

Portugal

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	Article 63 of the Corporate Income Tax Code
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	The OECD Transfer Pricing Guidelines are referred in the Portuguese legislation as a source of guidance in the application of the arm's length principle. The preamble of the Ministerial Order (Portaria) n.º 268/2021, of the 26th of November, refers that the OECD Transfer Pricing Guidelines should be taken in consideration in the application of the transfer pricing legal framework and of the arm's length principle, given the complexity of the issue, and the need to avoid double taxation and litigation.	Ministerial Order n.º 268/2021, of the 26th of November
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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No There shall be deemed to be a special relationship between two entities where one of them has the power to exert, directly or indirectly, a significant impact on the management decisions of the other; this shall be deemed to occur, namely, between: <ul style="list-style-type: none"> a) An entity and the owners of its equity, or the spouses, ascendants or descendants thereof, holding, directly or indirectly, a participation not lower than 20 per cent of the equity or voting rights; b) Entities in which the same equity owners, respective spouses, ascendants or descendants hold, directly or indirectly, a participation not lower than 20 per cent of the equity or voting rights; c) An entity and the members of its corporate bodies, or any administration, direction, management or supervising boards, as well as their spouses, ascendants or descendants; d) Entities the majority of whose members of the corporate boards or of the administration, direction, management or supervising boards are the same persons or, in case of different persons, are related with each other by marriage, 	Article 63 paragraph 4, of the Corporate Income Tax Code

common law marriage or direct parentage;
 e) Entities related under a subordination agreement, a parity group or any other agreement of a similar nature;
 f) Enterprises with a control or group relationship, as defined in Article 486.º of the Commercial companies Code;
 g) Entities which legal relation allows, by its terms and conditions, that one entity conditions the management decisions of the other, due to facts or circumstances beyond or outside the commercial or professional relation;
 h) A resident entity or a non-resident entity with a permanent establishment situated in the Portuguese territory and an entity subject to a more favourable tax regime, resident in a country, territory or region listed in the Ministerial Order approved by the Minister of State and Finance.

The arm's length principle is also applicable to any transaction between:

- a) a Portuguese company and its permanent establishments abroad, or between these permanent establishments;
- b) A non-resident entity and its permanent establishment in Portugal, or between these and other permanent establishments of that non-resident entity.

Transfer Pricing Methods

4 **Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?**

Yes
 No

If affirmative, please check those provided for in your legislation:

CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Paragraph 3 of Article 63 of Corporate Income Tax Code states that the methods to be used are as follows:

- a) The Comparable Uncontrolled Price (CUP) method, the Resale Price method, the Cost Plus method, the Profit Split method or the Transactional Net Margin method;
- b) Any other method, technique or asset valuation model generally accepted, whenever the methods mentioned in the previous sub-paragraph cannot be applied, due to the uniqueness of the transactions under evaluation or the lack of information and comparable data regarding similar transactions between independent entities, namely when those transactions refer to rights on immovable property, share capital participations, credit claims and intangibles.

[Article 63](#) paragraph 3 of the Corporate Income Tax Code

5	Which criterion is used in your jurisdiction for the application of transfer pricing methods?	Please check all that apply: <input type="checkbox"/> Hierarchy of methods <input checked="" type="checkbox"/> Most appropriate method <input type="checkbox"/> Other (<i>if so, please explain</i>)	Article 63 paragraph 3 of the Corporate Income Tax Code Article 6 of the Ministerial Order n.º 268/2021, of the 26th of November
		According to Article 6 of Ministerial Order n.º 268/2021, of the 26 th of November, the taxpayer shall adopt the most appropriate method, which is defined as the method that is likely to provide the highest degree of estimation of the terms and conditions that independent entities would agree upon, accept or use at arm's length.	
6	If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.	<input checked="" type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed. <input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>) <input type="checkbox"/> Other (<i>if so, please explain</i>)	
		As the domestic legislation does not contain specific guidance on commodity transactions, paragraphs 2.18-2.22 of the TPG would be a source of guidance in the application of the arm's length principle in these cases.	
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 Article 5 of the Ministerial Order n.º 268/2021 identifies the relevant steps to perform a comparability analysis, in alignment with Chapter III of the TPG, and Article 7 of the Ministerial Order n.º 268/2021 identifies the comparability factors to consider in the analysis of controlled transactions under the arm's length principle. The OCDE TPG are a supplementary source of guidance in the application of the arm's length principle in any comparability aspects not specifically covered by the domestic legislation.	Articles 5 and 7 of the Ministerial Order n.º 268/2021, of the 26th of November
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

