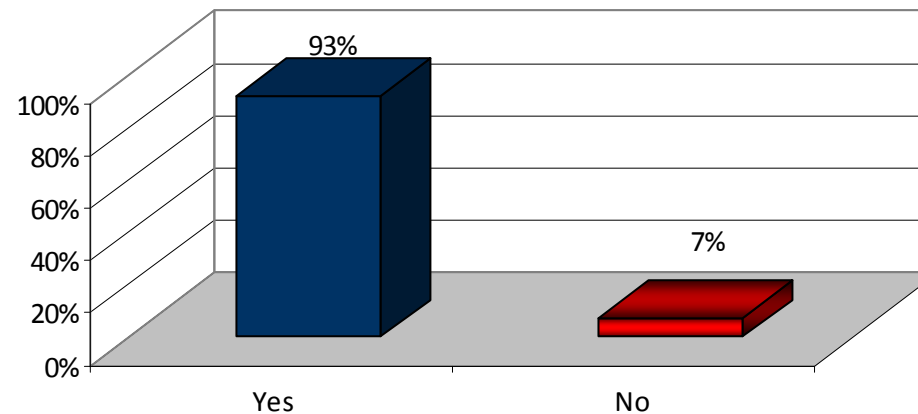
## **7. Transfer Pricing Questionnaire (Outcomes)**

### 7.1a) Is the arm's length principle recognised by law in your Country?

All the Countries included in this survey recognise in their legislation the arm's length principle as stated in the OECD Transfer Pricing Guidelines. In some cases there is a specific provision. Seven Countries (Austria, Croatia, Ireland, Luxembourg, Poland, Slovenia, UK) have not specific rules in this respect. However, in Austria there are only general rules which apply to transfer pricing. Luxembourg only has a general statement of the arm's length principle.

Malta applies general anti-avoidance rules. No transfer pricing rules in Switzerland. Amendments are expected in the Russian legislation in 2011.

Is the arm's length principle recognised by law in your Country?



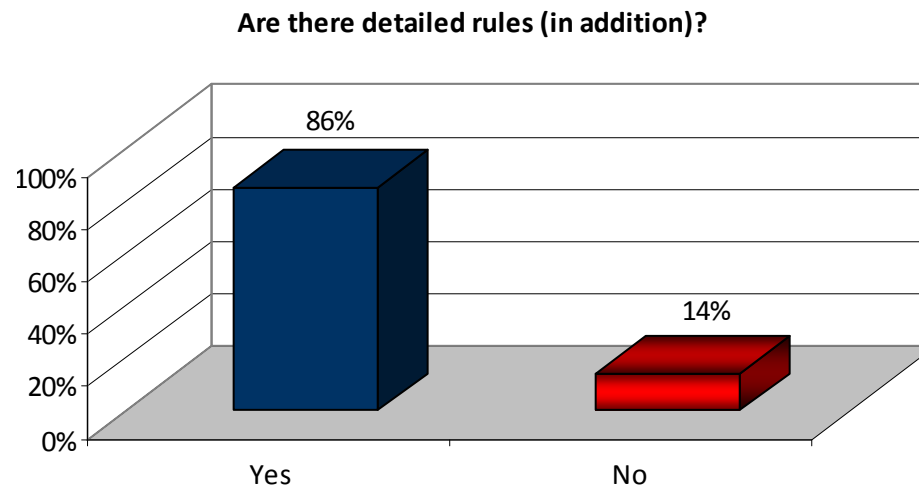


Is the arm's length principle recognised by law in your Country?

Country	Yes	No	Additional Notes
Austria			
Belgium	<input checked="" type="checkbox"/>		
Croatia			
Czech Republic	<input checked="" type="checkbox"/>		
France	<input checked="" type="checkbox"/>		
Germany	<input checked="" type="checkbox"/>		
Ireland			
Italy	<input checked="" type="checkbox"/>		
Latvia	<input checked="" type="checkbox"/>		
Luxembourg			
Malta	<input checked="" type="checkbox"/>		
Netherlands	<input checked="" type="checkbox"/>		
Poland			
Portugal	<input checked="" type="checkbox"/>		
Romania	<input checked="" type="checkbox"/>		
Russia	<input checked="" type="checkbox"/>		
Slovakia	<input checked="" type="checkbox"/>		
Slovenia			
Spain	<input checked="" type="checkbox"/>		
Switzerland		<input checked="" type="checkbox"/>	
UK			
<b>Total</b>	<b>13</b>	<b>1</b>	<b>14</b>
<b>Total (%)</b>	<b>93%</b>	<b>7%</b>	<b>100%</b>

### 7.1b) Are there detailed rules (in addition)?

A vast majority of the respondents (86%) reports the existence of detailed rules in their legislation regarding transfer pricing matters. Seven Countries (Austria, Croatia, Ireland, Luxembourg, Poland, Slovenia, UK) did not provide their answer to this question.





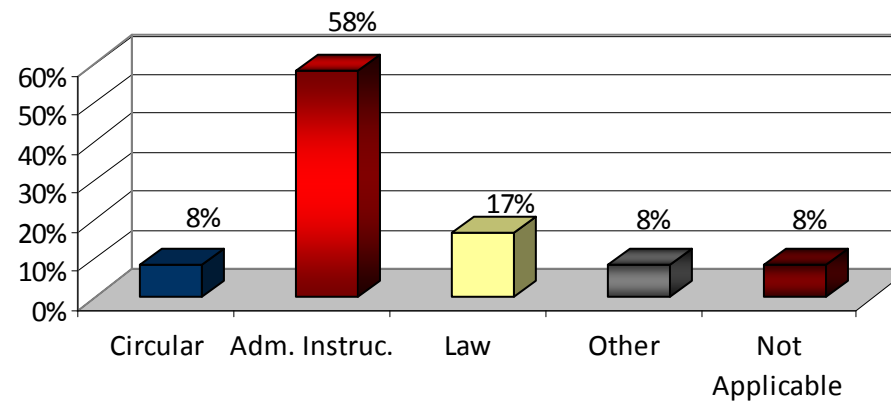
**Are there detailed rules (in addition)?**

Country	Yes	No	Additional Notes
Austria			
Belgium	<input checked="" type="checkbox"/>		
Croatia			
Czech Republic	<input checked="" type="checkbox"/>		
France	<input checked="" type="checkbox"/>		
Germany	<input checked="" type="checkbox"/>		
Ireland			
Italy	<input checked="" type="checkbox"/>		
Latvia	<input checked="" type="checkbox"/>		
Luxembourg			
Malta		<input checked="" type="checkbox"/>	Only general anti-avoidance legislation.
Netherlands	<input checked="" type="checkbox"/>		
Poland			
Portugal	<input checked="" type="checkbox"/>		
Romania	<input checked="" type="checkbox"/>		
Russia	<input checked="" type="checkbox"/>		
Slovakia	<input checked="" type="checkbox"/>		
Slovenia			
Spain	<input checked="" type="checkbox"/>		
Switzerland		<input checked="" type="checkbox"/>	
UK			
<b>Total</b>	<b>12</b>	<b>2</b>	<b>14</b>
<b>Total (%)</b>	<b>86%</b>	<b>14%</b>	<b>100%</b>

### 7.1c) Are these provisions in legislation or in other forms of law not directly binding (e.g., administrative instructions, circulars etc.)?

According to 58% of the respondents transfer pricing rules are detailed in administrative instructions provided by the local Tax Authority.  
In 17% of the cases transfer pricing rules are set forth by law.  
Nine Countries (Austria, Croatia, Ireland, Luxembourg, Malta, Portugal, Russia, Slovenia, UK) did not provide their answer.

#### Are these provisions in legislation or in other forms of law not directly binding (e.g., administrative instructions, circulars, etc)?





Are these provisions in legislation or in other forms of law not directly binding (e.g., administrative instructions, circulars etc.)?

Country	Circular	Adm. Instruc.	Law	Other	Not Applicable	
Austria						
Belgium	<input checked="" type="checkbox"/>					
Croatia						
Czech Republic		<input checked="" type="checkbox"/>				
France		<input checked="" type="checkbox"/>				
Germany		<input checked="" type="checkbox"/>				
Ireland						
Italy		<input checked="" type="checkbox"/>				
Latvia				<input checked="" type="checkbox"/>		
Luxembourg						
Malta						
Netherlands		<input checked="" type="checkbox"/>				
Poland		<input checked="" type="checkbox"/>				
Portugal						
Romania		<input checked="" type="checkbox"/>				
Russia						
Slovakia			<input checked="" type="checkbox"/>			
Slovenia						
Spain			<input checked="" type="checkbox"/>			
Switzerland					<input checked="" type="checkbox"/>	
UK						
<b>Total</b>	<b>1</b>	<b>7</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>12</b>
<b>Total (%)</b>	<b>8%</b>	<b>58%</b>	<b>17%</b>	<b>8%</b>	<b>8%</b>	<b>100%</b>

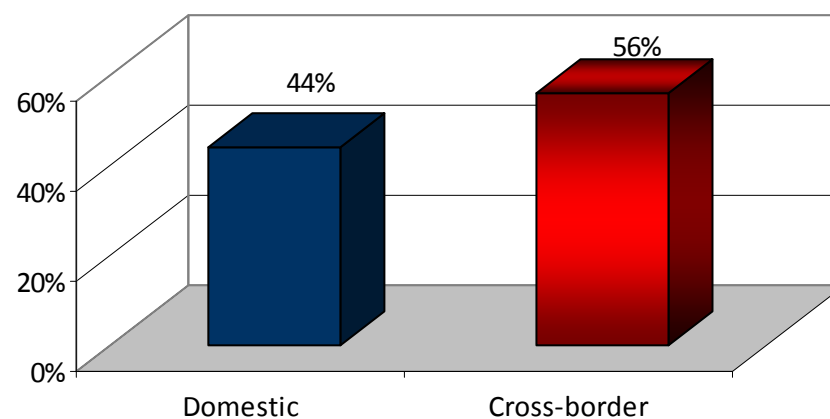
### 7.1d) Do such rules apply both to national and international situations?

The answers provided to this question underline that in the majority of the responding Countries, transfer pricing rules apply both to domestic and cross-border transactions.

Only Italy reports the application of the rules to transactions carried out with foreign entities.

Six Countries (Austria, Croatia, Luxembourg, Portugal, Slovenia, UK), did not answer to this question.

**Do such rules apply both to national and international situations?**



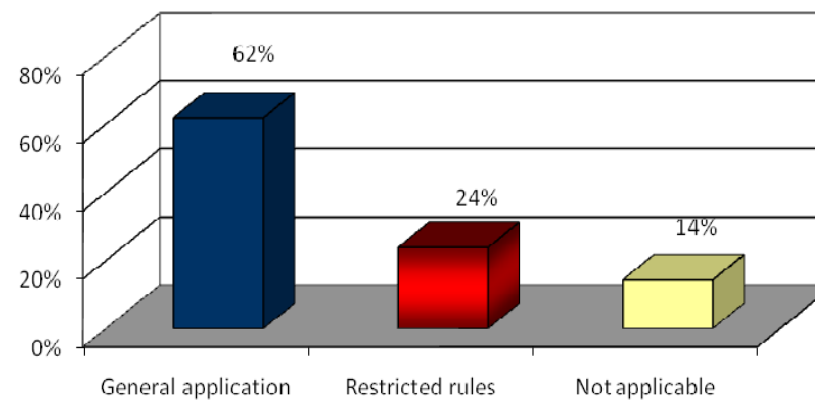
**Do such rules apply both to national and international situations?**

Country	Domestic	Cross-border	
Austria			
Belgium	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Croatia			
Czech Republic	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
France		<input checked="" type="checkbox"/>	
Germany	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Italy		<input checked="" type="checkbox"/>	
Latvia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Luxembourg			
Malta	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Netherlands	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Poland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Portugal			
Romania	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Russia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Slovakia		<input checked="" type="checkbox"/>	
Slovenia			
Spain	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Switzerland	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
UK			
<b>Total</b>	<b>11</b>	<b>14</b>	<b>25</b>
<b>Total (%)</b>	<b>44%</b>	<b>56%</b>	<b>100%</b>

## 7.2 If so, are these rules of general application or are they restricted to certain entities or transactions?

In most Countries transfer pricing rules are of general application.  
In other cases rules apply to certain types of transactions/related parties.

If so, are these rules of general application or are they restricted to certain entities or transactions?

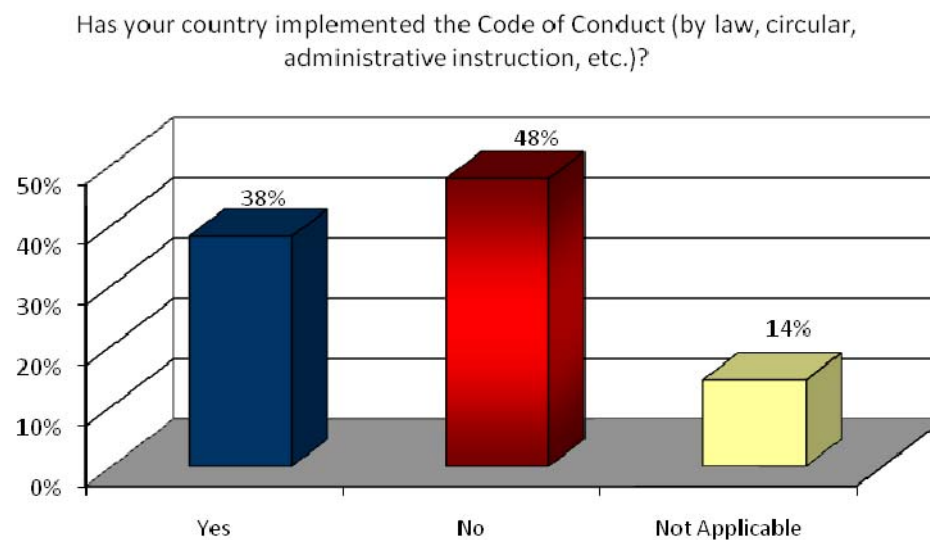


If so, are these rules of general application or are they restricted to certain entities or transactions?

Country	General	Restricted	Not Applicable	Additional Notes
Austria	<input checked="" type="checkbox"/>			
Belgium	<input checked="" type="checkbox"/>			
Croatia		<input checked="" type="checkbox"/>		Croatian companies and their foreign related parties.
Czech Republic	<input checked="" type="checkbox"/>			
France	<input checked="" type="checkbox"/>			
Germany	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Rules concerning hidden profit distribution and hidden capital contribution are applicable both, to domestic and cross-border transactions.
Italy		<input checked="" type="checkbox"/>		
Latvia		<input checked="" type="checkbox"/>		Related parties with 90% ownership in transactions with resident entities and with ownership of greater than 20%. Common control in transactions with non residents.
Luxembourg			<input checked="" type="checkbox"/>	
Malta			<input checked="" type="checkbox"/>	
Netherlands	<input checked="" type="checkbox"/>			
Poland	<input checked="" type="checkbox"/>			
Portugal	<input checked="" type="checkbox"/>			
Romania	<input checked="" type="checkbox"/>			
Russia	<input checked="" type="checkbox"/>			
Slovakia		<input checked="" type="checkbox"/>		Transfer pricing rules apply to foreign related entities and to permanent establishment.
Slovenia	<input checked="" type="checkbox"/>			Application to cross-border and domestic transactions.
Spain	<input checked="" type="checkbox"/>			
Switzerland			<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>			
<b>Total</b>	<b>13</b>	<b>5</b>	<b>3</b>	<b>21</b>
<b>Total (%)</b>	<b>62%</b>	<b>24%</b>	<b>14%</b>	<b>100%</b>

### 7.3 Has your country implemented the Code of Conduct (by law, circular, administrative instructions, etc.)?

Forty-eight per cent (48%) of the respondents answered that the Code of Conduct has not been implemented in their legislation.



**Has your country implemented the Code of Conduct (by law, circular, administrative instructions, etc.)?**

Country	Yes	No	Not Applicable	Additional Notes
Austria		<input checked="" type="checkbox"/>		
Belgium	<input checked="" type="checkbox"/>			Implemented by administrative guidelines on 14 November 2006.
Croatia		<input checked="" type="checkbox"/>		
Czech Republic	<input checked="" type="checkbox"/>			Implemented by the Ministry of Finance Instruction No. D-293.
France	<input checked="" type="checkbox"/>			Limited to large companies with total assets or turnover exceeding € 400 million.
Germany	<input checked="" type="checkbox"/>			By administrative decree (BMF-Schreiben).
Ireland	<input checked="" type="checkbox"/>			Since May 2010.
Italy		<input checked="" type="checkbox"/>		
Latvia		<input checked="" type="checkbox"/>		Some information is provided on the Tax Authorities website.
Luxembourg			<input checked="" type="checkbox"/>	
Malta			<input checked="" type="checkbox"/>	
Netherlands		<input checked="" type="checkbox"/>		Nevertheless, based on our practical experience, the principles of the Code can be applied in appropriate cases both, by taxpayers and tax authorities.
Poland		<input checked="" type="checkbox"/>		
Portugal		<input checked="" type="checkbox"/>		In practice applied in certain circumstances by Tax Authorities and Tax Courts in individual cases if issues are not completely governed by domestic law.
Romania		<input checked="" type="checkbox"/>		The Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the EU is expressly mentioned in the Order detailing the content of the transfer pricing documentation.
Russia		<input checked="" type="checkbox"/>		Russia is not an EU member state.
Slovakia	<input checked="" type="checkbox"/>			Indirectly. It serves as a basis for the Guidelines issued by the Ministry of Finance.



continued: Has your country implemented the Code of Conduct (by law, circular, administrative instructions, etc.)?

Country	Yes	No	Not Applicable	Additional Notes
Slovenia	<input checked="" type="checkbox"/>			
Spain	<input checked="" type="checkbox"/>			In full and through Royal Decree 1777/2004.
Switzerland			<input checked="" type="checkbox"/>	Not an EU-Member State.
UK		<input checked="" type="checkbox"/>		
<b>Total</b>	<b>8</b>	<b>10</b>	<b>3</b>	<b>21</b>
<b>Total (%)</b>	<b>38%</b>	<b>48%</b>	<b>14%</b>	<b>100%</b>



#### 7.4) If not, what documentation is required by your Revenue Authority?

In most cases the documentation follows the pattern established by the Code of Conduct (e.g., Masterfile and Country-specific documentation). In few countries additional requirements are set out (for example in the Czech Republic).

Country	Yes	No	N/A	Documentation required
Austria		<input checked="" type="checkbox"/>		Organisation chart, description of intercompany transactions, function and risk analysis, description of the transfer pricing scheme used, intercompany agreements.
Belgium		<input checked="" type="checkbox"/>		The Belgian tax authority considers that the EU TPD represents a maximum level of basic documentation.
Croatia		<input checked="" type="checkbox"/>		Transfer Pricing study with the following element: Description of business characteristics and the organisational structure of the related entities; Description of business characteristics of related entities carrying on business with the taxpayer; Description of existing and planned transactions with related entities; Overview of contractual relationship and the transfer prices between the taxpayer and the related entities sorted by types of transactions and individually; Functional analysis (at level of related entities and/or products/services); Comparability analysis; Available methods for determining transfer prices; Choice of appropriate method for assessment and support of transfer prices; Explanation of method choice and application; Exclusion of other methods.
Czech Republic	<input checked="" type="checkbox"/>			
France		<input checked="" type="checkbox"/>		General description of the activity: description of the group's legal and operational structure (including identification of associated enterprises), identification of the functions exercised and risks assumed, list of main intangibles, general description of the group transfer pricing policy. Specific documentation on the audited enterprise: description of the activity and of changes during the audited tax year, description of transactions with related parties (including royalties).
Germany		<input checked="" type="checkbox"/>		General information of shareholding percentages, business operations and organisational structure, business relationship with related parties, function and risk analysis, transfer pricing analysis.
Italy		<input checked="" type="checkbox"/>		There are no specific documentation requirements. In general terms, all income and deduction should be adequately substantiated.

continued: If not, what documentation is required by your Revenue Authority?

Country	Yes	No	N/A	Documentation required
Latvia		<input checked="" type="checkbox"/>		No specific guidelines on the content of the TP documentation. Companies should be able to justify prices in intercompany transactions.
Luxembourg			<input checked="" type="checkbox"/>	
Malta			<input checked="" type="checkbox"/>	
Netherlands		<input checked="" type="checkbox"/>		Based upon the parliamentary history and our experience the transfer pricing documentation preferably should consist of: 1. a general description of the industry; 2. the strategy of the company, a description of the products and/or services, and organisational/legal structure; 3. a description of the transactions between the associated enterprises, as well as the underlying (contractual) conditions; 4. an explanation of the relevant business processes within the group, discussing the functions performed, risks assumed and assets used, as well as the roles and responsibilities of the parties involved; 5. a description of the selected transfer pricing methodology; 6. a search of comparable transactions between unrelated parties; 7. a financial analysis; 8. documents supporting the transfer pricing system.
Poland		<input checked="" type="checkbox"/>		Function performed by the entities participating in the transaction; specification of all costs connected with the transaction, and the form and time limit for payment; the method and manner of calculating the profits, and specification of the price of the object of the transaction; a determination of the economic strategy and other actions within its framework, if the strategy adopted by an entity has influenced the value of the transaction; an indication of other factors; determination of the benefits connected with the performance which are expected by the entity obliged to prepare the tax documentation, in the case of contracts relating to immaterial performances (including services).

continued: If not, what documentation is required by your Revenue Authority?

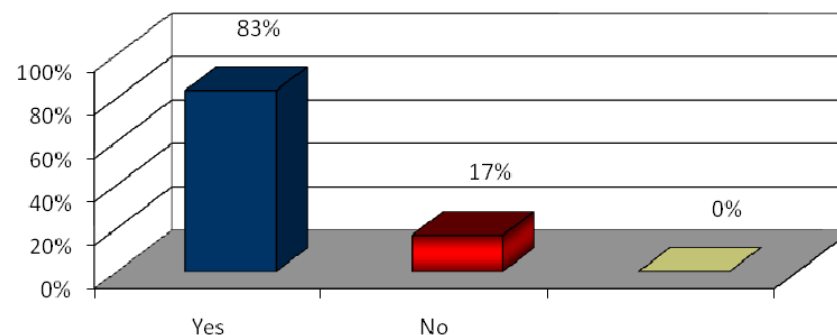
Country	Yes	No	N/A	Documentation required
Portugal			<input checked="" type="checkbox"/>	Description of the relations between the parties involved in the transaction; Characterisation of the activities developed by the company and its related entities; Detailed identification of the assets, rights or services involved in the transactions; Description of the functions, assets used and risks borne by the company or its related entities involved in the transactions; Technical analysis of the core business of the company; Guidelines regarding the transfer pricing policy of the company; Contracts and other legal documentation both concluded with related and unrelated parties; Justification regarding the choice of method for each operation; Information on the comparables used; Details on the assessment of comparability between the related and unrelated transactions and the parties involved as well as regarding any adjustments; Business policy and strategies; Any other information, data or documents that might be relevant to the determination of the arm's length price, the comparability of the transactions or the adjustments performed.
Romania		<input checked="" type="checkbox"/>		
Russia		<input checked="" type="checkbox"/>		At present, no specific documentation is required. As of 2011 it is expected that to confirm the price in controlled transactions the tax authority must be provided with documentation on: - activities of taxpayer and related parties, conducting the controlled transaction, related to this transaction, as well as about this transaction; - methods used for defining the price in the controlled transaction; - calculation of the range of controlled prices (profitability) in the controlled transaction with description of the method used for calculation; - calculation of revenues (profits)/expenses (losses) as a result of controlled transaction and its profitability; - economic benefit resulting from the transaction; - other factors influencing the price in the controlled transaction.
Slovakia	<input checked="" type="checkbox"/>			
Slovenia	<input checked="" type="checkbox"/>			
Spain			<input checked="" type="checkbox"/>	
Switzerland			<input checked="" type="checkbox"/>	
UK		<input checked="" type="checkbox"/>		Reasonable attempt to determine the arm's length price.

## 7.5 If yes, are there any deviations from the Code and if so, are the obligations imposed on the taxpayer more burdensome than those in the Code?

The Czech Republic requires detailed information regarding the services provided and the expected benefits, financial information about related parties and agreements that have been signed. Romanian law requires the taxpayer to disclose in its transfer pricing documentation file detailed information on all transactions between EU related parties, even if the Romanian taxpayer is not a party to these transactions.

When performing benchmarking studies as part of the economic analysis, comparability should first be analysed at local level and only if no or insufficient comparables are found, the search can be extended to an EU or global level. The local arm's length range is narrowed down to the inter-quartile range. Slovenia, Slovakia and Spain did not provide detailed information on this matter.

If yes, are there any deviations from the Code and, if so, are the obligations imposed on the taxpayer more burdensome than those in the Code?



**If yes, are there any deviations from the Code and if so, are the obligations imposed on the taxpayer more burdensome than those in the Code?**

Country	Yes	No	Not Applicable	Additional Notes
Austria				
Belgium				
Croatia				
Czech Republic	<input checked="" type="checkbox"/>			Detailed information about the purpose of services provided and their targeted benefit; financial information about all related parties and all agreements.
France				
Germany				
Italy				
Latvia				
Luxembourg				
Malta				
Netherlands				
Poland				
Portugal				
Romania	<input checked="" type="checkbox"/>			Romanian law requires the taxpayer to disclose in its transfer pricing documentation file detailed information on all transactions between EU related parties, even if the Romanian taxpayer is not a party to these transactions; When performing benchmarking studies as part of the economic analysis, comparability should first be analysed at local level and only if no or insufficient comparables are found, the search can be extended to an EU or global level. The local arm's length range is narrowed down to the inter-quartile range.
Russia		<input checked="" type="checkbox"/>		
Slovakia	<input checked="" type="checkbox"/>			
Slovenia	<input checked="" type="checkbox"/>			

continued: If yes, are there any deviations from the Code and if so, are the obligations imposed on the taxpayer more burdensome than those in the Code?

