

Papua New Guinea

Transfer Pricing Country Profile

February 2022

		SUMMARY	REFERENCE
The Arm's Length Principle			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Division 15 of the PNG Income Tax Act 1959 (as amended)
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	It is referenced under the Transfer Pricing circular PNG has on the application of transfer pricing adjustments under Division 15 of the PNG Income Tax Act.	Tax Circular 2011/2 – Transfer Pricing
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <p>The term “related parties” is not defined in the Income Tax Act, however, the act defines the term “associate”. Further references of the term associate are sited in PNG’s double tax treaty agreements under Article 9 “Associated Enterprises” for nine DTAs and Article 10 for one DTA.</p> <p>Taxation Circular 2011/2 provides guidance on the operation of Division 15 of the Income Tax Act and the Associated Enterprises Articles of Papua New Guinea’s double tax agreements. Paragraph 13 to 17 provides guidance on the definition of “associated enterprises” which extends to include “related party” or “related party dealings “as interchangeable term for “associated enterprises”.</p>	PNG Income Tax Act 1959 (as amended) Section 4, Definition International Agreements Act, Double Tax Treaty, Article 9 and Article 10 for one DTA Taxation Circular 2011/ 2, paragraphs 13 to 17

Transfer Pricing Methods

4	<p>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; text-align: center; border-collapse: collapse;"> <thead> <tr> <th style="padding: 5px;">CUP</th> <th style="padding: 5px;">Resale Price</th> <th style="padding: 5px;">Cost Plus</th> <th style="padding: 5px;">TNMM</th> <th style="padding: 5px;">Profit Split</th> <th style="padding: 5px;">Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> <td style="padding: 5px;"><input type="checkbox"/></td> </tr> </tbody> </table> <p>Taxation Circular 2011/2 provides guidance on acceptable methods for determining an arm's length price. The Commissioner General endorses the CUP, Resale Price, Cost Plus, TNMM and Profit Split as acceptable transfer pricing methods.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Taxation Circular 2011/2, paragraphs 80 to 89</p>
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)										
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
5	<p>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</p>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p> <p>Paragraph 89 of the Taxation Circular 2011/2 endorses the use of the most appropriate method for the transfer pricing analysis. The Commissioner General would generally seek to use the most appropriate method in a given case depending on the facts and circumstances of the case and the extent and reliability of information on which to base a comparability analysis.</p>	<p>Taxation Circular 2011/2, paragraph 89</p>												
6	<p>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</p>	<p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input checked="" type="checkbox"/> Other (<i>if so, please explain</i>)</p>													

Comparability Analysis

7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No TP Catalyst.	
10	Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	PNG Income Tax Act 1959 (as amended), Division 15, section 197D, subsection 1– 4

Intangible Property

12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	PNG Income Tax Act 1959 (as amended), Division 15, section 197A – 197G
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14	Are there any other rules outside transfer pricing rules that are relevant	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

	for the tax treatment of transactions involving intangibles?	The Commissioner General considers the guidance provided in the OECD Transfer Pricing Guidelines relevant and recommends that taxpayers follow such guidance.	
Intra-group Services			
15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Additional guidelines are provided in the Taxation Circular 2011/2 on Transfer Pricing.	PNG Income Tax Act 1959 (as amended), Division 15, section 197A – 197G. PNG Income Tax Act 1959 (as amended), Section 68AD, sub-section 1–4 and Division 10, sub-division A, Section 155M, sub-section 1-5 Taxation Circular 2011/2, paragraphs 244 to 248
16	Do you have any simplified approach for low value-adding intra-group services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Specific provision on Management fees in the PNG Income Tax Act 1959 provides a cap on limiting the deduction
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No PNG Income Tax Act 1959 contains a cap of 2% on turnover for the deductibility of management fees between related parties.	Specific provision on Management fees in the PNG Income Tax Act 1959 provides a cap on limiting the deduction
Financial Transactions			
18	[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	PNG Income Tax Act 1959 (as amended), section 68AF limit on interest deductions (thin cap rules)
19	[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?(e.g. whether your jurisdiction has implemented the measures in BEPS Action 4 to limit interest deductions and other financial payments or any similar rules)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	PNG Income Tax Act 1959 (as amended), Division 15, section 197A – 197G Division 3, section 68AF (1) – section 68AF (6) – Thin capitalisation Division 10, sub-division A, section 155H(2) – Thin capitalisation

Cost Contribution Agreements			
20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No PNG general income tax legislation applies to cost contribution agreements and supporting guidance referencing the OECD TPG is provided in the Taxation Circular 2011/2.	PNG Income Tax Act 1959 (as amended), Division 15, section 197A – 197G Taxation Circular 2011/2 Transfer Pricing guidance on interpretation of Division 15, paragraph 249
Transfer Pricing Documentation			
21	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If affirmative, please check all that apply:</i> <ul style="list-style-type: none"> <input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input checked="" type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify): The Income Tax Act, sections 364, 365, 366, deal comprehensively with the information and documentation that are required from taxpayers. These provisions are also applicable to transfer pricing audits.	Income Tax Act 1959 (as amended) section 364, 365, 366 Income Tax Act 1959 (as amended) Part III Division 16A, section 198 to section 201B Taxation Circular 2011/2 Transfer Pricing guidance on interpretation of Division 15, paragraphs 198 to 204 Schedule 7 – International Dealings Schedule of the company tax return
22	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	The Income Tax Act, section 201, requires that the CbCR shall be filed in a form identical to and applying the definitions and instructions contained in the standard template contained in Annex III of Chapter V of the OECD TPG, as modified periodically, and Annex III of the final report on BEPS Action 13.	
23	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

24	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	N/A	
Administrative Approaches to Avoiding and Resolving Disputes			
25	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	<p>Please check those that apply:</p> <p><input type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p>	Papua New Guinea's MAP Profile
		Please refer to the OECD MAP Profile of Papua New Guinea.	
Safe Harbours and Other Simplification Measures			
26	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	

Other Legislative Aspects or Administrative Procedures

28	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
29	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Attribution of Profits to Permanent Establishments

30	[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input checked="" type="checkbox"/> Yes <i>In how many tax treaties?</i> PNG follows the AOA in all its existing 11 tax treaties. <i>If yes, how do you implement it in cases, where the old tax treaties do not contain the new version of Article 7 (OECD MTC 2010 and later)</i>	
		<input type="checkbox"/> No	
31	[NEW] Does your jurisdiction follow also another approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>Provide description of the situations, when the other approach(es) applies and description of the key features of how the approach(es) applies.</i>	

Other Relevant Information

32	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
33	Other relevant information (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire)	N/A	

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