		There would be a preference for domestic comparables only in those cases where the controlled transactions under evaluation would involve terms and conditions significantly connected with specific/exclusive characteristics of the domestic market.	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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 The domestic legislation allows the use of an arm's length range and of statistical measures for determining an arm's length remuneration, provided that the analytical process underlying the determination of the range or the statistical measure is in alignment with the arm's length principle.	Article 6 of the Ministerial Order n.º 268/2021, of the 26th of November
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No When applying a transfer pricing method, and if the terms and conditions of the tested transactions or companies are not fully comparable in any of the relevant aspects required for an arm's length test, comparability adjustments must be performed in order to eliminate the effect of the existing differences.	Article 6 of the Ministerial Order n.º 268/2021, of the 26th of November
Intangible Property			
12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Controlled transactions involving intangibles follow the general transfer pricing rules prescribed in the Portuguese legislation, and Article 15 of the Ministerial Order n.º 268/2021 describes the framework for analysing transactions involving intangibles between associated enterprises, and its underlying steps, in alignment with Chapter IV of the TPG. The OCDE TPG are a supplementary source of guidance in the application of the arm's length principle to controlled transactions involving intangibles aspects, in aspects not specifically covered by the domestic legislation.	Article 15 of the Ministerial Order n.º 268/2021, of the 26th of November

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 <hr/> Portugal has not yet expressly adopted the HTVI approach as defined in Chapter VI of the TPG. The TPG are referred to in the Portuguese legislation as a source of supplementary guidance in the application of the arm's length principle, particularly in what concerns complex technical issues or in those cases where the national law does not prescribe specific guidance. In consequence, and although it is not expressly adopted in the national legislation, there is also no impediment to the application of the HTVI approach, as defined in Chapter VI of the TPG, within the statute of limitations period (four years).	HTVI Implementation Questionnaire
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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 <hr/> Article 14 of the Ministerial Order n.º 268/2021, gives generic guidance on the application of the Arm's Length Principle to intra-group services transactions, in alignment with the guidance of OECD TPG.	Article 14 of the Ministerial Order n.º 268/2021, of the 26th of November
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Financial Transactions			
18	[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Article 63 paragraph 2, of the Corporate Income Tax Code

		Although domestic legislation does not contain specific guidance on financial transactions between related parties, both Article 63 of the CITC and Article 1 of the Ministerial Order n.º 268/202, make clear that the arm's length principle is applicable to those transactions. Additionally, the OCDE TPG are a supplementary source of guidance in the application of the arm's length principle to controlled transactions in aspects not specifically covered by the domestic legislation.	Article 1 of the Ministerial Order n.º 268/2021, of the 26th of November
19	[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Article 67 of the Corporate Income Tax Code limits interest deductions for the purposes of the determination of a company's taxable income, following the transposal of Directive 2011/96/UE. Articles 68-A to D apply to the treatment of hybrid mismatch arrangements, in which financial transactions may be included, following the transposal of the Directive 2016/1164/UE.	Articles 67 , 68A , 68B , 68C and 68D of the Corporate Income Tax Code