Country	Yes	No	Not Applicable	Additional Notes
Spain	<input checked="" type="checkbox"/>			
Switzerland				
UK				
<b>Total</b>	5	1	0	<b>6</b>
<b>Total (%)</b>	83%	17%	0%	<b>100%</b>



### SECTION III

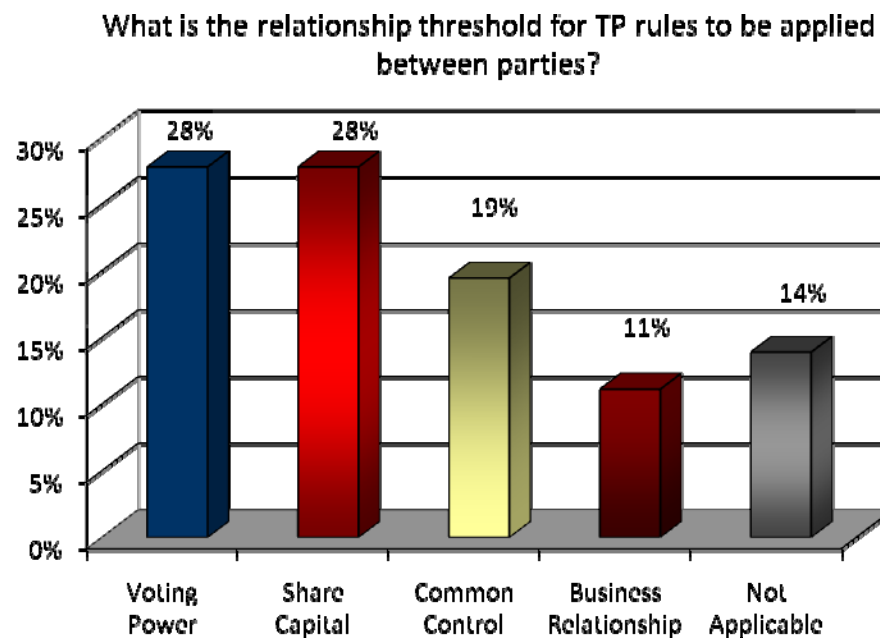
## **8. Main characteristics of transfer pricing rules in the surveyed Countries: Transfer Pricing Questionnaire – ADDENDUM (Outcomes)**

In addition to the questions in the Transfer Pricing Questionnaire and in order to better understand transfer pricing rules, respondents were requested to provide additional information on their transfer pricing regime.



**8.1a) What is the relationship threshold for transfer pricing rules to be applied between parties (e.g., ownership of a percentage based on voting power, share capital, common control, business relationship for tax purposes)?**

Most of the Countries involved report a definition pursuant to the law of the relationship criteria (voting power and share capital) applied for transfer pricing purposes. An exception is Belgium. Under Italian law, the influence of one enterprise over the managerial decisions of another must be considered in order to apply transfer pricing rules.



**What is the relationship threshold for transfer pricing rules to be applied between parties?**

Country	Voting Power	Share Capital	Common Control	Business Relationship	Not Applicable	Additional Notes
Austria					<input checked="" type="checkbox"/>	There is no special definition of related parties in Austria. Based on Article 6 Item 6 Austrian Income Tax Act and the respective double tax treaty applied, transfer pricing regulations generally need to be considered and applied if one company participates in the management, control or capital of the other company with at least 25%, or if the companies are under common control.
Belgium					<input checked="" type="checkbox"/>	Not specified in the law.
Croatia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
Czech Republic		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
France			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Germany	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
Italy	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		<p>Experience shows that the connection that determines the change in transfer prices is often represented by the influence of one enterprise over the managerial decisions of another.</p> <p>As a list of examples, the following situations may fall under the concept of "control":</p> <ul style="list-style-type: none"> <li>• exclusive sale of products of another company;</li> <li>• impossibility of carrying out the manufacturing process without the products of another group company;</li> <li>• right of appointing the members of the board of directors;</li> <li>• common members of the board of directors;</li> <li>• family relationships;</li> <li>• financial relationships;</li> <li>• participation in a price-setting syndicate;</li> <li>• number of contracts that determines a monopolistic situation;</li> <li>• in general, all the situations in which, potentially or actually an influence over management decisions is exercised.</li> </ul>

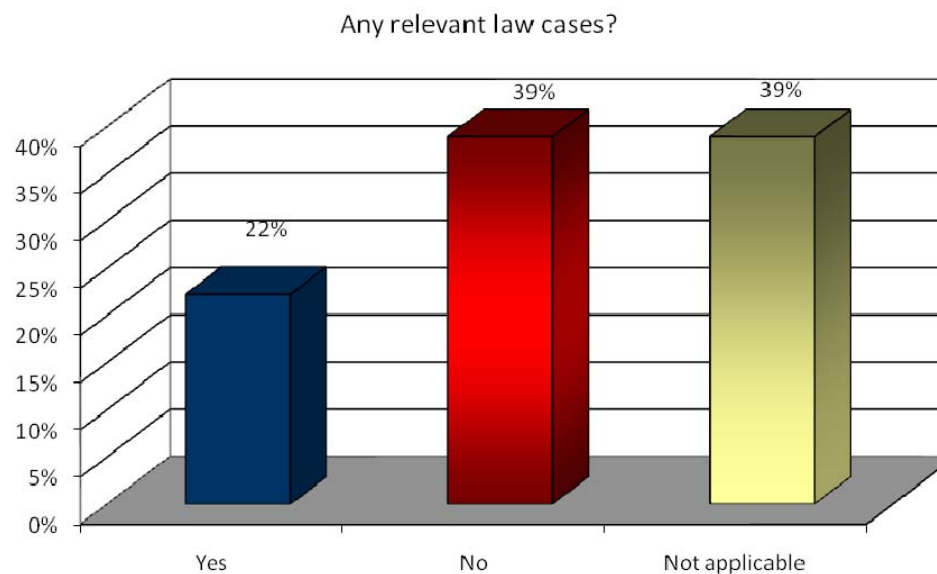
**What is the relationship threshold for transfer pricing rules to be applied between parties?**

Country	Voting Power	Share Capital	Common Control	Business Relationship	Not Applicable	Additional Notes
Ireland		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Latvia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
Luxembourg					<input checked="" type="checkbox"/>	There are no fixed rules, the inspector would consider on a case-by-case basis.
Malta	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			
Netherlands					<input checked="" type="checkbox"/>	
Poland		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Portugal						
Romania	<input checked="" type="checkbox"/>					
Slovakia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Slovenia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
Spain	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Switzerland					<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
<b>Total</b>	<b>10</b>	<b>10</b>	<b>7</b>	<b>4</b>	<b>5</b>	<b>36</b>
<b>Total (%)</b>	<b>28%</b>	<b>28%</b>	<b>19%</b>	<b>11%</b>	<b>14%</b>	<b>100%</b>

### 8.1b) Any relevant law cases?

Twenty-two per cent (22%) of all respondents reports significant law cases in transfer pricing matters (dealing with documentation requirements, service fees, burden of proof, de jure/de facto dependence).

Only two Countries (Poland, Portugal) did not provide answers to this question.



### Any relevant law cases?

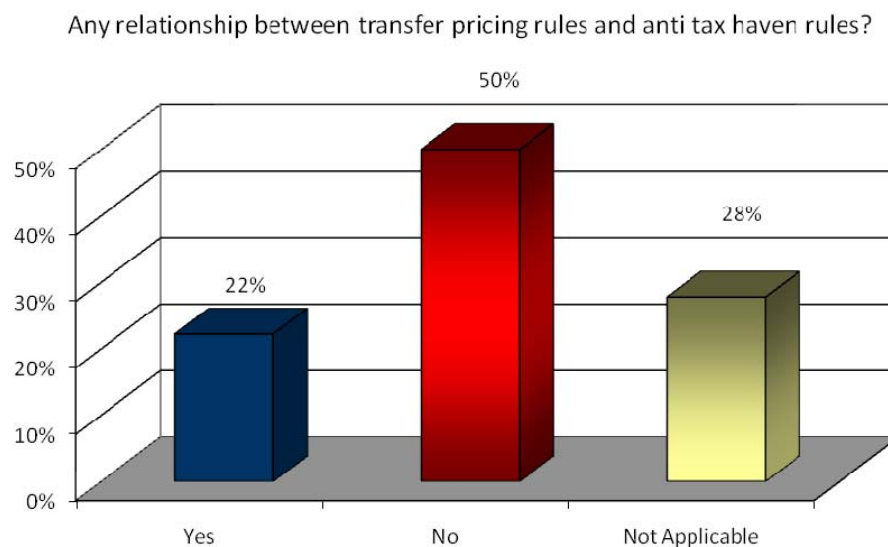
Country	Yes	No	Not Applicable	Additional Notes
Austria	<input checked="" type="checkbox"/>			There are several judgments by the Austrian Administrative High Court regarding transfer pricing, particularly with respect to intercompany services, documentation and the burden of proof. In its latest judgment the Austrian Administrative High Court ruled that tax authorities have to disprove existing documentation in order to justify a transfer pricing adjustment subsequently. Most cases point out the importance of documentation.
Belgium			<input checked="" type="checkbox"/>	
Croatia			<input checked="" type="checkbox"/>	
Czech Republic	<input checked="" type="checkbox"/>			There are several judgements by the Supreme Administration Court (NSS - Nejvyšší správní soud) regarding transfer pricing, particularly with respect to loans, service fees and other transfer pricing disputes.
France	<input checked="" type="checkbox"/>			Law cases regarding the burden of proof.
Germany		<input checked="" type="checkbox"/>		
Italy			<input checked="" type="checkbox"/>	
Latvia		<input checked="" type="checkbox"/>		
Luxembourg	<input checked="" type="checkbox"/>			If in respect of transactions of a corporate taxpayer with related parties, circumstances are such that it is likely that market conditions were not respected and if tax authorities presume this to be the case, the burden of proof lies with the taxpayer (inversion of the burden of proof). CA 1-2-2000 (11318C); TA 21-2-01 (12028); TA 24-4-02 (136662); TA 6-6-05 (19162); TA 27-11-06 (21033); TA 27-11-06 (21034); TA 9-6-08, (23324, c. 11-2-09, 24642C); TA 31-12-07 (22777).
Ireland		<input checked="" type="checkbox"/>		
Malta			<input checked="" type="checkbox"/>	
Netherlands		<input checked="" type="checkbox"/>		
Poland				
Portugal				
Romania			<input checked="" type="checkbox"/>	

continued: Any relevant law cases?

Country	Yes	No	Not Applicable	Additional Notes
Slovakia			<input checked="" type="checkbox"/>	
Slovenia		<input checked="" type="checkbox"/>		
Spain		<input checked="" type="checkbox"/>		
Switzerland			<input checked="" type="checkbox"/>	
UK		<input checked="" type="checkbox"/>		
<b>Total</b>	<b>4</b>	<b>7</b>	<b>7</b>	<b>18</b>
<b>Total (%)</b>	<b>22%</b>	<b>39%</b>	<b>39%</b>	<b>100%</b>

## 8.2a) Any relationship between transfer pricing rules and anti tax haven rules?

According to 50% of the respondents, there is no relationship between transfer pricing rules and anti tax haven rules. Thirty-eight per cent (28%) of results falls under the “*not applicable*” category.



**Any relationship between transfer pricing rules and anti tax haven rules?**

Country	Yes	No	Not Applicable	Additional Notes
Austria		<input checked="" type="checkbox"/>		There is no particular relationship between transfer pricing rules and anti tax haven rules. Nevertheless, the draft of the national transfer pricing guidelines, which came into force in 2010, include several paragraphs which deal with tax havens and tax avoidance. Therefore we expect the tax authorities to treat intercompany transactions with one of the companies located in a tax haven in a cautious manner.
Belgium		<input checked="" type="checkbox"/>		However special provisions on (intercompany) transactions with tax havens exist.
Croatia		<input checked="" type="checkbox"/>		
Czech Republic			<input checked="" type="checkbox"/>	
France	<input checked="" type="checkbox"/>			Conditions on dependence/control where beneficiary is in tax haven.
Germany		<input checked="" type="checkbox"/>		
Ireland		<input checked="" type="checkbox"/>		
Italy		<input checked="" type="checkbox"/>		
Latvia	<input checked="" type="checkbox"/>			A transaction of a resident or a permanent representative office with another commercial company or person, if they are located, have been established or founded in low-tax and tax-free countries or territories, will be considered to be a transaction with an affiliated undertaking or a person affiliated with the undertaking. The list of the countries or territories referred to shall be prescribed by the Cabinet.
Luxembourg		<input checked="" type="checkbox"/>		
Malta			<input checked="" type="checkbox"/>	
Netherlands		<input checked="" type="checkbox"/>		Where there is no concrete threshold, it is generally adhered to the OECD definition of associated enterprises.
Poland				
Portugal				
Romania			<input checked="" type="checkbox"/>	
Slovakia			<input checked="" type="checkbox"/>	
Slovenia		<input checked="" type="checkbox"/>		

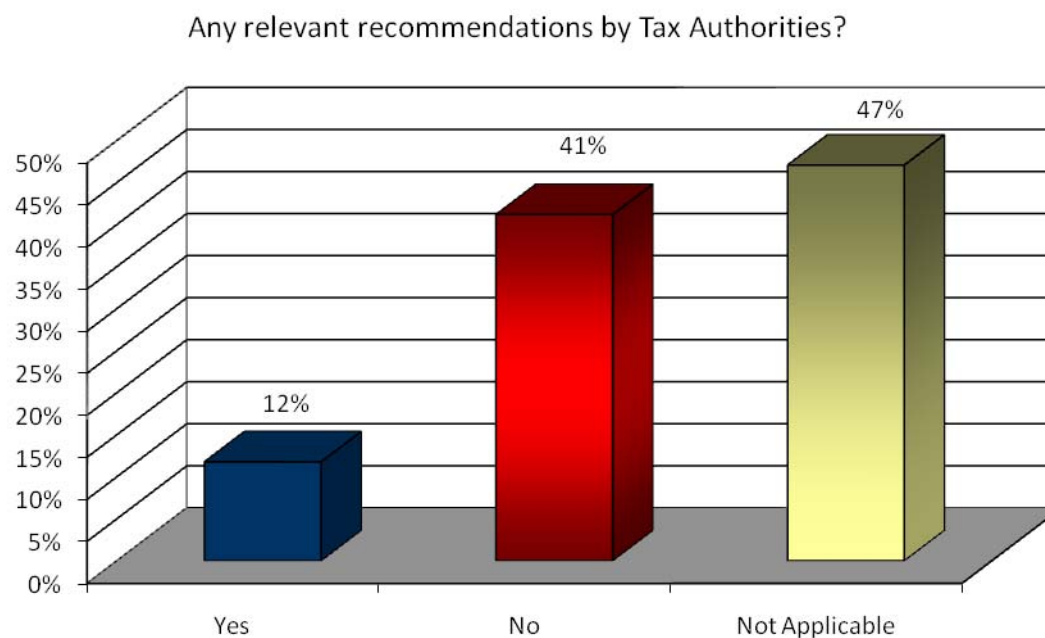


continued: Any relationship between transfer pricing rules and anti tax haven rules?

Country	Yes	No	Not Applicable	Additional Notes
Spain	<input checked="" type="checkbox"/>			Whenever there is a tax haven involved, the thresholds under which there is no obligation of documenting the transactions do not operate, and the documentation is required.
Switzerland			<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>			The exemption for small and medium sized enterprises does not apply where a party to a transaction is resident in a territory with which the UK has a treaty which does not include a non-discrimination provision. This will be the case in respect of most tax havens.
<b>Total</b>	<b>4</b>	<b>9</b>	<b>5</b>	<b>18</b>
<b>Total (%)</b>	<b>22%</b>	<b>50%</b>	<b>28%</b>	<b>100%</b>

## 8.2b) Any relevant recommendations by Tax Authorities?

There are no relevant recommendations by Tax Authorities in the matter of transfer pricing and anti tax haven rules (41%). Almost half of the respondents falls under the “*not applicable*” category.



### Any relevant recommendations by Tax Authorities?

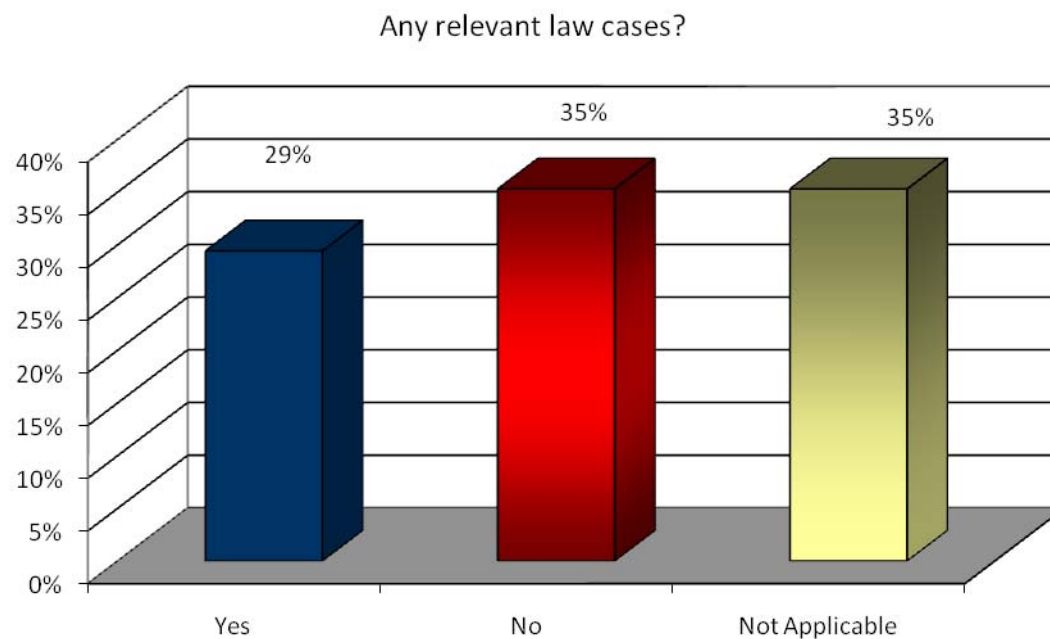
Country	Yes	No	n/a	Additional Notes
Austria	<input checked="" type="checkbox"/>			If a tax haven is included in an intercompany transaction, the Austrian tax authorities may be even more careful than in other transfer pricing cases. Such transactions should be documented even in a more detailed manner than transactions where no tax haven company is included. In general, Austrian taxpayers have an increased obligation to cooperate if a foreign company is involved in a transaction. This increased obligation might be even more increased in practice, if the foreign company is located in a tax haven.
Belgium			<input checked="" type="checkbox"/>	
Croatia				Answer not provided.
Czech Republic			<input checked="" type="checkbox"/>	
France		<input checked="" type="checkbox"/>		
Germany		<input checked="" type="checkbox"/>		
Ireland		<input checked="" type="checkbox"/>		
Italy			<input checked="" type="checkbox"/>	
Latvia		<input checked="" type="checkbox"/>		
Luxembourg		<input checked="" type="checkbox"/>		
Malta			<input checked="" type="checkbox"/>	
Netherlands		<input checked="" type="checkbox"/>		
Poland				
Portugal				
Romania			<input checked="" type="checkbox"/>	
Slovakia			<input checked="" type="checkbox"/>	
Slovenia		<input checked="" type="checkbox"/>		
Spain			<input checked="" type="checkbox"/>	
Switzerland			<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>			A transaction involving a tax haven would generally be regarded as high risk thus requiring a greater level of evidence and analysis in relation to demonstrating compliance with the arm's length principle.

continued: Any relevant recommendations by Tax Authorities?

Country	Yes	No	n/a	Additional Notes
<b>Total</b>	<b>2</b>	<b>7</b>	<b>8</b>	<b>17</b>
<b>Total (%)</b>	<b>12%</b>	<b>41%</b>	<b>47%</b>	<b>100%</b>

### 8.2c) Any relevant law cases?

Only 29% of the respondents report the existence of relevant law cases regarding transfer pricing and anti tax haven rules. Thirty-five per cent (35%) of the respondents fall under the “*not applicable*” category. Three Countries (Croatia, Poland, Portugal) did not provide an answer to this question.

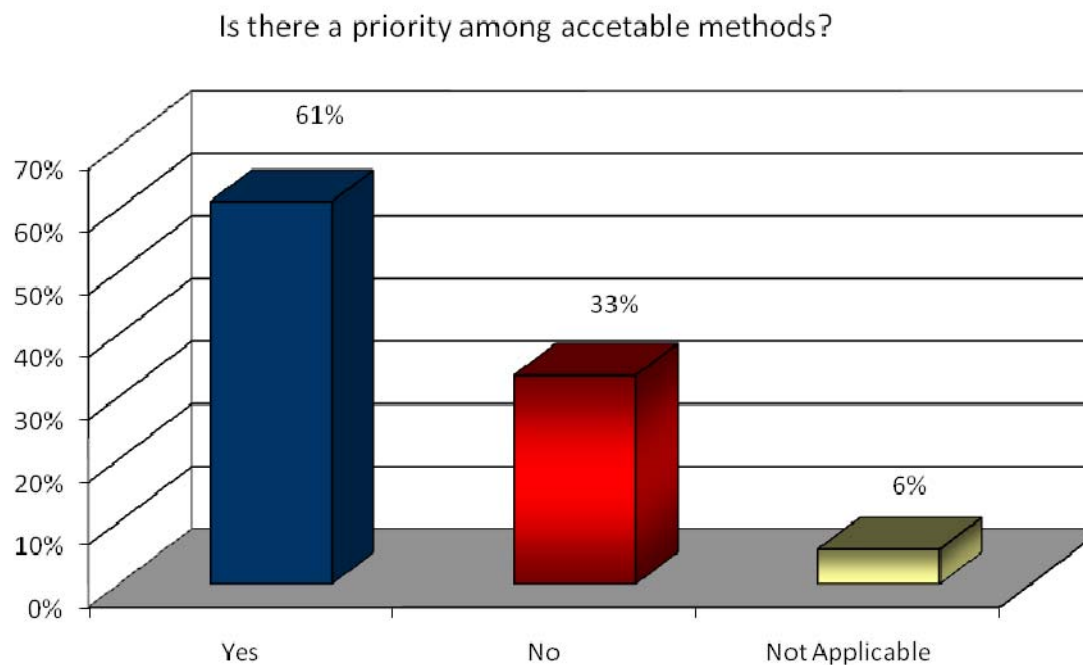


**Any relevant law cases?**

Country	Yes	No	n/a	Additional Notes
Austria	<input checked="" type="checkbox"/>			There are some judgments dealing for example with intercompany financing or licensing where one of the involved companies is located in a tax haven. The court ruled in most of these cases that the taxpayer has an increased obligation to provide information on the relevant transaction.
Belgium	<input checked="" type="checkbox"/>			
Croatia				Answer not provided.
Czech Republic			<input checked="" type="checkbox"/>	
France	<input checked="" type="checkbox"/>			There are a number of court cases showing that the privileged character of the foreign entity is strictly controlled and allowing payments when they are justified and not excessive, even to territories like Andorra or the Isle of Man.
Germany		<input checked="" type="checkbox"/>		
Ireland		<input checked="" type="checkbox"/>		
Italy			<input checked="" type="checkbox"/>	
Latvia		<input checked="" type="checkbox"/>		
Luxembourg		<input checked="" type="checkbox"/>		
Malta			<input checked="" type="checkbox"/>	
Netherlands	<input checked="" type="checkbox"/>			A case was considered a sale-and-lease-back construction involving a tax haven (being ignored by the Court).
Poland				
Portugal				
Romania			<input checked="" type="checkbox"/>	
Slovakia			<input checked="" type="checkbox"/>	
Slovenia		<input checked="" type="checkbox"/>		
Spain		<input checked="" type="checkbox"/>		
Switzerland			<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>			In the Charlton case, a taxpayer was prosecuted under the Public Theft Act for transferring profits out of the UK into a tax haven by means of their transfer pricing policy. There have been no Tax cases on this subject.
<b>Total</b>	<b>5</b>	<b>6</b>	<b>6</b>	<b>17</b>
<b>Total (%)</b>	<b>29%</b>	<b>35%</b>	<b>35%</b>	<b>100%</b>

### 8.3a) Is there a priority among acceptable methods?

Consistent with the OECD Transfer Pricing Guidelines (1995 and 2010), respondents generally set (61%) as a priority in the application of transfer pricing methods (broadly speaking the CUP method and the other traditional transaction methods which are preferred over profit-based methods). Two Countries (Poland, Portugal) did not provide an answer.



**Is there a priority among acceptable methods?**

Country	Yes	No	Not Applicable	Additional Notes
Austria	<input checked="" type="checkbox"/>			In accordance with the OECD Guidelines, the traditional transaction methods are generally preferred. The review of Chapters I-III has been acknowledged by the Austrian tax authorities and an expected review will be published.
Belgium	<input checked="" type="checkbox"/>			Due to the revision of the OECD Guidelines, the hierarchy of methods has been abandoned.
Croatia	<input checked="" type="checkbox"/>			
Czech Republic	<input checked="" type="checkbox"/>			There is no most acceptable method, however, the comparable uncontrolled price and transactional methods are preferred, and it should be explained why they were rejected. Method selection and rejection of other possible methods should be explained.
France		<input checked="" type="checkbox"/>		
Germany	<input checked="" type="checkbox"/>			Priority is given to the Comparable Uncontrolled Price (CUP) method, the Cost-Plus method and the Resale-Price method. If necessary, these methods may be modified or other methods may be applied. There is no general priority given to one of the first mentioned three methods.
Ireland		<input checked="" type="checkbox"/>		The OECD Transfer Pricing Guidelines have been adopted but no priorities are set between acceptable methods.
Italy	<input checked="" type="checkbox"/>			The Circular Letter no. 32/1980 points out that the application of the arm's length principle implies the comparison of prices, i.e. between the actual price and the price in a similar transaction carried out by either unrelated parties (external comparison) or a group company and an unrelated party (internal comparison). If a price comparison is not advisable the Circular Letter suggests the application of the following traditional methods: <ul style="list-style-type: none"> <li>• Resale price;</li> <li>• Cost plus.</li> </ul> Profit-based methods could be advisable: <ul style="list-style-type: none"> <li>• when it is impossible to use the three basic methods (CUP, Resale price, Cost plus);</li> <li>• when uncertainties arise in verifying the correct use of the basic methods.</li> </ul>
Latvia	<input checked="" type="checkbox"/>			
Luxembourg		<input checked="" type="checkbox"/>		

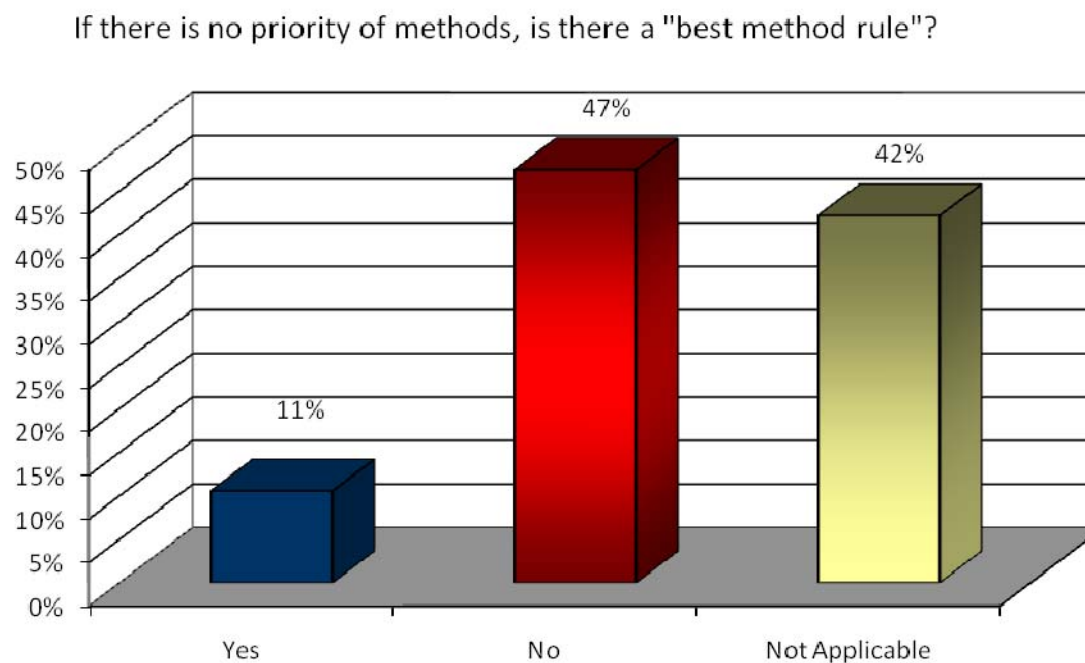


continued: Is there a priority among acceptable methods?

Country	Yes	No	Not Applicable	Additional Notes
Malta		<input checked="" type="checkbox"/>		
Netherlands		<input checked="" type="checkbox"/>		
Poland				
Portugal				
Romania	<input checked="" type="checkbox"/>			The traditional methods are preferred. Method selected and the reason for rejection of other methods should be carefully explained in the transfer pricing report. The Romanian Fiscal Code also makes reference to the method to be used in case of related party transactions involving services. The method to be used in such case is the CUP method for fees/standard tariffs. However, when there are no CUPs available, the cost plus method should be used.
Slovakia	<input checked="" type="checkbox"/>			Traditional TP methods (CUP, Resale Minus, Cost Plus) have priority over transaction methods (TNMM, profit split).
Slovenia		<input checked="" type="checkbox"/>		No strict priority is set between five legally acceptable methods (CUP, RPM, Cost-plus, Profit-split, TNMM).
Spain	<input checked="" type="checkbox"/>			The Corporate Income Tax Law establishes that, in order to determine the market value, one of the following methods should be applied: Comparable Uncontrolled Price Method, Cost Plus Method or Resale Price Method. When due to the complexity or to the information relating on the transactions, the above methods may not be applied properly, the Profit Split Method or Transactional Net Margin Method may be used.
Switzerland			<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>			
<b>Total</b>	<b>11</b>	<b>6</b>	<b>1</b>	<b>18</b>
<b>Total (%)</b>	<b>61%</b>	<b>33%</b>	<b>6%</b>	<b>100%</b>

### 8.3b) If there is no priority of methods, is there a "best method rule"?

In general terms, there is no a best method rule (47%), but 42% of the answers fall under the "not applicable" category.



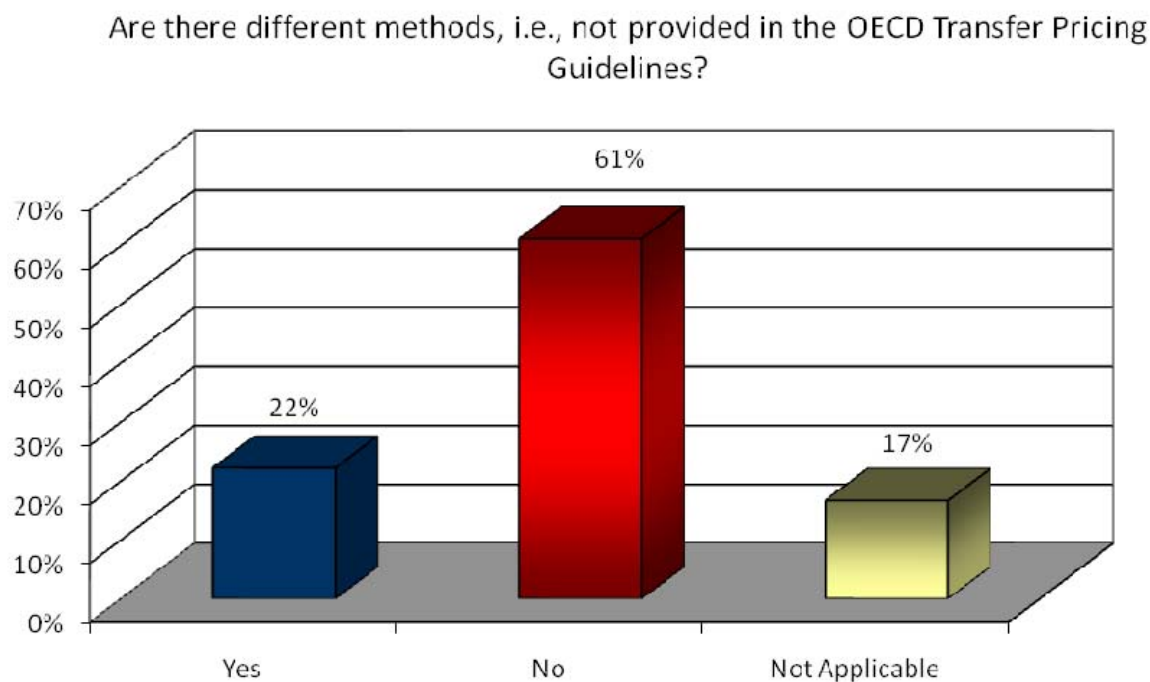
**If there is no priority of methods, is there a "*best method rule*"?**

Country	Yes	No	Not Applicable	Additional Notes
Austria			<input checked="" type="checkbox"/>	
Belgium		<input checked="" type="checkbox"/>		However, where a traditional transaction method and a transactional profit method can be applied in an equally reliable manner, the traditional transaction method is preferable to the transactional profit method.
Croatia			<input checked="" type="checkbox"/>	
Czech Republic		<input checked="" type="checkbox"/>		
France	<input checked="" type="checkbox"/>			When applicable, the comparable uncontrolled price method is the most direct and reliable method.
Germany		<input checked="" type="checkbox"/>		
Ireland		<input checked="" type="checkbox"/>		
Italy			<input checked="" type="checkbox"/>	
Latvia			<input checked="" type="checkbox"/>	
Luxembourg			<input checked="" type="checkbox"/>	
Malta		<input checked="" type="checkbox"/>		
Netherlands		<input checked="" type="checkbox"/>		
Poland				
Portugal				
Romania	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	Comparable uncontrolled prices method is the preferred method according to the law, cost plus method is the most applied in practice (although in practice the cost plus method is a TNMM).
Slovakia			<input checked="" type="checkbox"/>	
Slovenia		<input checked="" type="checkbox"/>		Officially there is no priority of methods. But unofficially the traditional methods (CUP, RPM, Cost-Plus) are preferred by the tax authority.
Spain		<input checked="" type="checkbox"/>		The CUP, the cost plus and the resale.
Switzerland			<input checked="" type="checkbox"/>	
UK		<input checked="" type="checkbox"/>		
<b>Total</b>	<b>2</b>	<b>9</b>	<b>8</b>	<b>19</b>
<b>Total (%)</b>	<b>11%</b>	<b>47%</b>	<b>42%</b>	<b>100%</b>

### 8.3c) Are there different methods, i.e., not provided in the OECD Transfer Pricing Guidelines?

More than half of the respondents (61%) provides for the same methods of the OECD Guidelines (i.e., CUP, Resale Minus, Cost Plus, Transactional Profit Split, Transaction Net Margin Method). According to Luxembourg, the taxpayer can select any other method which is deemed to be pertinent to the circumstances of the case.

In Italy, two alternative methods that are not provided by the OECD can be found: the invested capital profitability and the economic sector gross margin.



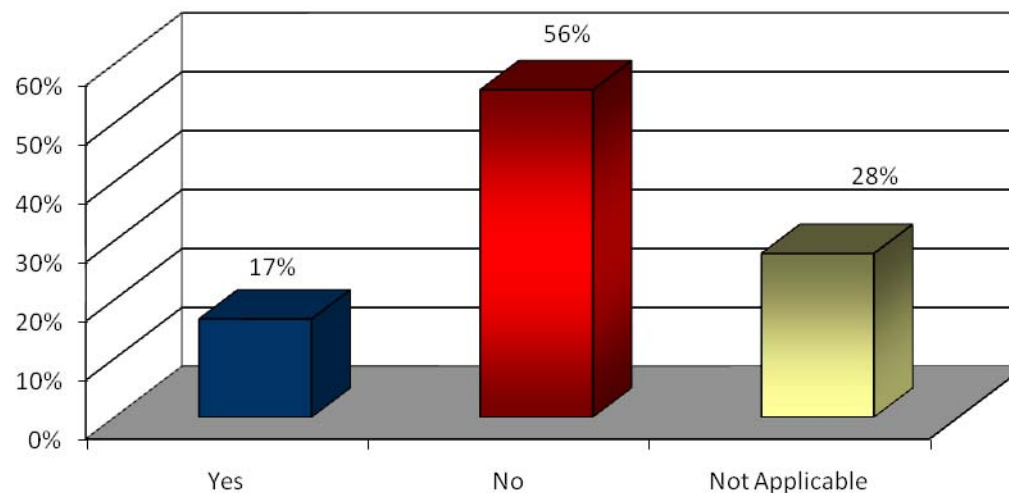
**Are there different methods, i.e., not provided in the OECD Transfer Pricing Guidelines?**

Country	Yes	No	Not Applicable	Additional Notes
Austria		<input checked="" type="checkbox"/>		
Belgium		<input checked="" type="checkbox"/>		
Croatia		<input checked="" type="checkbox"/>		
Czech Republic	<input checked="" type="checkbox"/>			
France		<input checked="" type="checkbox"/>		
Germany		<input checked="" type="checkbox"/>		
Ireland		<input checked="" type="checkbox"/>		
Italy	<input checked="" type="checkbox"/>			
Latvia		<input checked="" type="checkbox"/>		
Luxembourg	<input checked="" type="checkbox"/>			OECD Guidelines remain guidelines, the taxpayer may come up with any method he deems to be more pertinent under the circumstances of his case.
Malta			<input checked="" type="checkbox"/>	
Netherlands			<input checked="" type="checkbox"/>	
Poland				
Portugal				
Romania		<input checked="" type="checkbox"/>		
Slovakia	<input checked="" type="checkbox"/>			Not directly. Other methods are allowed than those described by law.
Slovenia		<input checked="" type="checkbox"/>		
Spain		<input checked="" type="checkbox"/>		
Switzerland			<input checked="" type="checkbox"/>	
UK		<input checked="" type="checkbox"/>		
<b>Total</b>	<b>4</b>	<b>11</b>	<b>3</b>	<b>18</b>
<b>Total (%)</b>	<b>22%</b>	<b>61%</b>	<b>17%</b>	<b>100%</b>

**8.3d) Any recommendations with reference to the application of transfer pricing methods to certain type of transactions (e.g., transactions in commodities) or to certain industries (e.g., automotive)?**

The trend that can be observed in the majority of respondents (56%) is that the Tax Administration involved does not provide any particular guidance in respect of certain types of transactions or with reference to the goods sold/purchased in the transactions.

Any recommendations with reference to the application of TP methods to certain types of transactions (e.g., transactions in commodities) or to certain industries (e.g., automotive)?



**Any recommendations with reference to the application of transfer pricing methods to certain type of transactions (e.g., transactions in commodities) or to certain industries (e.g., automotive)?**

Country	Yes	No	Not Applicable	Additional Notes
Austria	<input checked="" type="checkbox"/>			Concerning intercompany financing, the Austrian tax authorities generally challenge interests granted by third-party banks as CUP because of the non-comparable function and risk profile of the group financing company and the bank. According to our experience, the Austrian tax authorities tend to expect rather a split of the arising synergies of the intercompany financing. Concerning cash pooling, the Austrian tax authorities tend to expect the cost plus method for remunerating the parent company, if this company has to be qualified as mere service provider. The benefit of the cash pool should be attributed to the participating companies.
Belgium			<input checked="" type="checkbox"/>	
Croatia		<input checked="" type="checkbox"/>		
Czech Republic		<input checked="" type="checkbox"/>		
France		<input checked="" type="checkbox"/>		
Germany		<input checked="" type="checkbox"/>		
Ireland		<input checked="" type="checkbox"/>		
Italy			<input checked="" type="checkbox"/>	
Latvia		<input checked="" type="checkbox"/>		
Luxembourg		<input checked="" type="checkbox"/>		
Malta			<input checked="" type="checkbox"/>	
Netherlands	<input checked="" type="checkbox"/>			
Poland				
Portugal				
Romania			<input checked="" type="checkbox"/>	On a case by case basis.
Slovakia		<input checked="" type="checkbox"/>		
Slovenia		<input checked="" type="checkbox"/>		
Spain		<input checked="" type="checkbox"/>		
Switzerland			<input checked="" type="checkbox"/>	

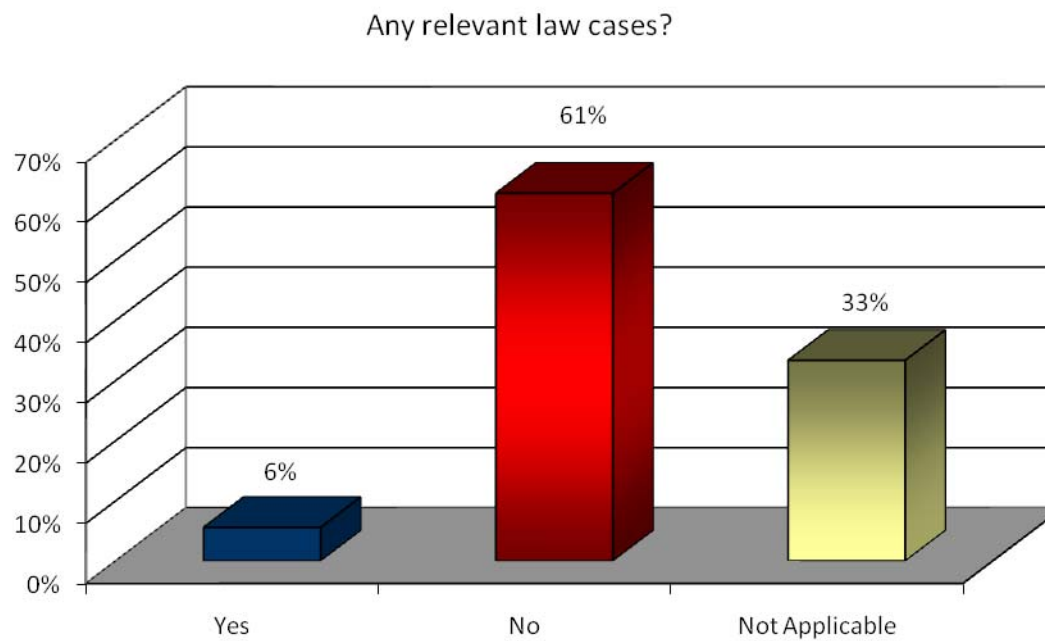
continued: Any recommendations with reference to the application of transfer pricing methods to certain type of transactions (e.g., transactions in commodities) or to certain industries (e.g., automotive)?

Country	Yes	No	Not Applicable	Additional Notes
UK	<input checked="" type="checkbox"/>			HMRC's internal guidance sets out some general applications of the OECD methods. For example: <ul style="list-style-type: none"> <li>•the resale minus method may be appropriate to examine the transfer prices charged by a manufacturing company as well as where a company purchases goods for distribution from a connected party.</li> <li>•The cost plus method may be appropriate where the type of functions carried out are of the type that would be contracted out at arm's length, being functions that are not vital to the overall trade of the group.</li> </ul>
<b>Total</b>	<b>3</b>	<b>10</b>	<b>5</b>	<b>18</b>
<b>Total (%)</b>	<b>17%</b>	<b>56%</b>	<b>28%</b>	<b>100%</b>



### 8.3e) Any relevant law cases?

The majority of the respondents (61%) does not provide any significant law cases dealing with the application of transfer pricing methods.



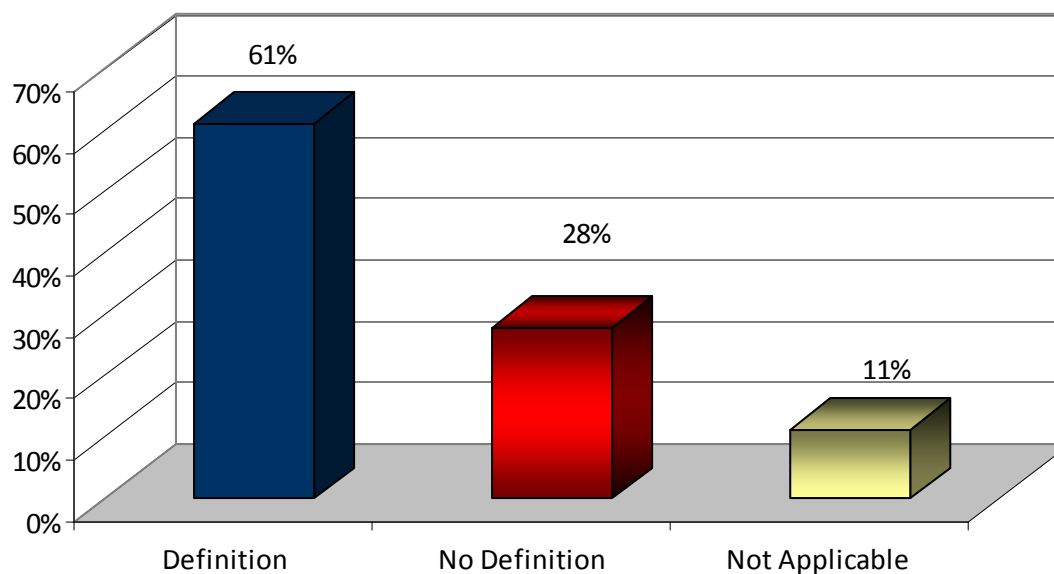
Any relevant law cases?

Country	Yes	No	Not Applicable	Additional Notes
Austria		<input checked="" type="checkbox"/>		
Belgium		<input checked="" type="checkbox"/>		
Croatia		<input checked="" type="checkbox"/>		
Czech Republic		<input checked="" type="checkbox"/>		
France		<input checked="" type="checkbox"/>		
Germany		<input checked="" type="checkbox"/>		
Ireland		<input checked="" type="checkbox"/>		
Italy			<input checked="" type="checkbox"/>	
Latvia		<input checked="" type="checkbox"/>		
Luxembourg		<input checked="" type="checkbox"/>		
Malta			<input checked="" type="checkbox"/>	
Netherlands		<input checked="" type="checkbox"/>		
Poland				
Portugal				
Romania			<input checked="" type="checkbox"/>	
Slovakia			<input checked="" type="checkbox"/>	
Slovenia			<input checked="" type="checkbox"/>	
Spain		<input checked="" type="checkbox"/>		
Switzerland			<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>			DSG Retail and others v HMRC considered issues on transfer pricing methodologies. In this case the Special Commissioners favoured a residual profit split method over an outdated CUP. The absence of analysis of the respective parties' bargaining power was central to the rejection of the CUP and the suggested application of a residual profit split approach.
<b>Total</b>	<b>1</b>	<b>11</b>	<b>6</b>	<b>18</b>
<b>Total</b>	<b>6%</b>	<b>61%</b>	<b>33%</b>	<b>100%</b>

#### 8.4a) Which is the definition of “*small-medium sized enterprise*” in your Country?

More than half of the respondents (61%) provide for an independent definition of “*small-medium sized enterprises*” (SMEs). Only five Countries (Austria, Latvia, Luxembourg, Netherlands and Slovakia) have no definition.

Which is the definition of “*small medium sized enterprise*” in your Country?



**Which is the definition of “small-medium sized enterprise” in your Country?**

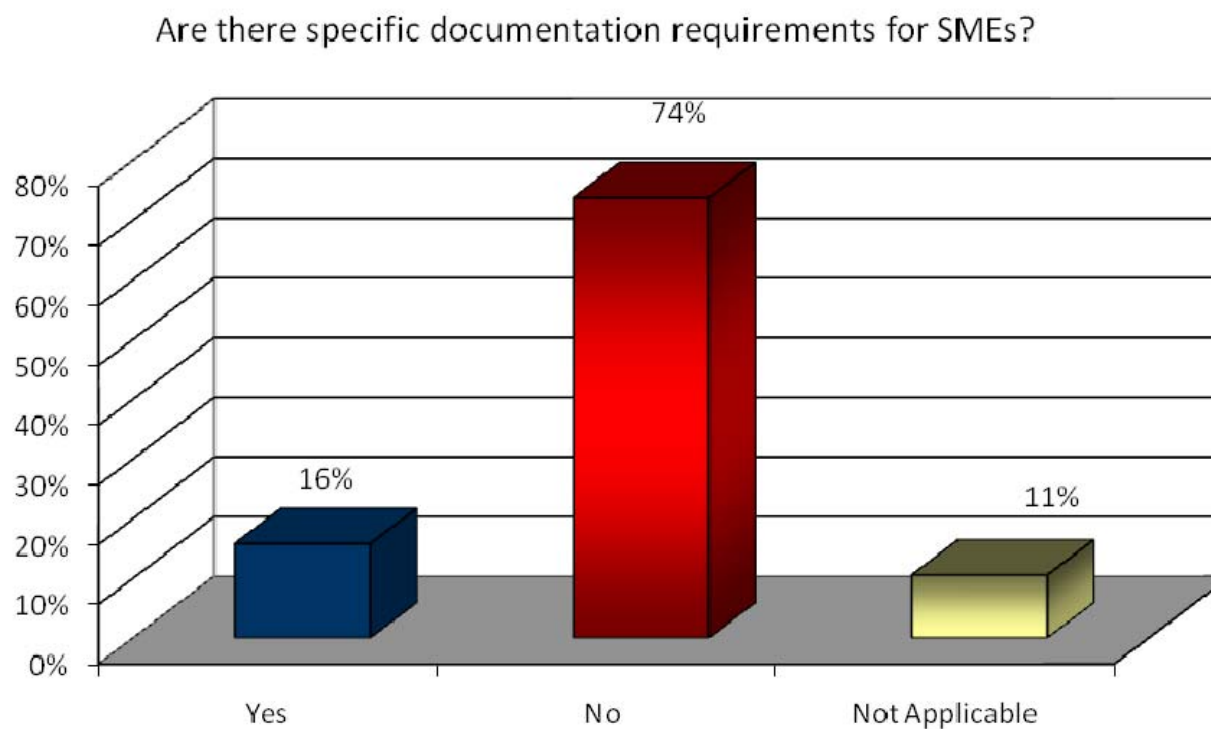
Country	Definition	No Definition	n/a	Additional Notes
Austria		<input checked="" type="checkbox"/>		It is possible to use the definition of the European Commission (Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises) as reference.
Belgium	<input checked="" type="checkbox"/>			Enterprises qualify as small and medium-sized enterprises (SMEs) if they fulfill the criteria laid down in the Article 15 of Belgian Company Law which are summarized below. An enterprise qualifies as an SME if it does not exceed more than one of the ceilings i. Average yearly headcount: 50 ii. Turnover: 7.300.000 EUR iii. Total balance sheet: 3.650.000 EUR, unless average yearly headcount is higher than 100.
Croatia	<input checked="" type="checkbox"/>			Small enterprises are those who do not fulfil two of the following three criteria: – total assets 32,500,000.00 HRK, – revenue 65,000,000.00 HRK, – average number of employees during the business year 50. Medium sized enterprises are those who fulfil at least two criteria from the point (I) but who do not fulfil two of the following three criteria: – total assets 130.000.000,00 HRK, – revenue 260.000.000,00 HRK, – average number of employees during the business year 250.
Czech Republic	<input checked="" type="checkbox"/>			The definition of the European Commission applies (Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises).
France	<input checked="" type="checkbox"/>			For transfer pricing purposes, SMEs are those to which new documentation requirement does not apply.
Germany	<input checked="" type="checkbox"/>			Under Sec. 6 of the "Gewinnabgrenzungsaufzeichnungsverordnung" (GAufzV) a decree-law outlining the general rules of Sec. 90 (3) General Tax Code small enterprises are those, whose sales from delivering goods to related person in a fiscal year do not exceed EUR 5 million and whose sales from rendering services to related persons do not exceed EUR 500.000.
Ireland	<input checked="" type="checkbox"/>			The definition of the European Commission applies (Commission recommendation - 2003/361/EC of 6 May 2003).
Italy	<input checked="" type="checkbox"/>			
Latvia		<input checked="" type="checkbox"/>		This concept does not exist in tax law.

continued: Which is the definition of “small-medium sized enterprise” in your Country?