Cost Contribution Agreements

20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Article 13 of the Ministerial Order n.º 268/2021 gives generic guidance on the application of the Arm's Length Principle to cost contribution agreements, in alignment with the guidance of the OECD TPG.	Article 13 of the Ministerial Order n.º 268/2021, of the 26th of November
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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 checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input checked="" 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) 	CbCR: Articles 121-A and 121-B of the Corporate Income Tax Code TPD (MF and LF): Articles 17 to 18 of Ministerial Order n.º 268/2021, of the 26th of November
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		<input type="checkbox"/> Other (specify):	
22	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>Transfer pricing documentation must be prepared until the 15th day of the 7th month after the end of a taxation period. The documentation should be prepared in Portuguese, but other working languages may be accepted upon request.</p> <p>The same deadline applies to the filing of the TP return.</p> <p>CbCR must be submitted until the end of the 12th month after the end of the fiscal year to which it refers. Each constituent entity of a MNE group must identify by filing the adequate form, the reporting entity of the MNE group, until the end of the 5th month after the end of the fiscal year to which the inherent CbCR refers.</p>	<p>TP Documentation: article 63 paragraph 6 and article 130 of the Corporate Income Tax Code</p> <p>TP Return: article 121 of the of the Corporate Income Tax Code</p> <p>CbCR: article 121-A, paragraphs 3 and 4</p>
23	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The failure to present the transfer pricing documentation or CbCR is punished with a penalty of EUR 500 to EUR 10 000, with an additional of 5% of the fine for each day of delay.</p> <p>The failure to present the transfer pricing return is punished with a penalty of EUR 500 to EUR 10 000.</p> <p>Any inaccuracies in the information provided in the TP documentation, in the TP returns or in CbCR are punished with a penalty of EUR 375 to EUR 22 500.</p>	<p>Article 116 and article 117 of the Portuguese Taxation Infringements General Law</p> <p>Article 119 of the Portuguese Taxation Infringements General Law</p>
24	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	<p>The obligation to prepare the transfer pricing documentation file does not comprise any taxable person with net sales and other income in the previous fiscal year which is less than EUR 10 million. This threshold is not applicable to the transfer pricing return, or to CbCR, that replicates the guidance of BEPS Action 13.</p>	<p>Article 17 of Ministerial Order n.º 268/2021, of the 26th of November</p>
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 checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p>	<p>Article 138.º of the Corporate Income Tax Code and Ministerial Order n.º 267/2021, of the 26th of November, regulate the process for entering into an Advance Pricing Agreement, including the rules to access MAP (articles 20 to 25)</p> <p>Other MAP guidance</p> <p>Portugal's MAP Profile</p>

		<input checked="" type="checkbox"/> Mutual Agreement Procedures <input type="checkbox"/> Other (<i>please specify</i>):	
		<p>The possibility to request an APA was established in 2008 and is currently governed by Article 138.º of the Corporate Income Tax Code and Ministerial Order n.º 267/2021.</p> <p>An APA may cover a maximum period of four fiscal years that may include fiscal years regarding which tax returns were already submitted, if no more than two years have passed since the deadline defined for the submission for those tax returns.</p> <p>There are domestic rules and procedures for MAP that are addressed in Portugal's MAP Profile.</p>	
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?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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	<p>Article 3, paragraph 2 of Ministerial Order n.º 268/2021, of the 26th of November</p> <p>Article 63 paragraphs 8 and 9, of the Corporate Income Tax Code</p>
		<p>Year-end accounting adjustments are allowed/required in those circumstances where the companies use an arm's length range and, at the end of the year, need to adjust a profit level indicator in order to comply with that arm's length range.</p> <p>Companies are not allowed to perform corresponding adjustments.</p>	
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 The preamble of the Ministerial Order n.º 268/2021, of the 26th of November, establishes that the application of the ALP to controlled transactions involving permanent establishments should consider the OECD guidance included in the Reports on the Attribution of Profits to Permanent Establishments, published in 2008 and 2010, and Portugal's comments and observations to the OECD MTC, applicable to the specific facts and circumstances under analysis.	Ministerial Order n.º 268/2021, of the 26th of November
		<input type="checkbox"/> No	
31	[NEW] Does your jurisdiction follow also another approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Other Relevant Information

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

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