Country	Definition	No Definition	n/a	Additional Notes
Luxembourg		<input checked="" type="checkbox"/>		This concept does not exist in tax law, only in company law (IV Directive).
Malta			<input checked="" type="checkbox"/>	
Netherlands		<input checked="" type="checkbox"/>		
Poland				
Portugal				
Romania	<input checked="" type="checkbox"/>			According to the Romanian Fiscal Code and for tax purposes only, an SME (small and medium sized enterprise) is a Romanian legal entity that cumulatively satisfies the following conditions on December 31st of the preceding fiscal year: a) the business purpose is the production of material goods, the supply of services and/or trade; b) the number of employees are from 1 to 9, inclusively; c) the realized incomes do not exceed the equivalent in RON of EUR 100,000; d) the social capital of the legal person is owned by persons other than the state, local authorities and public institutions.
Slovakia		<input checked="" type="checkbox"/>		
Slovenia	<input checked="" type="checkbox"/>			The definition of “Small Company” and “Medium Company” is set in the Companies Act (ZGD-1) and relates to the number of employees, yearly turnover and value of assets in the company.
Spain	<input checked="" type="checkbox"/>			From a tax perspective, Corporate Income Tax Law considers as SME’s which net turnover in the immediately preceding tax period is less than € 8 million. When the entity is part of a group of companies within the meaning of Article 42 of the Commercial Code, regardless of the residence and the obligation to prepare consolidated financial statements, the net turnover shall relate to all entities belonging to that group. This criterion also shall apply when a person alone or jointly with spouse or other individuals linked by kinship in the direct line or collateral consanguinity or affinity up to the second degree, are in relation with other entities that are partners in some of the situations referred to in Article 42 of the Commercial Code, regardless of the residence of the entity and the obligation to make consolidated financial statements.
Switzerland			<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>			The definition in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003.
<b>Total</b>	<b>11</b>	<b>5</b>	<b>2</b>	<b>18</b>
<b>Total %</b>	<b>61%</b>	<b>28%</b>	<b>11%</b>	<b>100%</b>

#### 8.4b) Are there specific documentation requirements for SMEs?

Almost three quarters of the countries (74%) has no specific documentation requirements for SMEs.  
 In other cases (i.e., Germany, Spain) the law provides for simplified documentation requirements.  
 Romanian SMEs must prepare and file the same documentation requested for MNEs.

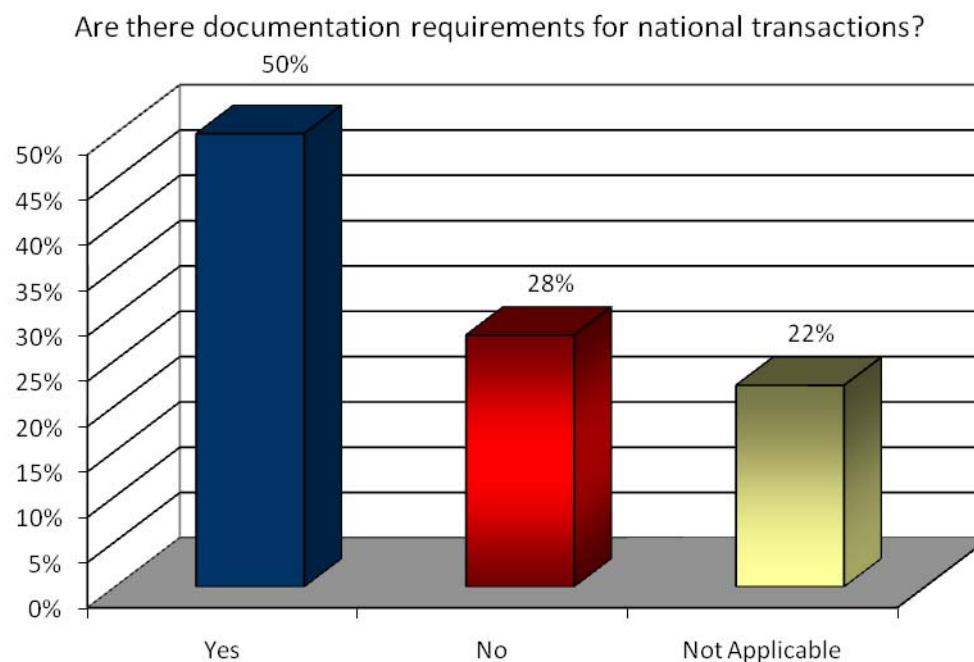


**Are there specific documentation requirements for SMEs?**

Country	Yes	No	n/a	Additional Notes
Austria		<input checked="" type="checkbox"/>		
Belgium		<input checked="" type="checkbox"/>		
Croatia		<input checked="" type="checkbox"/>		
Czech Republic		<input checked="" type="checkbox"/>		
France		<input checked="" type="checkbox"/>		A specific practical guide has been drafted for these companies by the FTA.
Germany	<input checked="" type="checkbox"/>			
Ireland		<input checked="" type="checkbox"/>		
Italy		<input checked="" type="checkbox"/>		
Latvia		<input checked="" type="checkbox"/>		
Luxembourg			<input checked="" type="checkbox"/>	
Malta		<input checked="" type="checkbox"/>		
Netherlands		<input checked="" type="checkbox"/>		
Poland		<input checked="" type="checkbox"/>		
Portugal				
Romania	<input checked="" type="checkbox"/>			
Slovakia		<input checked="" type="checkbox"/>		
Slovenia		<input checked="" type="checkbox"/>		
Spain	<input checked="" type="checkbox"/>			SMEs are practically exempt from the documentation requirements as there is an exemption for persons or entities whose total turnover in the tax year is less than 8 million €, when the total transactions with related parties during that year does not exceed 100.000 €.
Switzerland			<input checked="" type="checkbox"/>	
UK		<input checked="" type="checkbox"/>		Broadly, SMEs are exempt from the UK's transfer pricing provisions. An SME must tick the appropriate box on the first page of its self assessment tax return to declare that it qualifies for the SME exemption. If the SME wishes to elect that the exemption should not apply for a particular chargeable period, this is usually implemented by including a statement to this effect in the tax computation which accompanies the self assessment return.
<b>Total</b>	<b>3</b>	<b>14</b>	<b>2</b>	<b>19</b>
<b>Total (%)</b>	<b>16%</b>	<b>74%</b>	<b>11%</b>	<b>100%</b>

### 8.5a) Are there documentation requirements for national transactions?

Fifty per cent (50%) of the respondents answered affirmatively. The detail of the documentation required in this case is the same provided for cross-border transactions. The Austrian law requires a level of detail which provides an authorized expert (e.g., tax inspector) with a detailed view of the company and of the transactions. In the Netherlands the content of the documentation must be evaluated in relation to the case at hand.





**Are there documentation requirements for national transactions?**

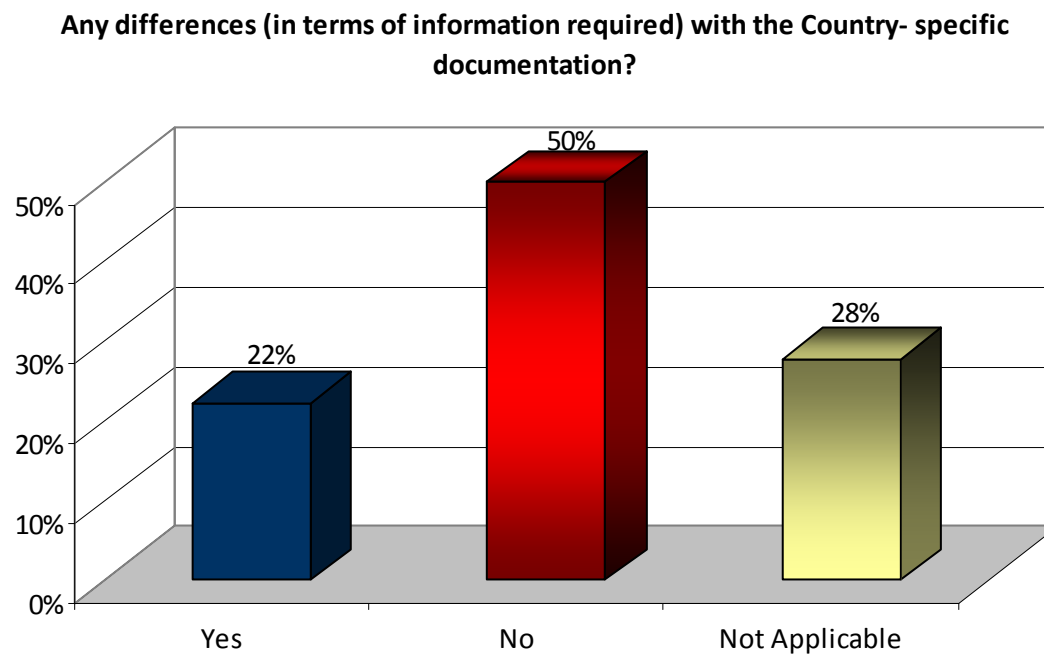
Country	Yes	No	Not Applicable	Additional Notes
Austria	<input checked="" type="checkbox"/>			Austria currently has statutory rules stating general documentation requirements (Articles 124, 131 and 138 Federal Fiscal Code). Based on these general statutory rules, the taxpayer has to have documentary evidence to substantiate that the intercompany pricing arrangements (national as well as international) are at arm's length.
Belgium		<input checked="" type="checkbox"/>		
Croatia	<input checked="" type="checkbox"/>			
Czech Republic	<input checked="" type="checkbox"/>			General documentation obligation applies to both, domestic and foreign transactions.
France		<input checked="" type="checkbox"/>		
Germany		<input checked="" type="checkbox"/>		
Ireland	<input checked="" type="checkbox"/>			
Italy			<input checked="" type="checkbox"/>	
Latvia		<input checked="" type="checkbox"/>		Companies should be able justify prices in intercompany transactions and support method (only in case of 90% relationship).
Luxembourg		<input checked="" type="checkbox"/>		No, but the taxpayer should retain the documentation to allow him to support his method and conclusions in case of questions.
Malta			<input checked="" type="checkbox"/>	
Netherlands	<input checked="" type="checkbox"/>			
Poland				
Portugal				
Romania	<input checked="" type="checkbox"/>			
Slovakia			<input checked="" type="checkbox"/>	
Slovenia	<input checked="" type="checkbox"/>			Yes, but only in the following cases: 1.) if one of the subjects discloses an uncovered tax loss carried forward from the previous tax periods; 2.) if one of the subjects pays tax at lower rate than the general CIT rate 3.) if one of the subjects is exempt from paying CIT. If none of those 3 criteria is met, no TP documentation is required for national transactions.

continued: Are there documentation requirements for national transactions?

Country	Yes	No	Not Applicable	Additional Notes
Spain	<input checked="" type="checkbox"/>			
Switzerland			<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>			
<b>Total</b>	<b>9</b>	<b>5</b>	<b>4</b>	<b>18</b>
<b>Total (%)</b>	<b>50%</b>	<b>28%</b>	<b>22%</b>	<b>100%</b>

### 8.5b) Any differences (in terms of information required) with the Country-specific documentation?

No deviations from the Country-specific documentation provided by the EU Code of Conduct have been observed by 50% of the respondents.

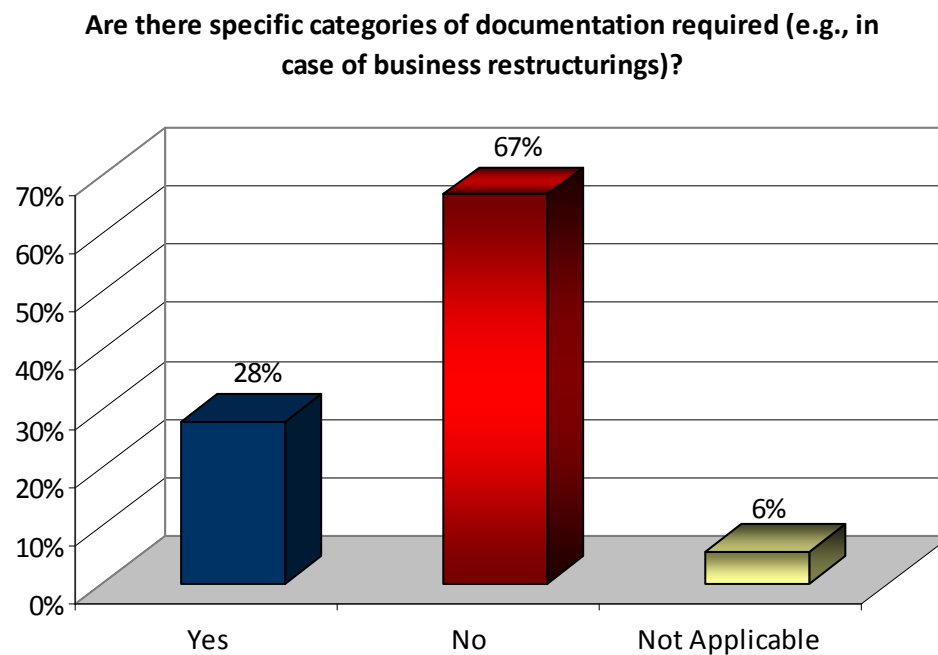


**Any differences (in terms of information required) with the Country-specific documentation?**

Country	Yes	No	Not Applicable	Additional Notes
Austria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	In general Austrian taxpayers have an increased obligation to cooperate if a foreign company is involved in a transaction.
Belgium	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Croatia	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Czech Republic	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	There is particular stress on documenting the benefit test of services.
France	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Germany	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No difference in essence. Required country specific documentation is a bit more formalized.
Ireland	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Italy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Latvia	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Luxembourg	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Malta	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Netherlands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Poland	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Portugal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Romania	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Slovakia	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Slovenia	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Spain	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Switzerland	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
UK	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<b>Total</b>	<b>4</b>	<b>9</b>	<b>5</b>	<b>18</b>
<b>Total (%)</b>	<b>22%</b>	<b>50%</b>	<b>28%</b>	<b>100%</b>

### 8.6a) Are there specific categories of documentation required (e.g., in case of business restructurings)?

In the majority of the respondents (67%) the local tax law does not set forth documentation requirements for specific circumstances.



**Are there specific categories of documentation required (e.g., in case of business restructurings)?**

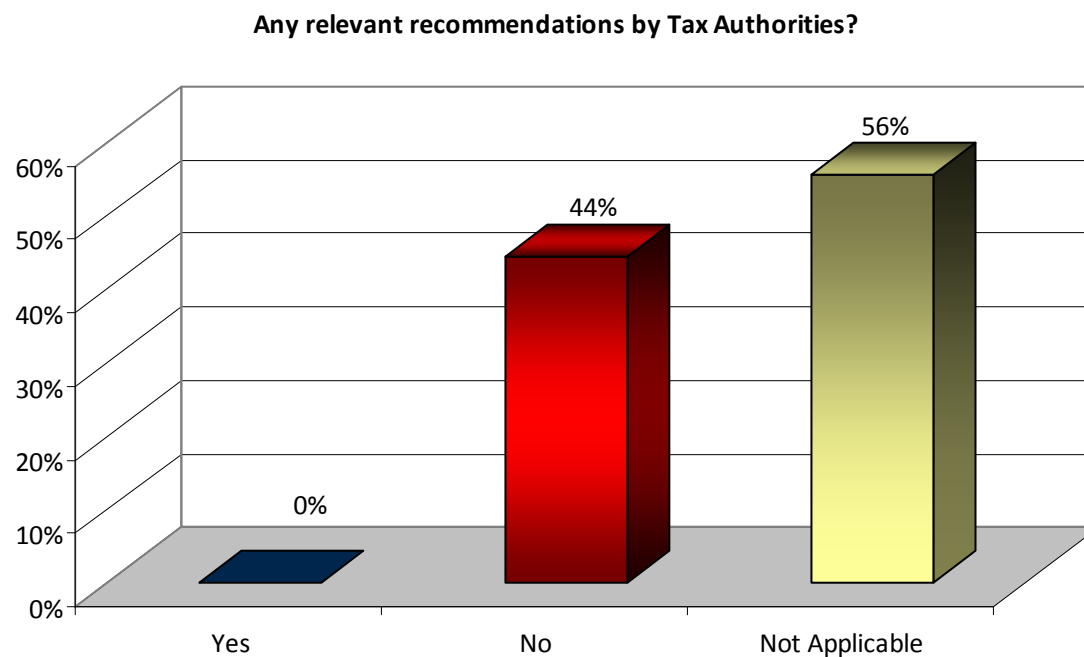
Country	Yes	No	Not Applicable	Additional Notes
Austria	<input checked="" type="checkbox"/>			No specific requirements. Nevertheless such specific circumstances should be documented in a sound and comprehensive way to support them. In case of a business restructuring the Austrian tax authorities usually expect a function and risk analysis before and after the restructuring. The requirements stated in the OECD Draft on Business Restructuring are regarded by the Austrian tax authorities as best practice.
Belgium		<input checked="" type="checkbox"/>		
Croatia		<input checked="" type="checkbox"/>		
Czech Republic		<input checked="" type="checkbox"/>		
France		<input checked="" type="checkbox"/>		The FTA is particularly sensitive to business restructurings involving foreign principals benefiting from a privileged tax regime and a decrease of taxable income in France.
Germany		<input checked="" type="checkbox"/>		
Ireland		<input checked="" type="checkbox"/>		
Italy		<input checked="" type="checkbox"/>		
Latvia		<input checked="" type="checkbox"/>		
Luxembourg		<input checked="" type="checkbox"/>		
Malta		<input checked="" type="checkbox"/>		
Netherlands		<input checked="" type="checkbox"/>		
Poland				
Portugal				
Romania	<input checked="" type="checkbox"/>			The Romanian tax authorities have developed their own approach.
Slovakia		<input checked="" type="checkbox"/>		
Slovenia	<input checked="" type="checkbox"/>			The notification of business restructuring has to be sent to the Tax Authority. But this document (notification) is not related to TP documentation.
Spain	<input checked="" type="checkbox"/>			Business restructurings are always subject to the documentation requirements, even if the amounts involved do not exceed 250.000 €.
Switzerland			<input checked="" type="checkbox"/>	

continued: Are there specific categories of documentation required (e.g., in case of business restructurings)?

Country	Yes	No	Not Applicable	Additional Notes
UK	<input checked="" type="checkbox"/>			
<b>Total</b>	<b>5</b>	<b>12</b>	<b>1</b>	<b>18</b>
<b>Total(%)</b>	<b>28%</b>	<b>67%</b>	<b>6%</b>	<b>100%</b>

### 8.6b) Any relevant recommendations by Tax Authorities?

There are no relevant recommendations by Tax Authorities regarding documentation requirements for specific circumstances (44%). More than half (56%) of the respondents fall under the “*not applicable*” category.



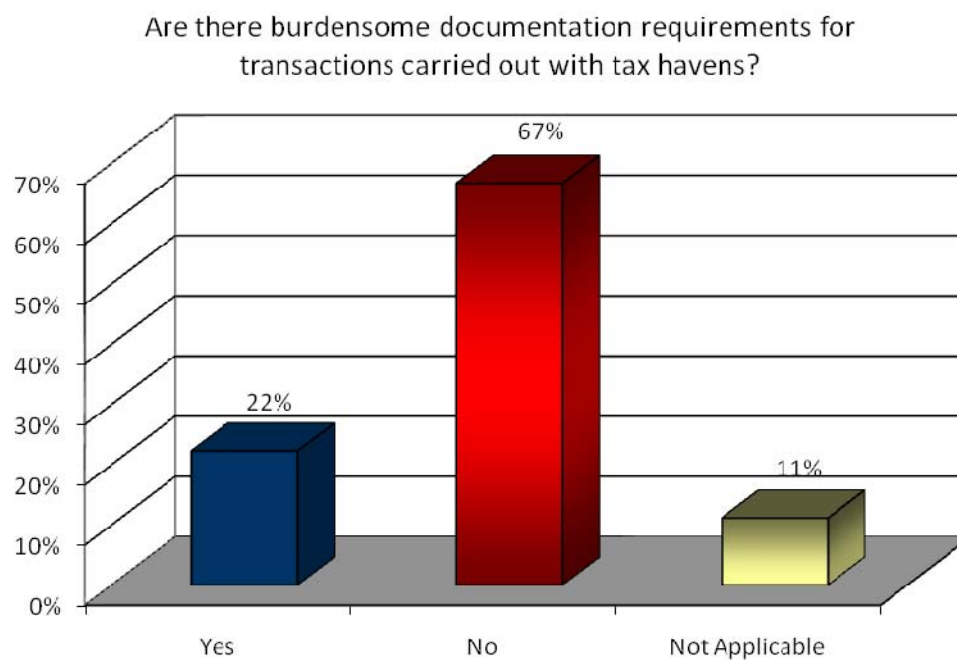


**Any relevant recommendations by Tax Authorities?**

Country	Yes	No	Not Applicable	Additional Notes
Austria			<input checked="" type="checkbox"/>	
Belgium			<input checked="" type="checkbox"/>	
Croatia			<input checked="" type="checkbox"/>	
Czech Republic		<input checked="" type="checkbox"/>		Tax Authorities require particularly proof of evidence with regard to the real provision of services (benefit test).
France		<input checked="" type="checkbox"/>		
Germany			<input checked="" type="checkbox"/>	
Ireland		<input checked="" type="checkbox"/>		
Italy			<input checked="" type="checkbox"/>	
Latvia			<input checked="" type="checkbox"/>	
Luxembourg		<input checked="" type="checkbox"/>		
Malta			<input checked="" type="checkbox"/>	
Netherlands			<input checked="" type="checkbox"/>	
Poland				
Portugal				
Romania		<input checked="" type="checkbox"/>		Depending on the specific circumstances.
Slovakia		<input checked="" type="checkbox"/>		
Slovenia		<input checked="" type="checkbox"/>		
Spain			<input checked="" type="checkbox"/>	
Switzerland			<input checked="" type="checkbox"/>	
UK		<input checked="" type="checkbox"/>		
<b>Total</b>	<b>0</b>	<b>8</b>	<b>10</b>	<b>18</b>
<b>Total (%)</b>	<b>0%</b>	<b>44%</b>	<b>56%</b>	<b>100%</b>

### 8.7a) Are there burdensome documentation requirements for transactions carried out with tax havens?

In general terms, there are no burdensome documentation requirements for transactions carried out with tax havens. Two thirds of the respondents (67%) answered negatively.



**Are there burdensome documentation requirements for transactions carried out with tax havens?**

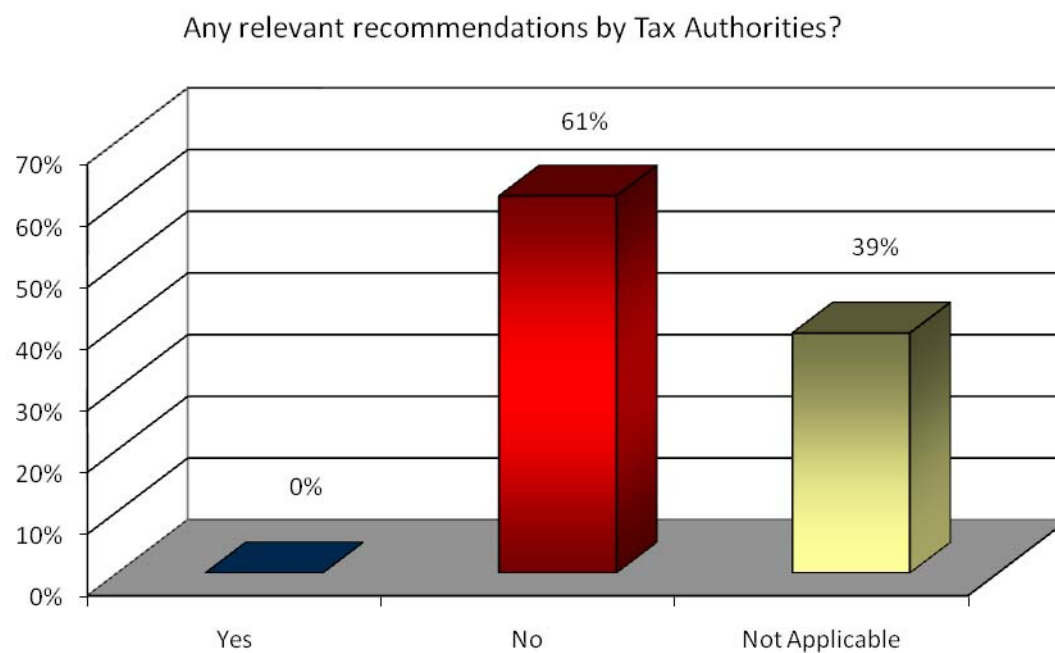
Country	Yes	No	Not Applicable	Additional Notes
Austria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If a tax haven is included in an intercompany transaction, the Austrian tax authorities may be more careful than in other transfer pricing cases. Such transactions should be documented in greater detail than transactions where no tax haven is included. In general, Austrian taxpayers have an increased obligation to cooperate if a foreign company is involved in a transaction. This increased obligation might be even more extended in practice if the foreign company is located in a tax haven.
Belgium	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Croatia	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Czech Republic	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
France	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Since the Third Finance Amendment Law for 2009 (December 30, 2009), there are new documentation requirements assessed to large enterprises which conduct operations with associated entities situated in a NCST. They are subject to an additional documentation obligation: for each beneficiary entity, the French enterprises have to provide financial statements drawn up in compliance with French tax principles.
Germany	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	In practice, documentation concerning business transactions to tax havens may be scrutinized more in detail than others.
Ireland	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Italy		<input checked="" type="checkbox"/>		The taxpayer must comply with the anti-abuse law provided in Article 110 of the Italian Tax Code. In this regard, Article 110's restrictions do not apply if the Italian entity can prove that: <ul style="list-style-type: none"> <li>• the foreign entity carries out an actual commercial or industrial activity in the countries in which it is incorporated, or, alternatively,</li> <li>• the transactions with the foreign entity are supported by an actual economic interest and have been really performed.</li> </ul>
Latvia		<input checked="" type="checkbox"/>		Any transactions with tax haven based partner are considered as transaction with related company.
Luxembourg		<input checked="" type="checkbox"/>		There are none. However the possible inversion of proof described under 1.c. above makes it recommendable to submit as solid a documentation as possible.
Malta			<input checked="" type="checkbox"/>	

**continued: Are there burdensome documentation requirements for transactions carried out with tax havens?**

Country	Yes	No	Not Applicable	Additional Notes
Netherlands		<input checked="" type="checkbox"/>		
Poland				
Portugal				
Romania		<input checked="" type="checkbox"/>		
Slovakia		<input checked="" type="checkbox"/>		
Slovenia		<input checked="" type="checkbox"/>		
Spain	<input checked="" type="checkbox"/>			Taxpayers engaging in transactions with unrelated entities located in EU tax havens will be subject to nearly identical documentation requirements as transactions with related parties, and the taxpayer will be required to identify the administrators of the tax haven entity as well. An exemption from the documentation requirements is available, however, if the taxpayer proves that the transactions were undertaken for valid economic reasons and are comparable to the ordinary transactions undertaken with third parties located in countries that are not considered tax havens.
Switzerland			<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>			
<b>Total</b>	<b>4</b>	<b>12</b>	<b>2</b>	<b>18</b>
<b>Total (%)</b>	<b>22%</b>	<b>67%</b>	<b>11%</b>	<b>100%</b>

### 8.7b) Any relevant recommendations by Tax Authorities?

There are no relevant recommendations by Tax Authorities regarding documentation requirements for transactions carried out with tax havens (61% of cases).

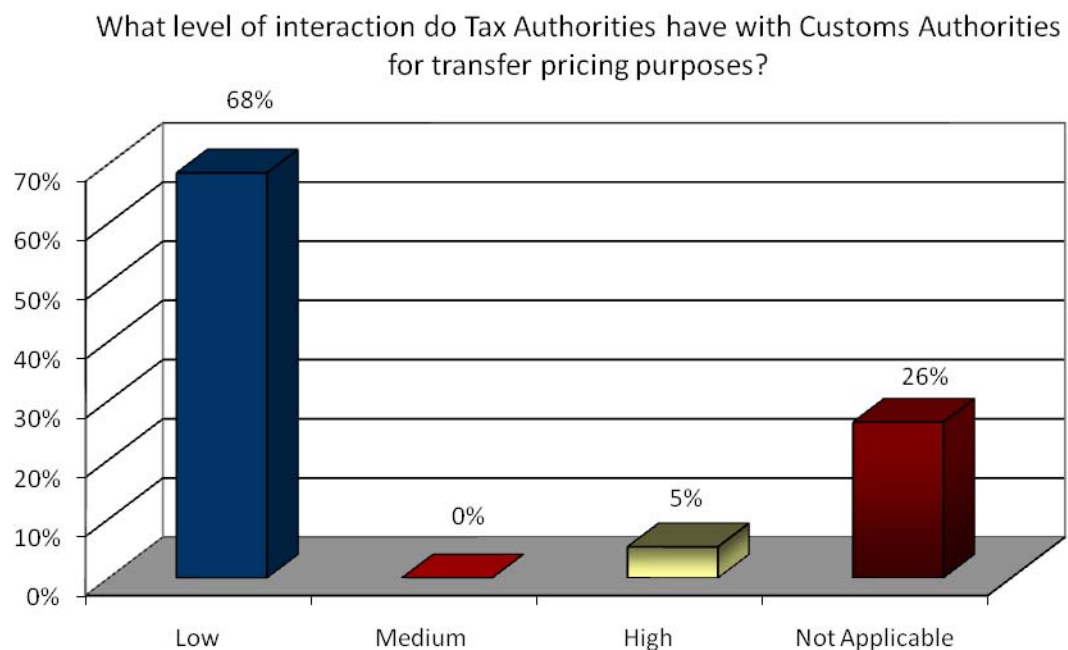


**Any relevant recommendations by Tax Authorities?**

Country	Yes	No	Not Applicable	Additional Notes
Austria		<input checked="" type="checkbox"/>		
Belgium		<input checked="" type="checkbox"/>		
Croatia		<input checked="" type="checkbox"/>		
Czech Republic			<input checked="" type="checkbox"/>	
France			<input checked="" type="checkbox"/>	
Germany		<input checked="" type="checkbox"/>		
Ireland		<input checked="" type="checkbox"/>		
Italy			<input checked="" type="checkbox"/>	
Latvia			<input checked="" type="checkbox"/>	
Luxembourg		<input checked="" type="checkbox"/>		
Malta			<input checked="" type="checkbox"/>	
Netherlands			<input checked="" type="checkbox"/>	
Poland				
Portugal				
Romania		<input checked="" type="checkbox"/>		
Slovakia		<input checked="" type="checkbox"/>		
Slovenia		<input checked="" type="checkbox"/>		
Spain		<input checked="" type="checkbox"/>		
Switzerland		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
UK		<input checked="" type="checkbox"/>		
<b>Total</b>	<b>0</b>	<b>11</b>	<b>7</b>	<b>18</b>
<b>Total (%)</b>	<b>0%</b>	<b>61%</b>	<b>39%</b>	<b>100%</b>

### 8.8a) What level of interaction do Tax Authorities have with Customs Authorities for transfer pricing purposes?

The results (68%) show that the level of interaction between Tax Authorities and Customs Authorities is low. An exception is represented by Croatia which reports a high level of cooperation.



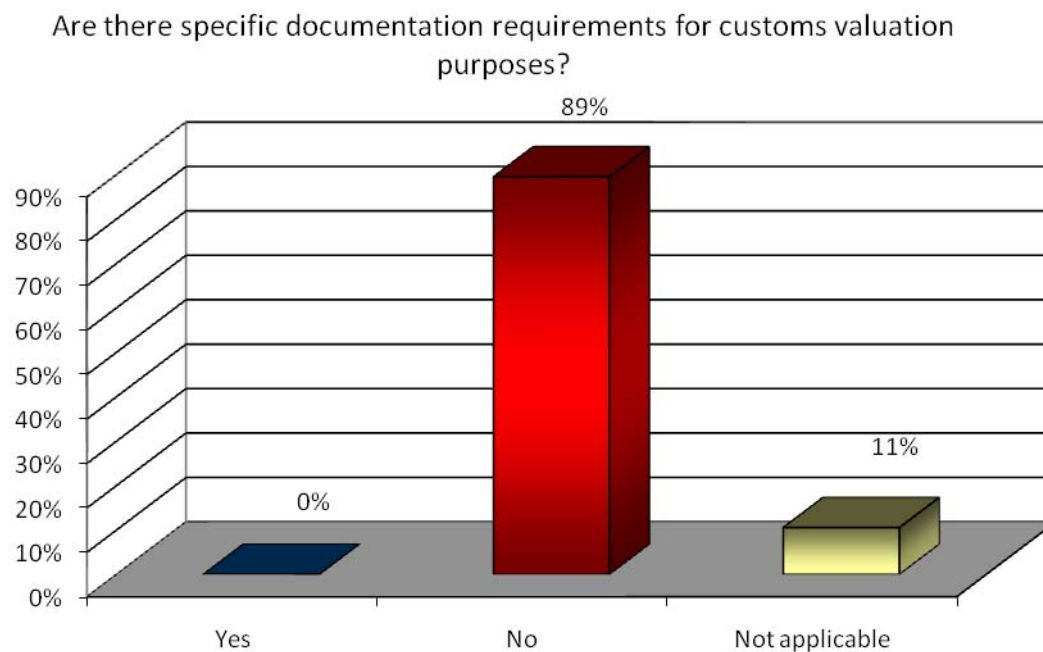
**What level of interaction do Tax Authorities have with Customs Authorities for transfer pricing purposes?**

Country	Low	Medium	High	Not Applicable	Additional Notes
Austria	<input checked="" type="checkbox"/>				
Belgium	<input checked="" type="checkbox"/>				
Croatia			<input checked="" type="checkbox"/>		
Czech Republic	<input checked="" type="checkbox"/>				
France	<input checked="" type="checkbox"/>				In practice, the FTA can obtain information through customs duties and vice versa.
Germany	<input checked="" type="checkbox"/>				
Ireland	<input checked="" type="checkbox"/>				
Italy	<input checked="" type="checkbox"/>				
Latvia				<input checked="" type="checkbox"/>	It is one authority.
Luxembourg	<input checked="" type="checkbox"/>				Possible exchange of information.
Malta				<input checked="" type="checkbox"/>	
Netherlands	<input checked="" type="checkbox"/>				
Poland	<input checked="" type="checkbox"/>				
Portugal					
Romania	<input checked="" type="checkbox"/>				It is increasing.
Slovakia				<input checked="" type="checkbox"/>	We are not aware of any official interaction.
Slovenia	<input checked="" type="checkbox"/>				
Spain				<input checked="" type="checkbox"/>	
Switzerland				<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>				In our experience the Revenue does not typically interact with Customs on transfer pricing issues. However, Customs may check transfer pricing payments and consider their suitability. In these cases there may be some interaction between the two parts of HMRC.
<b>Total</b>	<b>13</b>	<b>0</b>	<b>1</b>	<b>5</b>	<b>19</b>
<b>Total (%)</b>	<b>68%</b>	<b>0%</b>	<b>5%</b>	<b>26%</b>	<b>100%</b>



### 8.8b) Are there specific documentation requirements for customs valuation purposes?

None of the countries has reported specific documentation requirements for customs purposes.

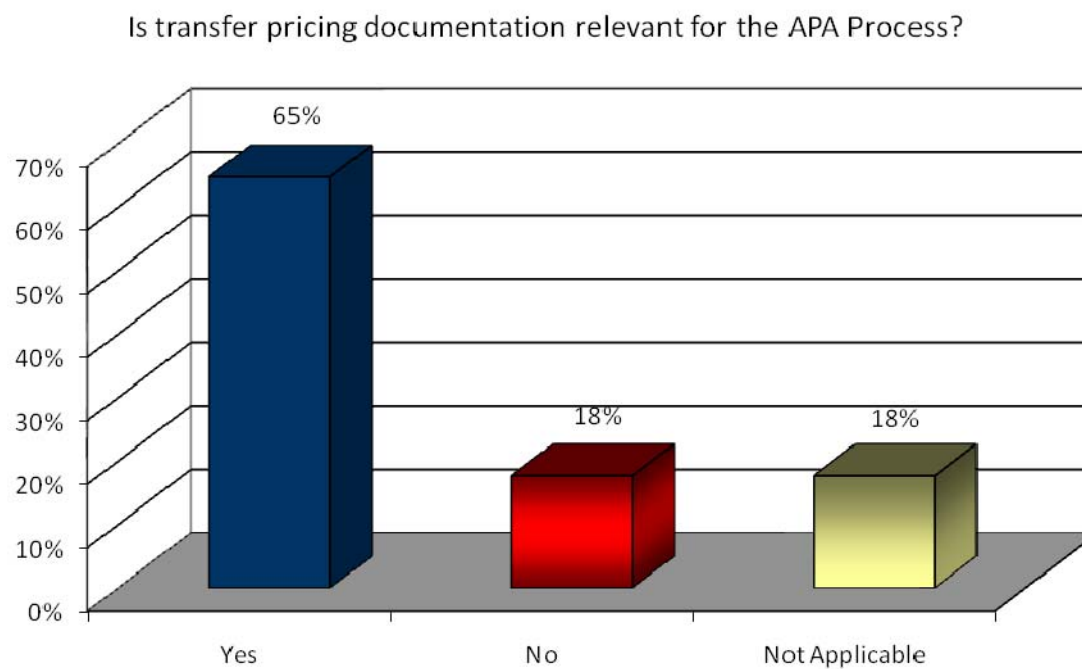


**Are there specific documentation requirements for customs valuation purposes?**

Country	Yes	No	Not Applicable	Additional Notes
Austria		<input checked="" type="checkbox"/>		However, the general customs valuation principles must be considered (e.g., the determination of the customs value between related persons – Art 143 of the Commission Regulation EEC 2454/93).
Belgium		<input checked="" type="checkbox"/>		
Croatia		<input checked="" type="checkbox"/>		
Czech Republic		<input checked="" type="checkbox"/>		
France		<input checked="" type="checkbox"/>		
Germany		<input checked="" type="checkbox"/>		
Ireland		<input checked="" type="checkbox"/>		
Italy		<input checked="" type="checkbox"/>		
Latvia		<input checked="" type="checkbox"/>		
Luxembourg		<input checked="" type="checkbox"/>		
Malta			<input checked="" type="checkbox"/>	
Netherlands		<input checked="" type="checkbox"/>		
Poland		<input checked="" type="checkbox"/>		
Portugal				
Romania		<input checked="" type="checkbox"/>		Specific to customs clearance and control.
Slovakia		<input checked="" type="checkbox"/>		The customs valuation is done in accordance with the EU Customs Code. No other specific valuation procedures are required.
Slovenia		<input checked="" type="checkbox"/>		
Spain		<input checked="" type="checkbox"/>		
Switzerland			<input checked="" type="checkbox"/>	
UK		<input checked="" type="checkbox"/>		
<b>Total</b>	<b>0</b>	<b>17</b>	<b>2</b>	<b>19</b>
<b>Total (%)</b>	<b>0%</b>	<b>89%</b>	<b>11%</b>	<b>100%</b>

## 8.9 Is transfer pricing documentation relevant for the APA process?

The majority of the respondents (65%) reports the relevance of the transfer pricing documentation for the APA process.



**Is transfer pricing documentation relevant for the APA process?**

Country	Yes	No	n/a	Additional Notes
Austria				Regulations regarding APAs were enacted recently and will become effective as of 1 January 2011. Taxpayers who want to obtain an APA must submit a written application which has to include comprehensive and complete explanation of the relevant facts, particular interest of the applicant to agree on a binding ruling, explanation of the legal problem and questions arising in this regard, legal assessment of the questions arising due to the legal problem and information to determine administrative fees. If the APA is obtained, the tax authorities are allowed to impose specific reporting requirements on the taxpayer.
Belgium	<input checked="" type="checkbox"/>			
Croatia		<input checked="" type="checkbox"/>		
Czech Republic	<input checked="" type="checkbox"/>			
France	<input checked="" type="checkbox"/>			To the extent that the taxpayer has to propose a transfer pricing methodology and to give the relevant information from a commercial, industrial, legal and financial viewpoint. The taxpayer has to demonstrate that the method will lead to the determination of a transfer pricing policy in accordance with the arm's length principle. Accordingly, the taxpayer must give all relevant information such as the price used for similar transactions in the market (comparables) and if such information is not available, identify all transactions that might be comparable for which precise data are not available.
Germany	<input checked="" type="checkbox"/>			Relevance is given, although requirements are not identical.
Ireland	<input checked="" type="checkbox"/>			
Italy		<input checked="" type="checkbox"/>		There are no specific documentation requirements in Italy. However, documentation supporting intercompany transactions should adhere to the OECD Transfer Pricing Guidelines and to the EU documentation. For APA process ("ruling internazionale") purposes, the taxpayer must provide to the Tax Administration the following information: <ul style="list-style-type: none"> <li>• details of goods and services which are object of the intercompany transactions;</li> <li>• non-resident company with which such transactions are carried out, as well as all the relevant information concerning the relevant case;</li> <li>• the criteria and the methods whereby the arm's length value of the transactions is calculated and the reasons whereby these are considered to be in compliance with law;</li> <li>• any illustrative documentation is considered appropriate.</li> </ul>

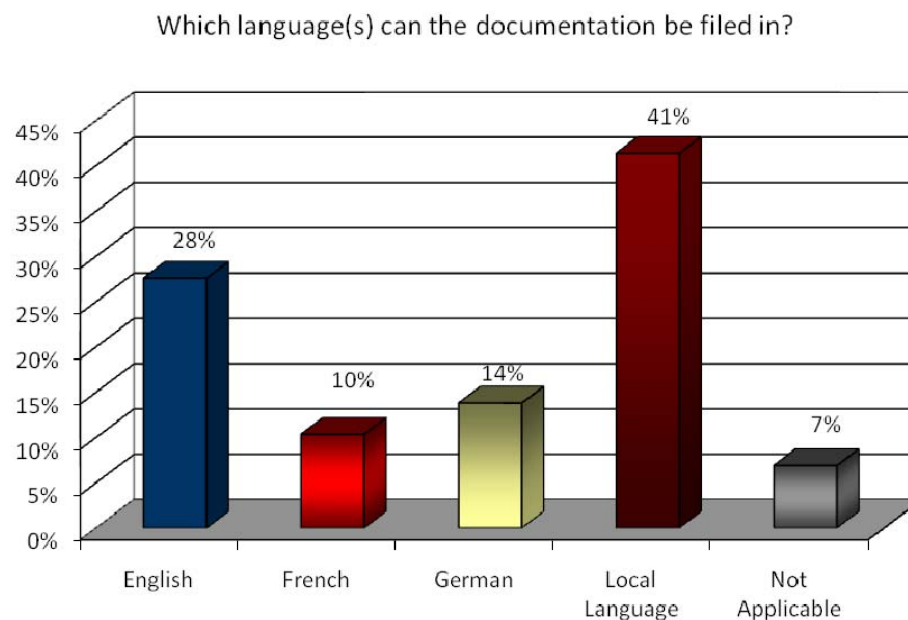
**Is transfer pricing documentation relevant for the APA process?**

Country	Yes	No	n/a	Additional Notes
Latvia			<input checked="" type="checkbox"/>	APA does not exist. Although, there are possibility to request tax ruling.
Luxembourg	<input checked="" type="checkbox"/>			In an APA anything which may support the case may be of relevance. The administration is not required to agree on an APA, thus the taxpayer should come up with solid documentation.
Malta			<input checked="" type="checkbox"/>	
Netherlands				
Poland		<input checked="" type="checkbox"/>		
Portugal				
Romania	<input checked="" type="checkbox"/>			The documentation needed for the APA process is similar to the one provided by the local legislation for the transfer pricing file.
Slovakia	<input checked="" type="checkbox"/>			
Slovenia	<input checked="" type="checkbox"/>			No APAs are possible in Slovenia.
Spain	<input checked="" type="checkbox"/>			The Spanish Tax Authorities can request data, reports, background information and evidence related to the proposal, as well as additional explanations, if needed.
Switzerland			<input checked="" type="checkbox"/>	In practice APA Process is recognised.
UK	<input checked="" type="checkbox"/>			
<b>Total</b>	<b>11</b>	<b>3</b>	<b>3</b>	<b>17</b>
<b>Total (%)</b>	<b>65%</b>	<b>18%</b>	<b>18%</b>	<b>100%</b>

### 8.10a) Which language(s) can documentation be filed in?

Under the Code of Conduct, the documentation should be prepared in a language that is commonly understood. The document must be translated at least in English, considering the practice of some States (28% of the respondents).

The results show that in 41% of the cases the documentation must be prepared in local languages.

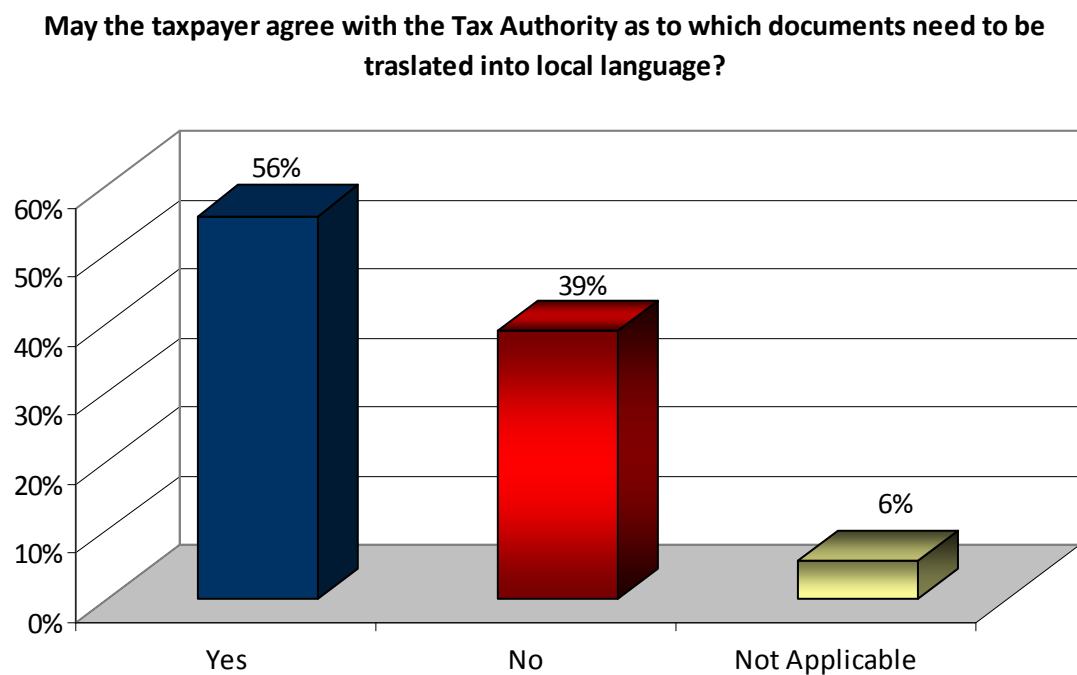


**Which language(s) can documentation be filed in?**

Country	English	French	German	Local Language	n/a	Additional Notes
Austria	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			
Belgium		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Official language depends on the location in Belgium of company. Therefore, in principle, Dutch or French is acceptable. But, in practice, documentation made in English may be accepted.
Croatia				<input checked="" type="checkbox"/>		The documentation has to be filed in Croatian.
Czech Republic				<input checked="" type="checkbox"/>		Tax authorities may require all documents in Czech or Slovak. This is usually the case if they want to scrutinize transfer prices or in the case of APA submissions.
France	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
Germany	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			
Ireland	<input checked="" type="checkbox"/>					
Italy				<input checked="" type="checkbox"/>		The Italian Tax Authorities have the right to require all the documentation in Italian, or translated into Italian before submission.
Latvia				<input checked="" type="checkbox"/>		The Latvian Tax Authority have the right to require all the documentation in Latvian.
Luxembourg	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Malta					<input checked="" type="checkbox"/>	
Netherlands	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		
Poland				<input checked="" type="checkbox"/>		
Portugal						
Romania				<input checked="" type="checkbox"/>		The Order 222/2008 regarding the content of the transfer pricing file provides that the transfer pricing documentation be submitted to the tax authorities in Romanian language.
Slovakia				<input checked="" type="checkbox"/>		
Slovenia				<input checked="" type="checkbox"/>		Masterfile – any language, Country specific documentation – only in Slovene.
Spain	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>		The Masterfile should be submitted in English; the Country-specific documentation in Spanish.
Switzerland					<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>					
<b>Total</b>	<b>8</b>	<b>3</b>	<b>4</b>	<b>12</b>	<b>2</b>	<b>29</b>
<b>Total (%)</b>	<b>28%</b>	<b>10%</b>	<b>14%</b>	<b>41%</b>	<b>7%</b>	<b>100%</b>

### 8.10b) May the taxpayer agree with the Tax Authority as to which documents need to be translated into local languages?

Tax Authorities should require only a limited number of documents to be translated into their local language when documentation is due or during a tax audit. Tax Authorities, however, must be able to understand what the documentation says. In 56% of the cases the taxpayer may agree as to which documents need to be translated.



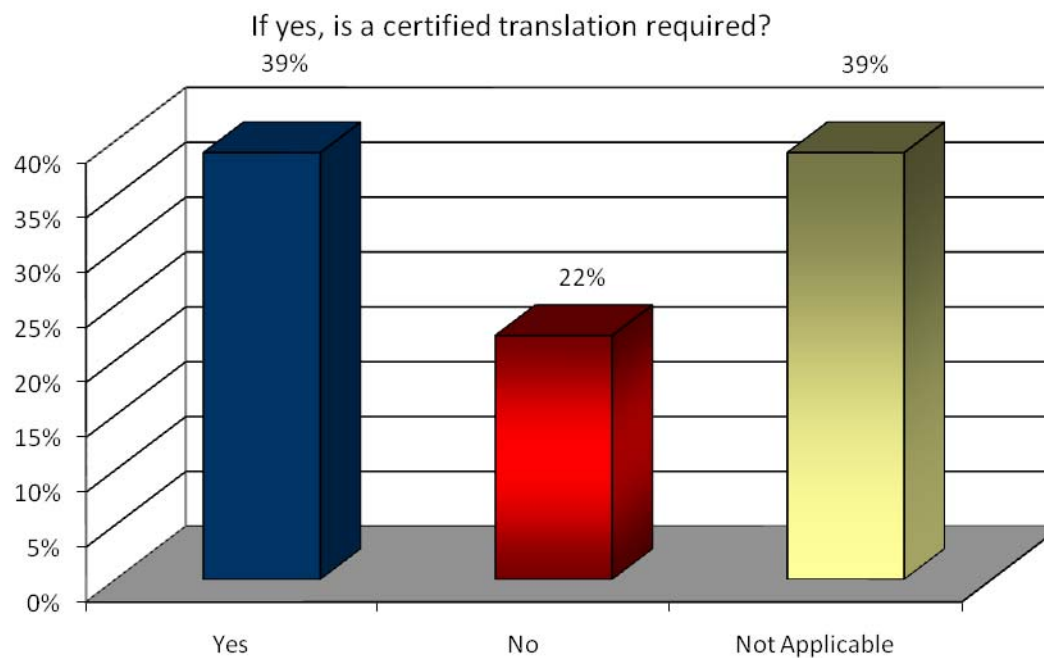


**May the taxpayer agree with the Tax Authority as to which documents need to be translated into local languages?**

Country	Yes	No	Not Applicable	Additional Notes
Austria		<input checked="" type="checkbox"/>		The tax authorities have the right to request all documents in German.
Belgium	<input checked="" type="checkbox"/>			
Croatia		<input checked="" type="checkbox"/>		
Czech Republic	<input checked="" type="checkbox"/>			Some authorities also accept documentation in English, and taxpayers may agree with the tax authorities which documents need not be translated into Czech/Slovak.
France	<input checked="" type="checkbox"/>			This is something that may be discussed.
Germany	<input checked="" type="checkbox"/>			
Ireland		<input checked="" type="checkbox"/>		
Italy	<input checked="" type="checkbox"/>			The Italian Tax authorities may accept documentation in another language, but there is no guarantee that they will.
Latvia		<input checked="" type="checkbox"/>		In practice, the Tax Authority can accept documentation in English, but it is not prescribed.
Luxembourg	<input checked="" type="checkbox"/>			There are no prescriptive rules concerning this.
Malta	<input checked="" type="checkbox"/>			
Netherlands	<input checked="" type="checkbox"/>			
Poland				
Portugal				
Romania	<input checked="" type="checkbox"/>			
Slovakia		<input checked="" type="checkbox"/>		Not allowed by the law. In case of the tax audit, it happens that the taxpayer agrees with the tax authorities on translation of certain parts of the TP documentation only.
Slovenia		<input checked="" type="checkbox"/>		
Spain	<input checked="" type="checkbox"/>			
Switzerland			<input checked="" type="checkbox"/>	In the APA Process, all three Swiss languages (DE,FR,IT) but also EN are accepted.
UK		<input checked="" type="checkbox"/>		There are no prescriptive rules concerning this. The taxpayer would need to agree an approach with HMRC on an informal basis.
<b>Total</b>	<b>10</b>	<b>7</b>	<b>1</b>	<b>18</b>
<b>Total (%)</b>	<b>56%</b>	<b>39%</b>	<b>6%</b>	<b>100%</b>

### 8.10c) If yes, is a certified translation required?

When the taxpayer agrees to the translation of the documentation, the results show that in 39% of the cases, the Tax Administration involved requires a certified translation.

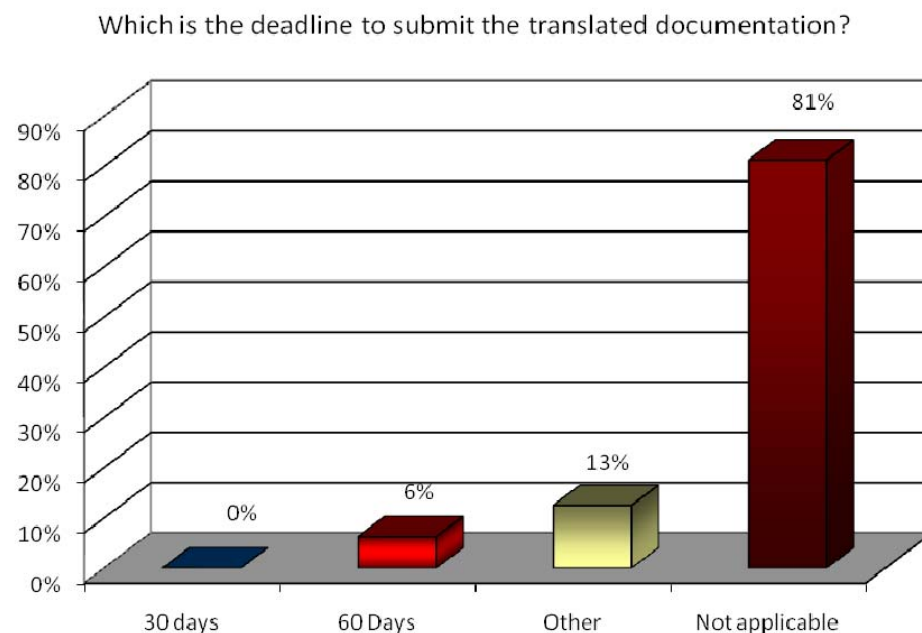


**If yes, is a certified translation required?**

Country	Yes	No	Not Applicable	Additional Notes
Austria	<input checked="" type="checkbox"/>			If the tax authorities formally request documents in German, a certified translation of the documents has to be provided.
Belgium		<input checked="" type="checkbox"/>		Taxpayers may agree with the tax authorities which documents need to be translated into local language, but no certified translation is required.
Croatia			<input checked="" type="checkbox"/>	
Czech Republic	<input checked="" type="checkbox"/>			
France	<input checked="" type="checkbox"/>			The FTA may require a certified translation, but it is also possible that the FTA accepts free translation; there is nothing fixed in this respect.
Germany		<input checked="" type="checkbox"/>		
Ireland			<input checked="" type="checkbox"/>	
Italy			<input checked="" type="checkbox"/>	
Latvia		<input checked="" type="checkbox"/>		
Luxembourg	<input checked="" type="checkbox"/>			To be agreed on a case by case basis.
Malta			<input checked="" type="checkbox"/>	
Netherlands	<input checked="" type="checkbox"/>			
Poland				
Portugal				
Romania	<input checked="" type="checkbox"/>			
Slovakia	<input checked="" type="checkbox"/>			If the taxpayer officially provides TP documentation in a foreign language to the tax authorities, it must be translated by certified translators. During the tax audits, also unofficial translations are sometimes accepted.
Slovenia		<input checked="" type="checkbox"/>		
Spain			<input checked="" type="checkbox"/>	
Switzerland			<input checked="" type="checkbox"/>	
UK			<input checked="" type="checkbox"/>	
<b>Total</b>	<b>7</b>	<b>4</b>	<b>7</b>	<b>18</b>
<b>Total(%)</b>	<b>39%</b>	<b>22%</b>	<b>39%</b>	<b>100%</b>

### 8.10d) Which is the deadline to submit the translated documentation?

Only Slovenia provides for a 60-day deadline. In most countries other terms are applicable. Eighty-one per cent (81%) of the answers falls under the “*not applicable*” category.



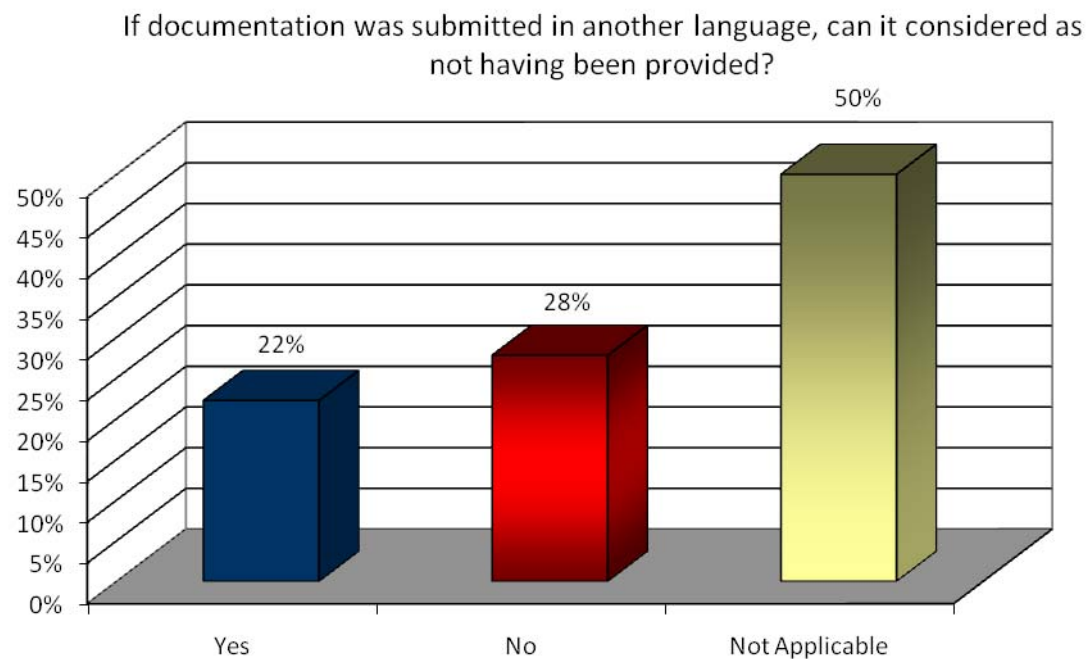
#### Which is the deadline to submit the translated documentation?

Country	30 days	60 days	Other	n/a	Additional Notes
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Austria				<input checked="" type="checkbox"/>	As there are any specific requirements aiming directly on transfer pricing documentation, there is no predetermined deadline for submitting a translation. Because taxpayers must have documentation upon request of the tax authorities (usually in course of a tax audit) a deadline (for the documentation and relevant translation) will be set on a case by case basis.
Belgium				<input checked="" type="checkbox"/>	
Croatia					Answer not provided.
Czech Republic			<input checked="" type="checkbox"/>		No statutory deadline for submission. Ordinary terms applied. Minimum deadline is 8 days (with possible extension to 15 days – longer extension may be rejected).
France				<input checked="" type="checkbox"/>	
Germany				<input checked="" type="checkbox"/>	
Ireland				<input checked="" type="checkbox"/>	
Italy				<input checked="" type="checkbox"/>	No statutory deadline for submission. Ordinary terms applied.
Latvia				<input checked="" type="checkbox"/>	
Luxembourg			<input checked="" type="checkbox"/>		To be agreed on a case by case basis.
Malta				<input checked="" type="checkbox"/>	
Netherlands					
Poland				<input checked="" type="checkbox"/>	
Portugal					
Romania					The answer is not clear.
Slovakia				<input checked="" type="checkbox"/>	
Slovenia		<input checked="" type="checkbox"/>			
Spain				<input checked="" type="checkbox"/>	
Switzerland				<input checked="" type="checkbox"/>	
UK				<input checked="" type="checkbox"/>	
<b>Total</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>13</b>	<b>16</b>
<b>Total (%)</b>	<b>0%</b>	<b>6%</b>	<b>13%</b>	<b>81%</b>	<b>100%</b>

### 8.10e) If documentation was submitted in another language, can it be considered as not having been provided?

Only four Countries (Czech Republic, Germany, Romania, Slovenia) provide for additional penalties when the documentation is submitted in languages different from the local one. Fifty per cent (50%) of the answers falls under the “*not applicable*” category.



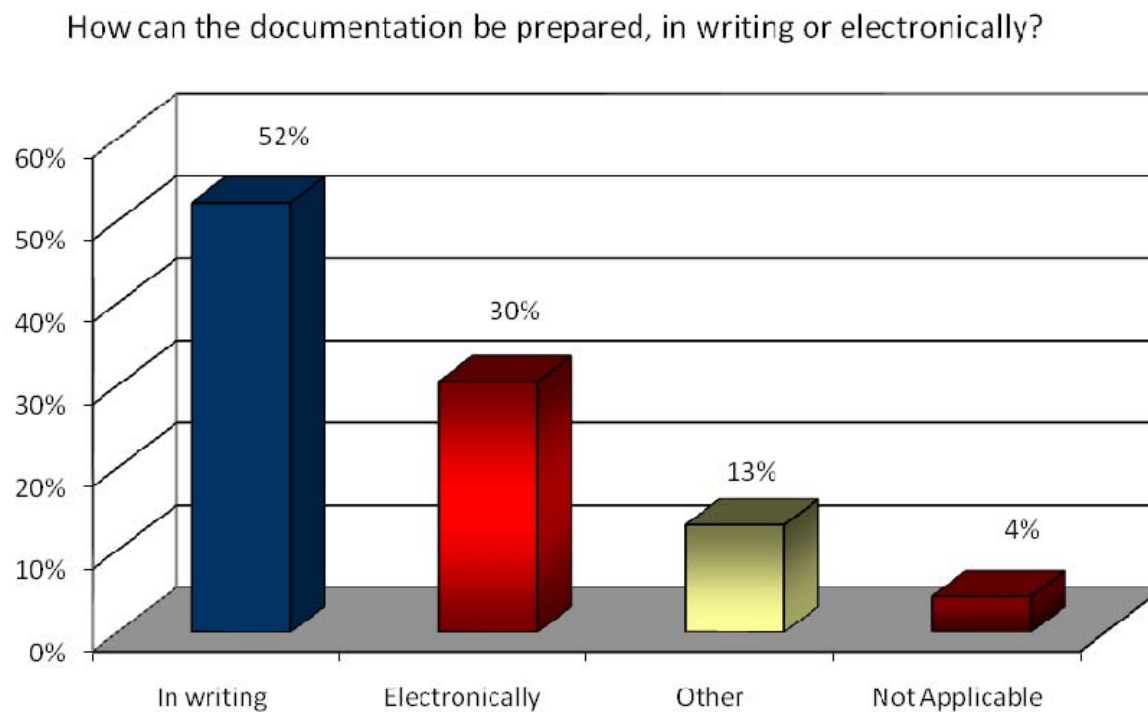
**If documentation was submitted in another language, can it be considered as not having been provided?**

Country	Yes	No	Not Applicable	Additional Notes
Austria		<input checked="" type="checkbox"/>		The documentation could be considered as not having been provided. If no documentation can be provided, the Austrian tax authorities are generally allowed to estimate and adjust the respective income accordingly.
Belgium			<input checked="" type="checkbox"/>	
Croatia		<input checked="" type="checkbox"/>		The documentation can be considered as not provided in those cases.
Czech Republic	<input checked="" type="checkbox"/>			Taxpayers have the obligation to cooperate with the Tax Authority and may be penalized up to 1,000,000 CZK.
France			<input checked="" type="checkbox"/>	
Germany	<input checked="" type="checkbox"/>			
Ireland			<input checked="" type="checkbox"/>	
Italy			<input checked="" type="checkbox"/>	
Latvia			<input checked="" type="checkbox"/>	The documentation can be considered as not provided.
Luxembourg		<input checked="" type="checkbox"/>		
Malta			<input checked="" type="checkbox"/>	
Netherlands		<input checked="" type="checkbox"/>		
Poland				
Portugal				
Romania	<input checked="" type="checkbox"/>			
Slovakia		<input checked="" type="checkbox"/>		The Slovak law does not have any specific penalties with respect to TP. If the TP adjustment leads to reduction in the tax liability in Slovakia, the general penalty calculated as 3 times the ECB base rate (but not less than 10%) shall apply. Alternatively, if the taxpayers do not have the TP documentation as required by law, they can be assessed for non-monetary violation of the law of up to about 33,190 EUR.
Slovenia	<input checked="" type="checkbox"/>			Tax authority may translate the documentation itself and then charge the translation costs to the taxpayer.
Spain			<input checked="" type="checkbox"/>	
Switzerland			<input checked="" type="checkbox"/>	
UK			<input checked="" type="checkbox"/>	
<b>Total</b>	<b>4</b>	<b>5</b>	<b>9</b>	<b>18</b>
<b>Total (%)</b>	<b>22%</b>	<b>28%</b>	<b>50%</b>	<b>100%</b>

### 8.11 How can the documentation be prepared, in writing or electronically?

Documentation should be prepared in writing in 52% of the cases.

Only 30% of the respondents report the possibility to submit the documentation in an electronic format.



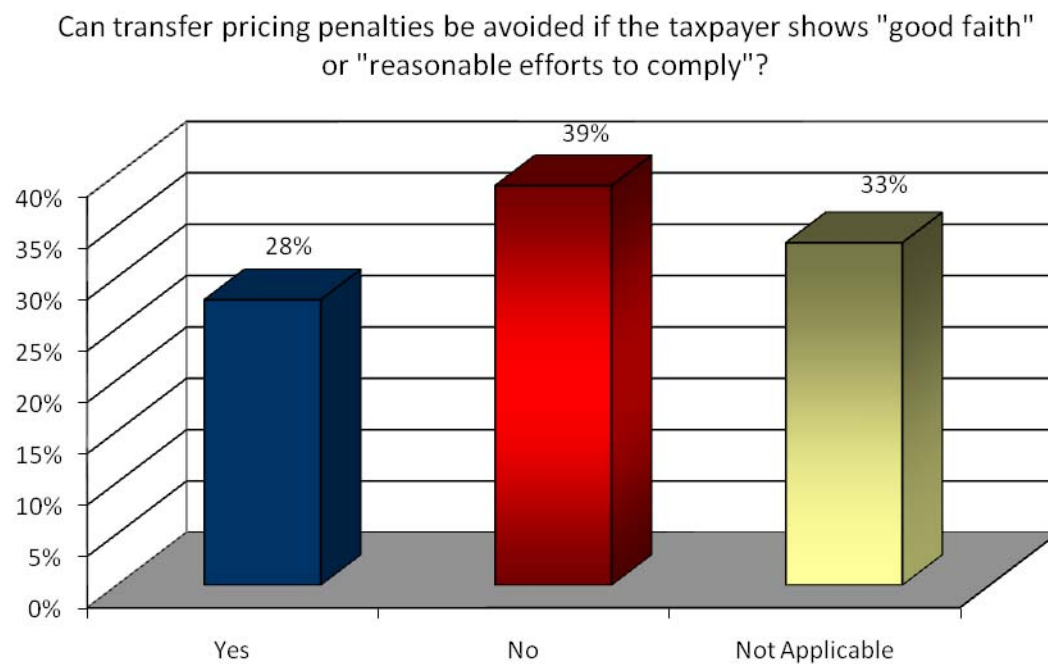


**How can the documentation be prepared, in writing or electronically?**

Country	Writing	Electronically	Other	Not Applicable	Additional Notes
Austria	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Belgium	<input checked="" type="checkbox"/>				
Croatia		<input checked="" type="checkbox"/>			A transfer pricing study should be in hard copy.
Czech Republic	<input checked="" type="checkbox"/>				Electronic submission may be agreed.
France	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Germany	<input checked="" type="checkbox"/>				Electronic submission may be agreed.
Ireland			<input checked="" type="checkbox"/>		There is no requirement for documentation to be kept in a standard form and it may be kept in a form of the companies own choosing.
Italy	<input checked="" type="checkbox"/>				
Latvia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Luxembourg			<input checked="" type="checkbox"/>		To be agreed on a case by case basis.
Malta	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Netherlands	<input checked="" type="checkbox"/>				
Poland					
Portugal					
Romania	<input checked="" type="checkbox"/>				According to the law, electronic submission may be agreed with the tax authorities (not often seen in practice).
Slovakia	<input checked="" type="checkbox"/>				
Slovenia		<input checked="" type="checkbox"/>			
Spain	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			There is no specific rule that establishes how the documentation should be prepared.
Switzerland				<input checked="" type="checkbox"/>	
UK			<input checked="" type="checkbox"/>		Documentation should be prepared in a form that can be made available to HMRC. There are no prescriptive rules concerning whether this must be in written or electronic form. In practice, most taxpayers prepare documentation in written form, or in an electronic form that can easily be printed out.
<b>Total</b>	<b>12</b>	<b>7</b>	<b>3</b>	<b>1</b>	<b>23</b>
<b>Total (%)</b>	<b>52%</b>	<b>30%</b>	<b>13%</b>	<b>4%</b>	<b>100%</b>

### 8.12 Can transfer pricing penalties be avoided if the taxpayer shows “good faith” or “reasonable efforts to comply”?

39% of the respondents report that penalties cannot be reduced if the taxpayer shows “good faith” or “reasonable efforts to comply”.



**Can transfer pricing penalties be avoided if the taxpayer shows “good faith” or “reasonable efforts to comply”?**

Country	Yes	No	Not Applicable	Additional Notes
Austria		<input checked="" type="checkbox"/>		In the case of additional tax payment resulting from a tax audit, special interest has to be paid. Interest is applicable from October following the year the tax liability relates to and can be applied for a maximum term of 48 months. The interest rate amounts to 2% above the base interest rate. Beside these general penalties, the lack of documentation reverses the burden of proof to the taxpayer.
Belgium		<input checked="" type="checkbox"/>		No transfer pricing specific penalties exist in Belgium. General principles apply, so acting in “good faith”, may impact level of penalties applied.
Croatia		<input checked="" type="checkbox"/>		
Czech Republic			<input checked="" type="checkbox"/>	
France	<input checked="" type="checkbox"/>			
Germany	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	It is up to the tax authorities to decide on this case by case.
Ireland			<input checked="" type="checkbox"/>	Transfer Pricing legislation does not contain specific penalty provisions. The existing penalty regime under Irish domestic tax law applies.
Italy			<input checked="" type="checkbox"/>	
Latvia		<input checked="" type="checkbox"/>		No transfer pricing specific penalties exist. General principles apply.
Luxembourg			<input checked="" type="checkbox"/>	
Malta			<input checked="" type="checkbox"/>	
Netherlands	<input checked="" type="checkbox"/>			
Poland				
Portugal				
Romania		<input checked="" type="checkbox"/>		There are no rules in this respect.
Slovakia		<input checked="" type="checkbox"/>		
Slovenia	<input checked="" type="checkbox"/>			This only applies to the penalty and not to the additionally assessed tax.
Spain		<input checked="" type="checkbox"/>		The fulfilment of the documentation suggests that a penalty will not be applied.
Switzerland			<input checked="" type="checkbox"/>	
UK	<input checked="" type="checkbox"/>			
<b>Total</b>	<b>5</b>	<b>7</b>	<b>6</b>	<b>18</b>
<b>Total (%)</b>	<b>28%</b>	<b>39%</b>	<b>33%</b>	<b>100%</b>



## ATTACHMENTS

**ANNEX 1**

Brussels, 07.11.2005  
COM(2005) 543 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

**on the work of the EU Joint Transfer Pricing Forum on transfer pricing documentation for associated enterprises in the EU**

Proposal for a

**CODE OF CONDUCT**

**on transfer pricing documentation for associated enterprises in the EU**

(presented by the Commission)

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**COMMUNICATION FROM THE COMMISSION  
TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

**on the work of the EU Joint Transfer Pricing Forum on transfer pricing documentation for associated enterprises in the EU**

## **1. INTRODUCTION**

1. The aim of this communication is to report on the work done by the EU Joint Transfer Pricing Forum (JTPF) from January 2004 to May 2005 on transfer pricing documentation for associated enterprises in the EU and to present the conclusions which the Commission draws from this work.

## **2. BACKGROUND**

2. To follow up its study on "Company Taxation in the Internal Market"<sup>1</sup>, in its 2001 communication "Towards an internal market without obstacles - A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities"<sup>2</sup> the Commission proposed the establishment of an "EU Joint Transfer Pricing Forum". On 11 March 2002 the Council adopted conclusions welcoming this move.

The Forum was formally established by the Commission in June 2002 and consists of one expert from the tax administrations of each Member State plus 10 experts from business. Representatives from applicant countries and the OECD Secretariat attend as observers. The summary records of the proceedings of the JTPF are available on the Commission's website<sup>3</sup>.

3. As also reflected in the Council conclusions, the JTPF should work on the basis of consensus and should produce pragmatic, non-legislative solutions within the framework of the OECD Transfer Pricing Guidelines to the practical problems posed by transfer pricing practices in the EU.

4. The JTPF met for the first time in October 2002 and established a two-year work programme.

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<sup>1</sup> "Company Taxation in the Internal Market", Commission staff working paper, SEC(2001) 1681, 23.10.2001.

<sup>2</sup> Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: "Towards an internal market without obstacles - A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities" COM(2001) 582 final, 23.10.2001.

<sup>3</sup> [http://europa.eu.int/comm/taxation\\_customs/taxation/company\\_tax/transfer\\_pricing/index\\_en.htm](http://europa.eu.int/comm/taxation_customs/taxation/company_tax/transfer_pricing/index_en.htm).

5. The main achievements of the JTPF in its first term of activity were its conclusions and recommendations on issues related to the Arbitration Convention (Convention 90/436/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises) and on certain related issues concerning mutual agreement procedures under double tax treaties between Member States.

6. The JTPF's conclusions and recommendations were taken as the basis for a Commission communication<sup>4</sup> on the activities of the JTPF from October 2002 to December 2003, including a proposal for a Code of Conduct for the effective implementation of the Arbitration Convention and certain related issues of the mutual agreement procedure under double tax treaties between Member States, which was published on 23 April 2004. The proposed Code of Conduct was adopted by the Council on 7 December 2004.

7. Considering the constructive results and the important outstanding issues remaining on the JTPF's work programme, in December 2004 the Commission extended the JTPF's mandate for another two years (from January 2005 to December 2006).

### **3. ACTIVITIES OF THE EU JOINT TRANSFER PRICING FORUM FROM JANUARY 2004 TO MAY 2005**

8. A report on the activities of the JTPF, adopted by consensus in May 2005 and covering the work on transfer pricing documentation requirements is included in a Staff Working Document<sup>5</sup>. The activity report summarises the deliberations of the JTPF. It concludes that standardized and partially centralized transfer pricing documentation for associated enterprises in the EU could benefit the development of the single market.

9. Examination of transfer pricing documentation for associated enterprises in the EU was the main activity of the JTPF from January 2004 to May 2005. It has been noticed that documentation requirements in the EU have increased and there are significant differences in documentation requirements between Member States.

10. The existence of different sets of documentation requirements in the internal market places a burden on a company in one Member State that wants to set up and/or conduct business with an affiliated company in another Member State. The preparation of separate and unique documentation packages in different Member States is uneconomic. Small and medium-sized enterprises especially can be affected by these problems.

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<sup>4</sup> COM(2004) 297 final, 23.4.2004: "Communication on the work of the EU JTPF from October 2002 to December 2003 and on a proposal for a Code of Conduct for the effective implementation of the Arbitration Convention (90/436/EEC of 23 July 1990)."

<sup>5</sup> SEC(2005) Report on transfer pricing documentation prepared by the EU Joint Transfer Pricing Forum.

11. In order to remedy this situation, the Forum identified different approaches to documentation requirements and, in the light of their pros and cons, in particular in terms of legal certainty and flexibility, decided to pursue the concept of standardized “EU Transfer Pricing Documentation” (EU TPD). The main features of the EU TPD are standardization of the documentation requirements necessary for a tax administration as a risk assessment tool and to obtain sufficient information for the assessment of a group's transfer prices; the possibility of centralization of the core part of the documentation (the “masterfile”) at group level; and the availability to all EU Member States concerned of common standardized transfer pricing information relevant for all EU affiliates of a multinational enterprise.

12. The Forum further discussed the use of database searches for comparables, the issue of risk assessment and proposals for more general recommendations related to the timing and preparation of documentation, aggregation of transactions, simplification of documentation requirements for SMEs, language requirements, documentation-related penalties, the application of documentation rules to permanent establishments and the effect of the re-entry into force of the Arbitration Convention on 1 November 2004.

### **3.1. Use of database searches for comparables**

13. To support the arm's length nature of intra-group transactions, both the taxpayer and the tax administration have various possibilities for obtaining evidence. These range from the preferred source of information readily available within the company or group (internal comparables) to external comparables that can be obtained from a variety of sources, including searches of databases when the latter satisfy the comparability requirements and the rules on the aggregation of transactions. The Forum agreed that tax administrations should evaluate domestic or non-domestic comparables with respect to the specific facts and circumstances of the case. For example, comparables found in pan-European databases should not be rejected automatically. The use of non-domestic comparables by itself should not subject the taxpayer to penalties for non-compliance.

### **3.2. Risk assessment**

14. Globalization complicates taxation issues and the ability of tax administrations to track down trade and income flows. By increasing significantly the amount and type of income earned abroad, globalization also reduces the ability of tax administrations to verify the accuracy of taxpayers' transfer pricing. In the light of limited resources available, tax administrations need to maximize administrative efficiency. Enterprises, on the other hand, are confronted with varying and often extensive documentation requirements and are also more and more exposed to penalties for non-compliance with such documentation requirements or the arm's length principle.

The Forum therefore briefly discussed the issue of risk assessment in the context of documentation requirements from the point of view of both the tax administration and business and identified specific and common objectives.



15. For tax administrations, risk assessment is regarded as the most important case selection tool and as a tool for specific inquiries and tax audits. For business on the other hand risk assessment may help taxpayers to concentrate pro-actively on “risk” transactions which may require more detailed explanations and documentation and can also help to improve the transfer pricing system applied.

16. The common objective of risk management is to enable a business or a tax administration to establish what amount of effort and cost is appropriate in establishing, in particular circumstances, what the “arm’s length” result of a transaction between associated enterprises should be and how evidence should be kept to demonstrate that result. In other words, risk assessment enables both tax administrations and business to allocate and use their scarce resources as efficiently and effectively as possible.

17. The Forum concluded that the more common understanding there was between businesses and tax administrations about the basis of risk assessment, the greater would be the benefits for all concerned. It considered that an agreed procedure for reviewing tax risks with a company would be particularly helpful in questions concerning transfer pricing.

18. The Forum examined the risk assessment process, reviewed risk indicators and ratios and considered the scope for an EU-wide risk assessment procedure and the possible merits of a standardized risk assessment form. However, it was not possible to complete the work on risk assessment because, due to time constraints, the Forum decided to pursue the more important work on transfer pricing documentation for associated enterprises in the EU.

### **3.3. The EU transfer pricing documentation: description of the approach**

19. A common EU-wide approach on documentation requirements was considered beneficial both for taxpayers, in terms of reducing compliance costs and exposure to documentation-related penalties, and for tax administrations due to enhanced transparency and consistency. The Forum therefore examined the potential and merits of several possible common approaches to documentation requirements, i.e. “best practice”, “standardized documentation” and “centralized (integrated global) documentation”. The JTPF discussed this issue in the light of the experience of the Pacific Association of Tax Administrators (PATA) and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, aiming at maintaining a balance between the tax administrations’ right to obtain from a taxpayer the information necessary to assess whether the taxpayer's transfer pricing is at arm’s length and the compliance cost for the taxpayer.

20. In the light of the pros and cons of the standardized and the centralized approaches, the JTPF developed a new approach called “EU Transfer Pricing Documentation” (EU TPD) which combines aspects of the standardized approach and of the centralized (integrated global) documentation approach. It consists

of two main parts: one set of documentation containing common standardized information relevant for all EU group members (the “masterfile”) and several sets of standardized documentation each containing country-specific information (“country-specific documentation”). The EU TPD approach means, therefore, that a multinational group of companies has a standardized and consistent set of documentation (the “masterfile” supplemented by “country-specific documentation”) at company level.

21. The “masterfile” should follow the economic reality of the enterprise and provide a “blueprint” of the company and its transfer pricing system that would be relevant for all EU Member States concerned. Together, the “masterfile” and the “country specific documentation” constitute the documentation file for the relevant EU Member State.

22. The EU TPD should cover all group entities resident in the EU including controlled transactions between enterprises outside the EU and group entities resident in the EU. The EU TPD would serve both as a basic set of information for the assessment of a multinational enterprise (MNE) group’s transfer prices and as a risk assessment tool for taxpayers to identify transactions that may require more detailed explanations and documentation and for tax administrations for case selection purposes and as a starting point for examination of the company’s transfer pricing. The EU TPD would have the potential to improve the quality of the documentation and enhance taxpayers’ compliance with transfer pricing documentation requirements in EU Member States. It would thus reduce the risk of double taxation and exposure to documentation-related penalties. For tax administrations, the main advantage of the EU TPD approach is that all tax administrations involved would have access to the same common documentation and information in the masterfile element.

24. The EU TPD leaves some flexibility to taxpayers and to tax administrations as use of the EU TPD is optional for taxpayers while Member States may decide not to require transfer pricing documentation at all or to have transfer pricing documentation rules which require less information and documents than the EU TPD.

25. MNEs opting for the EU TPD should generally apply this approach collectively to all associated enterprises to which transfer pricing rules apply. However, some MNE groups have a decentralized organisational, legal or operational structure, or consist of several large divisions with completely different product lines and transfer pricing policies. In other cases the divisions of a MNE group have no inter-company transactions. Also, implementing a MNE’s EU TPD in the group or in a recently acquired company may take some time. In all those cases, one single masterfile covering all EU group members might be inappropriate. In well justified cases, a MNE group should, therefore, be allowed to produce more than one masterfile or to exempt specific group members from the EU TPD.

26. A MNE group should not arbitrarily opt in and out of the EU TPD approach for its documentation purposes but should retain consistency and continuity in its documentation policy. Therefore, a MNE group that adopts the EU TPD should do so in a way that is consistent throughout the EU and from year to year.

27. Member States have to decide how to implement the EU TPD at national level, e.g. through domestic legislation, guidance, administrative practices, etc. so as to allow acceptance of the EU TPD at national level. The EU TPD should be implemented flexibly and should recognise the particular circumstances of the business concerned. In particular, smaller and less complex businesses (including SMEs) should not be expected to produce the amount or complexity of documentation that might be expected from larger and more complex businesses.

28. The masterfile should be provided and accepted in a commonly understood language for the Member States concerned. Translations of the masterfile should be made available only upon request. The country-specific documentation should be prepared in a language prescribed by the specific Member State concerned, even if the taxpayer has opted to keep the country-specific documentation in the masterfile.

29. The taxpayer should have to submit its EU TPD to the tax administration only at the beginning of a tax audit or upon specific request. However, each Member State retains the right to require, in its domestic law, a taxpayer to provide, upon specific request or during a tax audit, more information and documents than would be contained in the EU TPD.

30. Member States should not impose a documentation-related penalty where taxpayers comply in good faith, in a reasonable manner and within a reasonable time with the EU TPD or with a Member State's domestic documentation requirements and apply their documentation properly to determine their arm's length transfer prices.

31. Taxpayers avoid cooperation-related penalties where they have agreed to adopt the EU TPD approach and provide, upon specific request or during a tax audit, in a reasonable manner and within reasonable time additional information and documents going beyond the EU TPD.

### **3.4. Re-entry into force of the Arbitration Convention**

32. After ratification by all Member States, the Protocol to the Arbitration Convention, re-entered into force on 1 November 2004 (with retroactive effect from 1 January 2000) inter alia extending its validity by periods of five years.

33. Considering the diverging positions taken by Member States during the interim period when not all Member States had ratified the Protocol (see Annex 1 to the first report<sup>6</sup> of the JTPF) the Forum was of the opinion that discussing the different problems related to the re-entry into force of this instrument, in particular with regard to the tax treatment of pending cases, could be useful for finding common solutions and ensuring taxpayers' legal certainty.

34. The replies to a questionnaire on pending mutual agreement procedures (MAPs) under the EU Arbitration Convention that was sent to Member States' tax administrations revealed that a total of 109 cases were pending on 31 December 2004. In 64 of these cases the time already spent on the mutual agreement procedures exceeded two years and in 24 cases the taxpayer had made the request prior to 1 January 2000, which means that these cases had been pending for more than five years (unless the two-year time limit has been extended in accordance with Article 7(4) of the Arbitration Convention).

35. The results of the questionnaire clearly show the importance of the JTPF's work on the Code of Conduct for the effective implementation of the Arbitration Convention<sup>7</sup>. Member States are, therefore, urged to expedite reaching mutual agreements on their pending MAPs under the Arbitration Convention, especially as regards those cases on which more than two years have already been spent. Those Member States concerned with the 24 cases where the taxpayer made the request prior to 1 January 2000 are urged to set up advisory commissions, without further delay, and to submit the cases for arbitration, in order urgently to eliminate the double taxation.

In the case of requests made by taxpayers before 1 November 2004, in line with the provisions of the Prolongation Protocol, the arbitration procedure (the second phase of the Convention) should be initiated as follows (unless the two-year time limit has been extended in accordance with Article 7(4) of the Convention):

- for cases where the mutual agreement procedure was initiated more than two years before 1 November 2004: as soon as possible after the Protocol entered into force, i.e. soon after 1 November 2004; and
- for cases where the mutual agreement procedure was initiated less than two years before 1 November 2004: two years after the commencement of the mutual agreement procedure.

### **3.5. Future work programme of the JTPF**

36. At its meeting on 14 December 2004 the Forum agreed to discuss the following issues in 2005 and 2006:

- Alternative dispute avoidance and resolution procedures (including APAs and prior consultation);

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<sup>6</sup> Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the work of the EU Joint Transfer Pricing Forum in the field of business taxation from October 2002 to December 2003 and on a proposal for a Code of Conduct for the effective implementation of the Arbitration Convention (90/436/EEC of 23 July 1990) (COM(2004) 297 final of 23 April 2004).

<sup>7</sup> Convention 90/436/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises OJ L 255, 20.8.1990, p. 10-24.

- Interest and penalties relating to transfer pricing adjustments;
- Certain aspects of the interaction of the mutual agreement and arbitration procedure with administrative and judicial appeals; and
- The influence of accounting systems on transfer pricing (consequences and possibilities of more harmonized and integrated accounting systems on transfer pricing).

### **3.6. Monitoring**

37. The Forum also agreed to assist the Commission in monitoring the implementation by Member States of the Code of Conduct on the effective implementation of the Arbitration Convention and the ratification process regarding the Convention on the accession of the ten new Member States to the Arbitration Convention<sup>8</sup>. This will allow the effectiveness of these instruments in the elimination of double taxation in connection with the adjustment of profits of associated enterprises to be assessed.

## **4. COMMISSION CONCLUSIONS**

38. Considering the aforementioned report on the activities of the JTPF, once again the Commission can only express its satisfaction with the work done by the JTPF. The experts from the Member States and from business have examined the different issues in an open and constructive manner that has led to pragmatic proposals and recommendations for solutions.

The Commission believes that the work achieved by the JTPF on transfer pricing documentation is a pragmatic solution to the problems posed by the significant differences in documentation requirements between Member States as indicated in the Commission study on “Company Taxation in the Internal Market”

A common approach on transfer pricing documentation should lead to a reduction of compliance costs and provide more consistency in transfer pricing documentation requirements in the EU.

40. The Commission considers the EU TPD to be the most appropriate and efficient approach to transfer pricing documentation on the growing intra-group cross-border trade transactions in the EU. This new approach will reduce tax obstacles to crossborder economic activities on the internal market.

41. The Commission fully supports the conclusions and suggestions contained in the JTPF’s second report. On the basis of this work, the Commission has drawn up a proposal for a Code of Conduct on transfer pricing documentation for associated enterprises in the EU.

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<sup>8</sup> Not yet published in the OJ.

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42. The Commission invites the Council to adopt the proposed Code of Conduct on transfer pricing documentation for associated enterprises in the EU and invites Member States to implement quickly the recommendations included in the Code of Conduct in their national legislation or administrative rules.
43. The Commission also fully supports the new work programme agreed by the JTPF at its meeting in December 2004 and expects substantive progress in the field of avoidance and resolution of tax disputes. The Commission will report on this issue as soon as the JTPF completes its work.
44. Member States are invited to report annually to the Commission on any measures they have taken further to this Code of Conduct and its practical functioning. On the basis of these reports, the Commission will periodically review this Code of Conduct.

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### **EXPLANATORY MEMORANDUM**

Taking into consideration the European Commission's Study "Company Taxation in the Internal Market"<sup>9</sup>, the Commission proposed in its 2001 Communication "Towards an Internal Market without obstacles - a strategy for providing companies with a consolidated corporate tax base for their EU-wide activities"<sup>10</sup> the establishment of a "EU Joint Transfer Pricing Forum" (hereafter: JTPF). On 11 March 2002, the Council adopted conclusions welcoming this initiative. The Commission formally established the JTPF in June 2002.

A first Commission Communication<sup>11</sup> was issued in April 2004 and adopted by the Council in December 2004 on the activities of the JTPF from October 2002 to December 2003. This included a proposal for a Code of Conduct for the effective implementation of the Arbitration Convention<sup>12</sup> and certain related issues of the mutual agreement procedure under double tax treaties between Member States.

Considering the constructive results and the remaining important issues of the JTPF's work programme, the Commission decided in 2004 to extend until the end of 2006 the initial period of two years foreseen for the activities of the JTPF.

Transfer pricing documentation for associated enterprises in the EU was the second issue of the work programme discussed by the JTPF. An EU-wide common approach on documentation requirements was considered beneficial both for taxpayers, in particular in terms of reducing compliance costs and the exposure to documentation related penalties and for tax administrations due to enhanced transparency and consistency.

The JTPF discussed the purpose and content of good and effective documentation including the benefit of risk assessment and the issue of burden of proof, preparation, submission and storage of documentation, the question in which language transfer pricing documentation should be presented, the use of database searches for comparables and the application of transfer pricing documentation to permanent establishments.

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<sup>9</sup> "Company Taxation in the Internal Market" Commission staff working paper, SEC(2001) 1681 23.10.2001.

<sup>10</sup> Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: "Towards an Internal Market without obstacles - a strategy for providing companies with a consolidated corporate tax base for their EU-wide activities" COM(2001) 582 final, 23.10.2001.

<sup>11</sup> "Communication on the work of the EU JTPF from October 2002 to December 2003 and on a proposal for a Code of Conduct for the effective implementation of the Arbitration Convention (90/436/EEC 23 July 1990)" Com(2004) 297 final, 23.04.2004.

<sup>12</sup> Convention 90/436/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, OJ L 255, 20.8.1990, p. 10-24.

In light of the pros and cons of the traditional approaches (a code of best practice, EU-wide standardized documentation rules and centralized (integrated global) documentation in particular in terms of legal certainty and flexibility, the JTPF eventually considered a new approach, the most appropriate, i.e. a standardized “EU Transfer Pricing Documentation” (EU TPD). The EU TPD consists of two main parts: (i) one set of standardized and consistent documentation relevant for all EU group members of a multinational enterprise (“MNE”) group (the “masterfile”), and (ii) several sets of standardized documentation containing country specific information that fit together with the “masterfile”.

The main features of the EU TPD are: (i) standardisation of the documentation requirements necessary for a tax administration as a risk assessment tool and to obtain sufficient information for the assessment of the MNE group's transfer prices, (ii) the possibility for centralisation of the core part of the documentation (the “masterfile”) at group level, and (iii) the availability to all EU Member States concerned of common standardised transfer pricing information relevant for all EU affiliates of a multinational enterprise.

The JTPF adopted its report and conclusions by consensus in May 2005. The work on transfer pricing documentation achieved by the JTPF is reported in a Commission Staff Working Document<sup>13</sup>.

The deliberations of the Forum and its report on documentation have clearly highlighted the need to provide all parties (Member States and the business community) with an instrument providing some recommendations in the field of transfer pricing related documentation.

The Commission supports the conclusions and the recommendations contained in the second report of the JTPF. Indeed, the new EU TPD approach reduces compliance costs and provides more simplicity, consistency and transparency in the area of transfer pricing.

Since the objective of the proposed action, namely setting up of a standardized and partially centralized (integrated global) documentation as regards transfer pricing for associated enterprises in the EU, should respect the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty establishing the European Community and should remain optional for companies, a Commission proposal for a Code of Conduct to be adopted by the Council is considered the most appropriate legal tool.

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<sup>13</sup> SEC(2005) Report on transfer pricing documentation prepared by the EU Joint Transfer Pricing Forum.



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Proposal for a

**CODE OF CONDUCT**

**on transfer pricing documentation for associated enterprises in the EU**

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE  
GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

HAVING REGARD TO the European Commission's study on "Company Taxation in the Internal Market"<sup>14</sup>, the proposal made by the Commission, in its 2001 communication "Towards an internal market without obstacles - A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities"<sup>15</sup>, for the establishment of a "EU Joint Transfer Pricing Forum" (hereinafter referred to as "JTPF"), the Council conclusions of 11 March 2002 welcoming this move and the establishment of the JTPF in June 2002,

**WHEREAS:**

1. The internal market comprises an area without frontiers in which the free movement of goods, persons, services and capital is guaranteed.
2. In an internal market having the characteristics of a domestic market, transactions between associated enterprises from different Member States should not be subject to less favourable conditions than those applicable to the same transactions carried out between associated enterprises from the same Member State.
3. In the interest of the proper functioning of the internal market, it is of major importance to reduce the compliance costs as regards transfer pricing documentation for associated enterprises.

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<sup>14</sup> "Company Taxation in the Internal Market" Commission staff working paper, SEC(2001) 1681, 23.10.2001.

<sup>15</sup> Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: "Towards an internal market without obstacles - A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities" COM(2001) 582 final, 23.10.2001.

4. This Code of Conduct provides Member States and taxpayers with a valuable instrument for the implementation of standardized and partially centralized transfer pricing documentation in the EU, with the aim of simplifying transfer pricing requirements for cross-border activities.
5. Standardized and partially centralized transfer pricing documentation required in Member States to support transfer pricing on an arm's length basis could help businesses to benefit more from the internal market.
6. Transfer pricing documentation in the EU must be viewed in the framework of the OECD Transfer Pricing Guidelines.
7. Standardized and partially centralized documentation should be implemented flexibly and should recognize the particular circumstances of the business concerned.
8. A Member State may decide not to have transfer pricing documentation rules at all or to require less transfer pricing documentation than that referred to in this Code of Conduct,

ACKNOWLEDGING that a common EU-wide approach on documentation requirements is beneficial both for taxpayers, in particular in terms of reducing compliance costs and exposure to documentation-related penalties, and for tax administrations due to enhanced transparency and consistency,

WELCOMING the 2005 Commission communication on the work of the EU Joint Transfer Pricing Forum in the field of business taxation and on a proposal for a Code of Conduct on transfer pricing documentation for associated enterprises in the EU,

EMPHASISING that the Code of Conduct is a political commitment and does not affect the Member States' rights and obligations or the respective spheres of competence of the Member States and the Community resulting from the Treaty,

ACKNOWLEDGING that the implementation of this Code of Conduct should not hamper solutions at a more global level,

HEREBY ADOPT THE FOLLOWING CODE OF CONDUCT:

**Without prejudice to the respective spheres of competence of the Member States and the Community, this Code of Conduct concerns the implementation of standardized and partially centralized transfer pricing documentation for associated enterprises in the EU.**

1. Member States will accept standardized and partially centralized transfer pricing documentation for associated enterprises in the EU, i.e. the “EU TPD” referred to in the Annex, and consider it as a basic set of information for the assessment of a multinational enterprise (MNE) group's transfer prices.
2. The use of the EU TPD will be optional for a MNE group.
3. Member States will apply similar considerations to documentation requirements for the attribution of profits to a permanent establishment as apply to transfer pricing documentation.
4. Member States will, wherever necessary, take duly into account and be guided by the general principles and requirements referred to in the annex.
5. Member States undertake not to require smaller and less complex enterprises (including SMEs) to produce the amount or complexity of documentation that might be expected from larger and more complex enterprises.
6. Member States should:
  - a) not impose unreasonable compliance costs or administrative burden on enterprises in requesting documentation to be created or obtained;
  - b) not request documentation that has no bearing on transactions under review;and
  - c) ensure that there is no public disclosure of confidential information contained in documentation.
7. Member States should not impose a documentation-related penalty where taxpayers comply in good faith, in a reasonable manner and within a reasonable time with standardized and consistent documentation as described in the Annex or with a Member State's domestic documentation requirements and apply their documentation properly to determine their arm's length transfer prices.
8. This Code of Conduct is addressed to Member States but it is also intended to encourage MNEs to apply the EU TPD approach.
9. In order to ensure the even and effective application of this Code, Member States are invited to report annually to the Commission on any measures they have taken further to this Code and its practical functioning. On the basis of these reports, the Commission intends to report to the Council and may propose a review of the provisions of this Code.

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**ANNEX TO THE CODE OF CONDUCT**

**EUROPEAN UNION TRANSFER PRICING DOCUMENTATION (EU TPD)**

**SECTION 1**

**CONTENT OF THE EU TPD**

1. A multinational enterprise (MNE) group's standardized and consistent EU TPD consists of two main parts: (i) one set of documentation containing common standardized information relevant for all EU group members (the “masterfile”); and (ii) several sets of standardized documentation each containing country-specific information (“country-specific documentation”). The EU TPD should contain enough details to allow the tax administration to make a risk assessment for case selection purposes or at the beginning of a tax audit, ask relevant and precise questions regarding the MNE’s transfer pricing and assess the transfer prices of the inter-company transactions. Subject to paragraph 31, the company would produce one single file for each Member State concerned, i.e. one common masterfile to be used in all Member States concerned and a different set of country-specific documentation for each Member State.
2. Each of the items of the EU TPD listed below should be completed, taking into account the complexity of the enterprise and the transactions. As far as possible, information should be used that is already in existence within the group (e.g. for management purposes). However, a MNE might be required to produce documentation for this purpose that otherwise would not have been in existence.
3. The EU TPD covers all group entities resident in the EU including controlled transactions between enterprises resident outside the EU and group entities resident in the EU.
4. The masterfile
  - 4.1 The “masterfile” should follow the economic reality of the business and provide a “blueprint” of the MNE group and its transfer pricing system that would be relevant and available to all EU Member States concerned.
  - 4.2 The masterfile should contain the following items:
    - a) a general description of the business and business strategy, including changes in the business strategy compared to the previous tax year;

- b) a general description of the MNE group's organisational, legal and operational structure (including an organisation chart, a list of group members and a description of the participation of the parent company in the subsidiaries);
- c) the general identification of the associated enterprises engaged in controlled transactions involving enterprises in the EU;
- d) a general description of the controlled transactions involving associated enterprises in the EU, i.e. a general description of:
  - (i) flows of transactions (tangible and intangible assets, services, financial);
  - (ii) invoice flows; and
  - (iii) amounts of transaction flows;
- e) a general description of functions performed, risks assumed and a description of changes in functions and risks compared to the previous tax year, e.g. change from a fully fledged distributor to a commissionaire;
- f) the ownership of intangibles (patents, trademarks, brand names, know-how, etc.) and royalties paid or received;
- g) the MNE group's inter-company transfer pricing policy or a description of the group's transfer pricing system that explains the arm's length nature of the company's transfer prices;
- h) a list of cost contribution agreements, APAs and rulings covering transfer pricing aspects as far as group members in the EU are affected; and
- i) an undertaking by each domestic taxpayer to provide supplementary information upon request and within a reasonable time frame in accordance with national rules.

## 5. Country-specific documentation

5.1 The content of the country-specific documentation supplements the masterfile. Together the two constitute the documentation file for the relevant EU Member State. The country-specific documentation would be available to those tax administrations with a legitimate interest in the appropriate tax treatment of the transactions covered by the documentation.

5.2 Country-specific documentation should contain, in addition to the content of the masterfile, the following items:

- a) a detailed description of the business and business strategy, including changes in the business strategy compared to the previous tax year; and
- b) information, i.e. description and explanation, on country-specific controlled transactions. including:
  - (i) flows of transactions (tangible and intangible assets, services, financial);
  - (ii) invoice flows; and
  - (iii) amounts of transaction flows;
- c) a comparability analysis, i.e.:
  - (i) characteristics of property and services;
  - (ii) functional analysis (functions performed, assets used, risks assumed);

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- (iii) contractual terms;
  - (iv) economic circumstances; and
  - (v) specific business strategies;
- d) an explanation about the selection and application of the transfer pricing method[s], i.e. why a specific transfer pricing method was selected and how it was applied;
- e) relevant information on internal and/or external comparables if available; and
- f) a description of the implementation and application of the group's intercompany transfer pricing policy.
6. A MNE should have the possibility of including items in the masterfile instead of the country-specific documentation, keeping, however, the same level of detail as in the country-specific documentation. The country-specific documentation should be prepared in a language prescribed by the specific Member State concerned, even if the MNE has opted to keep the country-specific documentation in the masterfile.
7. Any country-specific information and documents that relate to a controlled transaction involving one or more Member States must be contained either in the country-specific documentation of all the Member States concerned or in the common masterfile.
8. MNEs should be allowed to prepare the country-specific documentation in one set of documentation (containing information about all businesses in that country) or in separate files for each business or group of activities in that country.
9. The country-specific documentation should be prepared in a language prescribed by the specific Member State concerned.

## **SECTION 2**

### **GENERAL APPLICATION RULES AND REQUIREMENTS FOR MNES**

10. Use of the EU TPD is optional for MNE groups. However, a MNE group should not arbitrarily opt in and out of the EU Transfer Pricing Documentation approach for its documentation purposes but should apply the EU TPD in a way that is consistent throughout the EU and from year to year.
11. A MNE group that opts for the EU TPD should generally apply this approach collectively to all associated enterprises engaged in controlled transactions involving enterprises in the EU to which transfer pricing rules apply. Subject to paragraph 31, a MNE group opting for the EU TPD would, therefore, need to keep the documentation specified in section 1 in respect of all its enterprises in the Member State concerned, including permanent establishments.

12. Where a MNE group has opted for the EU TPD for a given fiscal year, each member of the MNE group should inform its tax administration accordingly.
13. MNEs should undertake to prepare the masterfile in time to comply with any legitimate request originating from one of the tax administrations involved.
14. The taxpayer in a given Member State should make its EU TPD available, upon request by a tax administration, within a reasonable time depending on the complexity of the transactions.
15. The taxpayer responsible for making documentation available to the tax administration is the taxpayer that would be required to make the tax return and that would be liable to a penalty if adequate documentation were not made available. This is the case even if the documentation is prepared and stored by one enterprise within a group on behalf of another. The decision of a MNE group to apply the EU TPD implies a commitment towards all associated enterprises in the EU to make the masterfile and the respective country-specific documentation available to its national tax administration.
16. Where, in its tax return, a taxpayer makes an adjustment to its accounts profit resulting from the application of the arm's length principle, documentation demonstrating how the adjustment was calculated should be available.
17. The aggregation of transactions must be applied consistently, be transparent to the tax administration and be in accordance with paragraph 1.42 of the OECD Transfer Pricing Guidelines (which allow aggregation of transactions that are so closely linked or continuous that they cannot be evaluated adequately on a separate basis). These rules should be applied in a reasonable manner, taking into account in particular the number and complexity of the transactions.

### **SECTION 3**

#### **GENERAL APPLICATION RULES AND REQUIREMENTS FOR MEMBER STATES**

18. Since the EU TPD is a basic set of information for the assessment of the MNE group's transfer prices a Member State would be entitled in its domestic law to require more and different information and documents, by specific request or during a tax audit, than would be contained in the EU TPD.
19. The period for providing additional information and documents upon specific request (cf. paragraph 18) should be determined on a case-by-case basis taking into account the amount and detail of the information and documents requested. Depending on specific local regulations, the timing should give the taxpayer a reasonable time (which can vary depending on the complexity of the transaction) to prepare the additional information.

20. Taxpayers avoid cooperation-related penalties where they have agreed to adopt the EU TPD approach and provide, upon specific request or during a tax audit, in a reasonable manner and within a reasonable time additional information and documents going beyond the EU TPD (cf. paragraph 18).

21. Taxpayers should have to submit their EU TPD, i.e. the masterfile and the country-specific documentation, to the tax administration only at the beginning of a tax audit or upon specific request.

22. Where a Member State requires a taxpayer to submit information about transfer pricing with its tax return, that information should be no more than a short questionnaire or an appropriate risk assessment form.

23. It may not always be necessary for documents to be translated into a local language. In order to minimize costs and delays caused by translation, Member States should accept documents in a foreign language as far as possible. As far as the EU Transfer Pricing Documentation is concerned, tax administrations should be prepared to accept the masterfile in a commonly understood language for the Member States concerned. Translations of the masterfile should be made available only if strictly necessary and upon specific request.

24. Member States should not oblige taxpayers to retain documentation beyond a reasonable period consistent with the requirements of the domestic laws which apply to each enterprise in the group.

25. Member States should evaluate domestic or non-domestic comparables with respect to the specific facts and circumstances of the case. For example, comparables found in pan-European databases should not be rejected automatically. The use of non-domestic comparables by itself should not subject the taxpayer to penalties for non-compliance.

## **SECTION 4**

### **GENERAL APPLICATION RULES AND REQUIREMENTS APPLICABLE TO MNES AND MEMBER STATES**

26. Where documentation produced for one period remains relevant for subsequent periods and continues to provide evidence of arm's length pricing, it may be appropriate for the documentation for subsequent periods to refer to earlier documentation rather than to repeat it.



27. Documentation does not need to replicate the documentation that might be found in negotiations between enterprises acting at arm's length (for example, in agreeing to a borrowing facility or a large contract) as long as it includes adequate information to assess whether arm's length pricing has been applied.

28. The sort of documentation that needs to be produced by an enterprise that is a subsidiary enterprise in a group may be different from that needed to be produced by a parent company, i.e. a subsidiary company would not need to produce information about all of the cross-border relationships and transactions between associated enterprises within the MNE group but only about relationships and transactions relevant to the subsidiary in question.

29. It should be irrelevant for tax administrations where a taxpayer prepares and stores its documentation as long as the documentation is sufficient and made available in a timely manner to the tax administrations involved upon request. Taxpayers should, therefore, be free to keep their documentation, including their EU TPD, either in a centralized or in a decentralized manner.

30. The way that documentation is stored - whether on paper, in electronic form or in any other system - should be at the discretion of the taxpayer, provided that it can be made available to the tax administration in a reasonable way.

31. In well justified cases, e.g. where a MNE group has a decentralized organisational, legal or operational structure or consists of several large divisions with completely different product lines and transfer pricing policies or no inter-company transactions, and in the case of a recently acquired enterprise, a MNE group should be allowed to produce more than one masterfile or to exempt specific group members from the EU TPD.

## SECTION 5

### GLOSSARY

#### MULTINATIONAL ENTERPRISE (MNE) AND MNE GROUP

According to the OECD Transfer Pricing Guidelines:

- A MNE is a company that is part of a MNE group.
- A MNE group is a group of associated companies with business establishments in two or more countries.

#### STANDARDIZED DOCUMENTATION

A uniform, EU-wide set of rules for documentation requirements according to which all enterprises in Member States prepare separate and unique documentation packages. This more prescriptive approach aims at arriving at a decentralised but standardized set of documentation, i.e. each entity in a multinational group prepares its own documentation, but according to the same rules.

#### CENTRALIZED (INTEGRATED GLOBAL) DOCUMENTATION

A single documentation package (core documentation) on a global or regional basis that is prepared by the parent company or headquarters of a group of companies in a EU-wide standardized and consistent form. This documentation package can serve as the basis for preparing local country documentation from both local and central sources.

#### EU TRANSFER PRICING DOCUMENTATION (EU TPD)

The EU Transfer Pricing Documentation (EU TPD) approach combines aspects of the standardized and of the centralized (integrated global) documentation approach. A multinational group would prepare one set of standardized and consistent transfer pricing documentation that would consist of two main parts: (i) one uniform set of documentation containing common standardized information relevant for all EU group members (the “masterfile”) and (ii) several sets of standardized documentation each containing country-specific information (“country-specific documentation”). The documentation set for a given country would consist of the common masterfile supplemented by the standardized country-specific documentation for that country.

#### DOCUMENTATION-RELATED PENALTY

An administrative (or civil) penalty imposed for failure to comply with the EU TPD or the domestic documentation requirements of a Member State (depending on which requirements the MNE has chosen to comply with) at the time the EU TPD or the domestic documentation required by a Member State was due to be submitted to the tax administration.

#### COOPERATION-RELATED PENALTY

An administrative (or civil) penalty imposed for failure to comply in a timely manner with a specific request of a tax administration to submit additional information or documents going beyond the EU TPD or the domestic documentation requirements of a Member State (depending on which requirements the MNE has chosen to comply with).

#### ADJUSTMENT-RELATED PENALTY

A penalty imposed for failure to comply with the arm's length principle usually levied in the form of a surcharge at a fixed amount or a certain percentage of the transfer pricing adjustment or the tax understatement.

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## ANNEX 2

IP/06/850

Brussels, 27 June 2006

### **Company taxation: The European Commission welcomes the adoption by the Council of a Code of Conduct on transfer pricing documentation**

*The Code of Conduct will standardise the documentation that companies must provide to tax authorities on their pricing of cross-border intra-group transactions ("transfer pricing" documentation). It will reduce significantly the tax complications that companies face when trading with associated enterprises in other Member States and, at the same time, facilitate the work of tax administrations by increased transparency regarding the group's transfer prices. It should also reduce the risk for businesses of double taxation and exposure to documentation related penalties. The Code is a political commitment but will not affect the Member States' rights and obligations or the respective spheres of competence of the Member States and the European Union. Member States have now to implement the Code as soon as possible in their legislation or administrative practices.*

"I am very pleased that Member States have adopted this Code of Conduct that will ensure greater certainty and reduced compliance costs and risks of documentation-related penalties for multinationals" said Taxation Commissioner Lázló Kovács. "I now urge Member States to implement the Code as soon as possible in their national legislation or administrative practices".

### ANNEX 3

IP/05/1403

Brussels, 10 November 2005

#### Company taxation: Commission adopts Code of Conduct concerning transfer pricing

***The European Commission has adopted a proposal for a Code of Conduct that would standardise the documentation that multinationals must provide to tax authorities on their pricing of cross-border intra-group transactions ("transfer pricing" documentation). The proposal, that has been developed on the basis of work in the EU Joint Transfer Pricing Forum (see IP/02/1105), would reduce significantly the tax complications that companies face when trading with associated enterprises in other Member States. Companies frequently complain at present about the onerous and divergent documentation obligations with which they have to comply in such cases in the different Member States involved. The Code would be a political commitment and would not affect the Member States' rights and obligations or the respective spheres of competence of the Member States and the Community.***

"This Code will ensure greater certainty and reduced compliance costs and risks of documentation-related penalties for multinationals" said European Taxation and Customs Commissioner László Kovács. "The EU Joint Transfer Pricing Forum is once again helping to remove cross-border tax problems and contributing to a competitive internal market."

The Commission proposal is for a Code of Conduct for new standardised and partially centralised "EU Transfer Pricing Documentation".

The documentation that multinational enterprises would have to file with tax administrations in order to report on their pricing for cross-border intra-group activities would consist of two main parts:

One set of documentation (the "masterfile") should provide a "blue print" of the company and its transfer pricing system that would be relevant and available to all EU Member States concerned. It would provide information such as a general description of the business and business strategy, of the transactions involving associated enterprises in the EU and of the enterprise's transfer pricing policy.

Second, a set of standardised documentation (“country-specific documentation” for each of the specific Member States concerned with the intra-group transactions. This documentation would include information such as amounts of transaction flows within that country, contractual terms and the particular transfer pricing methods used and would only be available to the relevant Member State.

The EU Transfer Pricing Documentation should improve both the quality of the information provided by businesses and taxpayers' compliance with transfer pricing documentation requirements in EU Member States. It should thus reduce the risk for businesses of double taxation and exposure to documentation related penalties. At the same time it should lead to increased transparency regarding the group's transfer prices and thus facilitate the work of tax administrations.

The EU TPD would be optional for businesses. It would cover all group entities resident in the EU, including transactions between group entities resident in the EU and associated enterprises outside the EU.

The Code of Conduct is presented in the context of a Commission Communication on the work achieved by the EU Joint Transfer Pricing Forum in the field of business taxation from January 2004 to May 2005.

Member States are already operating another Code of Conduct that was developed in the Forum (see IP/04/1447). That first Code of Conduct ensures a more effective and uniform application by EU Member States of the 1990 Arbitration Convention (90/436/EEC) that is designed to deal with the double taxation that can arise in transfer pricing cases.

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#### ANNEX 4

**Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 27 June 2006 on a code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD)**

(2006/C 176/01)

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

Having regard to the Commission's study entitled "Company Taxation in the Internal Market"<sup>1</sup>,

Having regard to the proposal made by the Commission, in its Communication of 23 October 2001 entitled 'Towards an internal market without obstacles — A strategy for providing companies with a consolidated corporate tax base for their EUwide activities'<sup>2</sup>, for the establishment of an EU Joint Transfer Pricing Forum,

Having regard to the Council conclusions of 11 March 2002 welcoming this move and the establishment of the Joint Transfer Pricing Forum in June 2002,

Considering that the internal market comprises an area without frontiers in which the free movement of goods, persons, services and capital is guaranteed,

Considering that in an internal market having the characteristics of a domestic market, transactions between associated enterprises from different Member States should not be subject to conditions less favourable than those applicable to the same transactions carried out between associated enterprises from the same Member State,

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<sup>1</sup> SEC(2001) 1681, 23.10.2001.

<sup>2</sup> COM(2001) 582 final, 23.10.2001.

Considering that in the interest of the proper functioning of the internal market, it is of major importance to reduce the compliance costs as regards transfer pricing documentation for associated enterprises,

Considering that the Code of Conduct contained in this Resolution provides Member States and taxpayers with a valuable instrument for the implementation of standardised and partially centralised transfer pricing documentation in the European Union, with the aim of simplifying transfer pricing requirements for cross-border activities,

Considering that acceptance by Member States of standardised and partially centralised transfer pricing documentation to support transfer pricing on an arm's length basis could help businesses to benefit more from the internal market,

Considering that transfer pricing documentation in the European Union needs to be viewed in the framework of the OECD Transfer Pricing Guidelines,

Considering that standardised and partially centralised documentation should be implemented flexibly and should recognise the particular circumstances of the business concerned,

Considering that a Member State may decide not to have transfer pricing documentation rules at all or to require less transfer pricing documentation than that referred to in the Code of Conduct contained in this Resolution,

Acknowledging that a common approach in the European Union with respect to documentation requirements is beneficial both for taxpayers, in particular in terms of reducing compliance costs and exposure to documentation-related penalties, and for tax administrations owing to enhanced transparency and consistency,

Welcoming the Commission Communication of 7 November 2005<sup>3</sup> on the work of the EU Joint Transfer Pricing Forum in the field of business taxation and on a Code of Conduct on transfer pricing documentation for associated enterprises in the European Union,

Emphasising that the Code of Conduct is a political commitment and does not affect the Member States' rights and obligations or the respective spheres of competence of the Member States and the Community resulting from the Treaty establishing the European Community,

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<sup>3</sup> COM(2005) 543 final, 7.11.2005.

Acknowledging that the implementation of the Code of Conduct contained in this Resolution should not hamper solutions at a more global level,

HEREBY AGREE TO THE FOLLOWING CODE OF CONDUCT:

**Code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD)**

Without prejudice to the respective spheres of competence of the Member States and the Community, this Code of Conduct concerns the implementation of standardised and partially centralised transfer pricing documentation for associated enterprises in the European Union. It is addressed to Member States but is also intended to encourage multinational enterprises to apply the EU TPD approach.

1. Member States will accept standardised and partially centralised transfer pricing documentation for associated enterprises in the European Union (EU TPD), as set out in the Annex, and consider it as a basic set of information for the assessment of a multinational enterprise group's transfer prices.
2. The use of the EU TPD will be optional for a multinational enterprise group.
3. Member States will apply similar considerations to documentation requirements for the attribution of profits to a permanent establishment as apply to transfer pricing documentation.
4. Member States will, wherever necessary, take duly into account and be guided by the general principles and requirements referred to in the Annex.
5. Member States undertake not to require smaller and less complex enterprises (including small and medium-sized enterprises) to produce the amount or complexity of documentation that might be expected from larger and more complex enterprises.
6. Member States should:
  - (a) not impose unreasonable compliance costs or administrative burden on enterprises in requesting documentation to be created or obtained;
  - (b) not request documentation that has no bearing on transactions under review;
  - (c) ensure that there is no public disclosure of confidential information contained in documentation.
7. Member States should not impose a documentation-related penalty where taxpayers comply in good faith, in a reasonable manner and within a reasonable time with standardised and consistent documentation as described in the Annex or with a Member State's domestic documentation requirements, and apply their documentation properly to determine their arm's length transfer prices.



8. In order to ensure the even and effective application of this Code, Member States should report annually to the Commission on any measures they have taken further to this Code and its practical functioning.

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## ANNEX

### TO THE CODE OF CONDUCT ON TRANSFER PRICING DOCUMENTATION FOR ASSOCIATED ENTERPRISES IN THE EUROPEAN UNION (EU TPD)

#### SECTION 1

##### CONTENT OF THE EU TPD

1. A multinational enterprise (MNE) group's standardised and consistent EU TPD consists of two main parts:

- (i) one set of documentation containing common standardised information relevant for all EU group members (the “masterfile”), and
- (ii) several sets of standardised documentation each containing country-specific information (‘country-specific documentation’).

The EU TPD should contain enough details to allow the tax administration to make a risk assessment for case selection purposes or at the beginning of a tax audit, ask relevant and precise questions regarding the MNE's transfer pricing and assess the transfer prices of the inter-company transactions. Subject to paragraph 31, the company would produce one single file for each Member State concerned, i.e. one common masterfile to be used in all Member States concerned and a different set of country-specific documentation for each Member State.

2. Each of the items of the EU TPD listed below should be completed, taking into account the complexity of the enterprise and the transactions. As far as possible, information should be used that is already in existence within the group (e.g. for management purposes). However, an MNE might be required to produce documentation for this purpose that otherwise would not have been in existence.

3. The EU TPD covers all group entities resident in the EU including controlled transactions between enterprises resident outside the EU and group entities resident in the EU.

#### 4. The masterfile

4.1. The masterfile should follow the economic reality of the business and provide a ‘blueprint’ of the MNE group and its transfer pricing system that would be relevant and available to all EU Member States concerned.

4.2. The masterfile should contain the following items:

- (a) a general description of the business and business strategy, including changes in the business strategy compared to the previous tax year;
- (b) a general description of the MNE group's organisational, legal and operational structure (including an organisation chart, a list of group members and a description of the participation of the parent company in the subsidiaries);

- (c) the general identification of the associated enterprises engaged in controlled transactions involving enterprises in the EU;
  - (d) a general description of the controlled transactions involving associated enterprises in the EU, i.e. a general description of:
    - (i) flows of transactions (tangible and intangible assets, services, financial),
    - (ii) invoice flows, and
    - (iii) amounts of transaction flows;
  - (e) a general description of functions performed, risks assumed and a description of changes in functions and risks compared to the previous tax year, e.g. change from a fully fledged distributor to a commissionaire;
  - (f) the ownership of intangibles (patents, trademarks, brand names, know-how, etc.) and royalties paid or received;
- the MNE group's inter-company transfer pricing policy or a description of the group's transfer pricing system that explains the arm's length nature of the company's transfer prices;
- (h) a list of cost contribution agreements, Advance Pricing Agreements and rulings covering transfer pricing aspects as far as group members in the EU are affected; and
  - (i) an undertaking by each domestic taxpayer to provide supplementary information upon request and within a reasonable time frame in accordance with national rules.

## 5. Country-specific documentation

5.1. The content of the country-specific documentation supplements the masterfile. Together the two constitute the documentation file for the relevant EU Member State. The country-specific documentation would be available to those tax administrations with a legitimate interest in the appropriate tax treatment of the transactions covered by the documentation.

5.2. Country-specific documentation should contain, in addition to the content of the masterfile, the following items:

- (a) a detailed description of the business and business strategy, including changes in the business strategy compared to the previous tax year;
- (b) information, i.e. description and explanation, on country-specific controlled transactions, including:
  - (i) flows of transactions (tangible and intangible assets, services, financial),
  - (ii) invoice flows, and
  - (iii) amounts of transaction flows;
- (c) a comparability analysis, i.e.:
  - (i) characteristics of property and services,
  - (ii) functional analysis (functions performed, assets used, risks assumed),

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- (iii) contractual terms,
  - (iv) economic circumstances, and
  - (v) specific business strategies;
  - (d) an explanation of the selection and application of the transfer pricing method(s), i.e. why a specific transfer pricing method was selected and how it was applied;
  - (e) relevant information on internal and/or external comparables if available; and
  - (f) a description of the implementation and application of the group's inter-company transfer pricing policy.
6. An MNE should have the possibility of including items in the masterfile instead of the country-specific documentation, keeping, however, the same level of detail as in the country-specific documentation. The country-specific documentation should be prepared in a language prescribed by the Member State concerned, even if the MNE has opted to keep the country-specific documentation in the masterfile.
7. Any country-specific information and documents that relate to a controlled transaction involving one or more Member States must be contained either in the country-specific documentation of all the Member States concerned or in the common masterfile.
8. MNEs should be allowed to prepare the country-specific documentation in one set of documentation (containing information about all businesses in that country) or in separate files for each business or group of activities in that country.
9. The country-specific documentation should be prepared in a language prescribed by the Member State concerned.

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## SECTION 2

### GENERAL APPLICATION RULES AND REQUIREMENTS FOR MNEs

10. Use of the EU TPD is optional for MNE groups. However, an MNE group should not arbitrarily opt in and out of the EU Transfer Pricing Documentation approach for its documentation purposes but should apply the EU TPD in a way that is consistent throughout the EU and from year to year.
11. An MNE group that opts for the EU TPD should generally apply this approach collectively to all associated enterprises engaged in controlled transactions involving enterprises in the EU to which transfer pricing rules apply. Subject to paragraph 31, an MNE group opting for the EU TPD would, therefore, need to keep the documentation specified in Section 1 in respect of all its enterprises in the Member State concerned, including permanent establishments.
12. Where an MNE group has opted for the EU TPD for a given fiscal year, each member of the MNE group should inform its tax administration accordingly.
13. MNEs should undertake to prepare the masterfile in time to comply with any legitimate request originating from one of the tax administrations involved.
14. The taxpayer in a given Member State should make its EU TPD available, upon request by a tax administration, within a reasonable time depending on the complexity of the transactions.
15. The taxpayer responsible for making documentation available to the tax administration is the taxpayer that would be required to make the tax return and that would be liable to a penalty if adequate documentation were not made available. This is the case even if the documentation is prepared and stored by one enterprise within a group on behalf of another. The decision of an MNE group to apply the EU TPD implies a commitment towards all associated enterprises in the EU to make the masterfile and the respective country-specific documentation available to its national tax administration.
16. Where in its tax return, a taxpayer makes an adjustment to its accounts profit resulting from the application of the arm's length principle, documentation demonstrating how the adjustment was calculated should be available.
17. The aggregation of transactions must be applied consistently, be transparent to the tax administration and be in accordance with paragraph 1.42 of the OECD Transfer Pricing Guidelines (which allow aggregation of transactions that are so closely linked or continuous that they cannot be evaluated adequately on a separate basis). These rules should be applied in a reasonable manner, taking into account in particular the number and complexity of the transactions.

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## SECTION 3

### GENERAL APPLICATION RULES AND REQUIREMENTS FOR MEMBER STATES

18. Since the EU TPD is a basic set of information for the assessment of the MNE group's transfer prices a Member State would be entitled in its domestic law to require more and different information and documents, by specific request or during a tax audit, than would be contained in the EU TPD.

19. The period for providing additional information and documents upon specific request referred to in paragraph 18 should be determined on a case-by-case basis taking into account the amount and detail of the information and documents requested. Depending on specific local regulations, the timing should give the taxpayer a reasonable time (which can vary depending on the complexity of the transaction) to prepare the additional information.

20. Taxpayers avoid cooperation-related penalties where they have agreed to adopt the EU TPD approach and provide, upon specific request or during a tax audit, in a reasonable manner and within a reasonable time, additional information and documents going beyond the EU TPD referred to in paragraph 18.

21. Taxpayers should be required to submit their EU TPD, i.e. the masterfile and the country-specific documentation, to the tax administration only at the beginning of a tax audit or upon specific request.

22. Where a Member State requires a taxpayer to submit information about transfer pricing with its tax return, that information should be no more than a short questionnaire or an appropriate risk assessment form.

23. It may not always be necessary for documents to be translated into a local language. In order to minimise costs and delays caused by translation, Member States should accept documents in a foreign language as far as possible. As far as the EU Transfer Pricing Documentation is concerned, tax administrations should be prepared to accept the masterfile in a commonly understood language in the Member States concerned. Translations of the masterfile should be made available only if strictly necessary and upon specific request.

24. Member States should not oblige taxpayers to retain documentation beyond a reasonable period consistent with the requirements of the domestic laws where the taxpayer is liable to tax regardless of where the documentation, or any part of it, is situated.

25. Member States should evaluate domestic or non-domestic comparables with respect to the specific facts and circumstances of the case. For example, comparables found in pan-European databases should not be rejected automatically. The use of non-domestic comparables by itself should not subject the taxpayer to penalties for non-compliance.

#### SECTION 4

##### **GENERAL APPLICATION RULES AND REQUIREMENTS APPLICABLE TO MNEs AND MEMBER STATES**

26. Where documentation produced for one period remains relevant for subsequent periods and continues to provide evidence of arm's length pricing, it may be appropriate for the documentation for subsequent periods to refer to earlier documentation rather than to repeat it.

27. Documentation does not need to replicate the documentation that might be found in negotiations between enterprises acting at arm's length (for example, in agreeing to a borrowing facility or a large contract) as long as it includes adequate information to assess whether arm's length pricing has been applied.

28. The sort of documentation that needs to be produced by an enterprise that is a subsidiary enterprise in a group may be different from that needed to be produced by a parent company, i.e. a subsidiary company would not need to produce information about all of the cross-border relationships and transactions between associated enterprises within the MNE group but only about relationships and transactions relevant to the subsidiary in question.

29. It should be irrelevant for tax administrations where a taxpayer prepares and stores its documentation as long as the documentation is sufficient and made available in a timely manner to the tax administrations involved upon request. Taxpayers should, therefore, be free to keep their documentation, including their EU TPD, either in a request. Taxpayers should, therefore, be free to keep their documentation, including their EU TPD, either in a centralised or in a decentralised manner.

30. The way that documentation is stored — whether on paper, in electronic form or in any other way — should be at the discretion of the taxpayer, provided that it can be made available to the tax administration in a reasonable way.

31. In well justified cases, e.g. where an MNE group has a decentralised organisational, legal or operational structure or consists of several large divisions with completely different product lines and transfer pricing policies or no intercompany transactions, and in the case of a recently acquired enterprise, an MNE group should be allowed to produce more than one masterfile or to exempt specific group members from the EU TPD.

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## SECTION 5

### GLOSSARY

#### MULTINATIONAL ENTERPRISE (MNE) AND MNE GROUP

According to the OECD Transfer Pricing Guidelines:

- an MNE is a company that is part of an MNE group,
- an MNE group is a group of associated companies with business establishments in two or more countries.

#### STANDARDISED DOCUMENTATION

A uniform, EU-wide set of rules for documentation requirements according to which all enterprises in Member States prepare separate and unique documentation packages. This more prescriptive approach aims at arriving at a decentralised but standardised set of documentation, i.e. each entity in a multinational group prepares its own documentation, but according to the same rules.

#### CENTRALISED (INTEGRATED GLOBAL) DOCUMENTATION

A single documentation package (core documentation) on a global or regional basis that is prepared by the parent company or headquarters of a group of companies in a EU-wide standardised and consistent form. This documentation package can serve as the basis for preparing local country documentation from both local and central sources.

#### EU TRANSFER PRICING DOCUMENTATION (EU TPD)

The EU Transfer Pricing Documentation (EU TPD) approach combines aspects of the standardised and of the centralised (integrated global) documentation approach. A multinational group would prepare one set of standardised and consistent transfer pricing documentation that would consist of two main parts:

- (i) one uniform set of documentation containing common standardised information relevant for all EU group members (the “masterfile”), and
- (ii) several sets of standardised documentation each containing country-specific information (‘country-specific documentation’).

The documentation set for a given country would consist of the common masterfile supplemented by the standardised country-specific documentation for that country.

#### DOCUMENTATION-RELATED PENALTY



An administrative (or civil) penalty imposed for failure to comply with the EU TPD or the domestic documentation requirements of a Member State (depending on which requirements the MNE has chosen to comply with) at the time the EU TPD or the domestic documentation required by a Member State was due to be submitted to the tax administration.

#### COOPERATION-RELATED PENALTY

An administrative (or civil) penalty imposed for failure to comply in a timely manner with a specific request of a tax administration to submit additional information or documents going beyond the EU TPD or the domestic documentation requirements of a Member State (depending on which requirements the MNE has chosen to comply with).

#### ADJUSTMENT-RELATED PENALTY

A penalty imposed for failure to comply with the arm's length principle usually levied in the form of a surcharge at a fixed amount or a certain percentage of the transfer pricing adjustment or the tax understatement.