

# Korea

## Transfer Pricing Country Profile

February 2022

		SUMMARY	REFERENCE
<b>The Arm's Length Principle</b>			
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 2 (1) 5 of the Act on Adjustment of International Taxes (" <a href="#">AAIT</a> ")
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	Korea's domestic legislation has been amended and is mostly consistent with the OECD Transfer Pricing Guidelines.	
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  The term "special relationship" means any of the following relationships, for which the detailed criteria shall be prescribed by Presidential Decree:  (a) A relationship between the parties to a transaction where either party to a transaction owns directly or indirectly at least 50% of the voting stocks (including the equity shares; hereinafter the same shall apply) of the other party;  (b) A relationship between the parties to a transaction where a third party or a person prescribed by Presidential Decree including his or her relatives owns directly or indirectly at least 50% of voting stocks of both parties;  (c) A relationship between the parties to a transaction where both parties have a common interest in the adjustment of income depending on the equity investment relationship, transaction relations of goods and services, monetary lending relationship, etc. and either party to the transaction has the power to substantially determine the business policy of the other party;	Article 2(1) 3 of <a href="#">AAIT</a>  Article 2 of Enforcement Decree of the AAIT("EDAAIT") <a href="#">Translated Version 2019</a>

(d) A relationship between the parties to a transaction where both parties have a common interest in the adjustment of income depending on the equity investment relationship, transaction relations of goods and services, monetary lending relationship, etc. and a third party has the power to substantially determine the business policies of both parties.

**Transfer Pricing Methods**

4	<p><b>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="width: 15%;">CUP</th> <th style="width: 15%;">Resale Price</th> <th style="width: 15%;">Cost Plus</th> <th style="width: 15%;">TNMM</th> <th style="width: 15%;">Profit Split</th> <th style="width: 20%;">Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> </tbody> </table> <p>Any of the following transfer pricing methods shall be used for service transaction with respect to an intra-group payment guarantee between a resident and a foreign related party:</p> <ol style="list-style-type: none"> <li>1. Calculating the arm's length price based on the anticipated risks of, and expenses to be incurred by, the guarantor;</li> <li>2. Calculating the arm's length price based on the expected benefits of the principal;</li> <li>3. Calculating the arm's length price based on the expected risks of, and expenses to be incurred by, the guarantor and the expected benefits of the principal.</li> </ol>	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"/>	<p>Article 8(1) of <a href="#">AAIT</a></p> <p>Article 8(1) 6 of <a href="#">AAIT</a></p> <p>Article 10 of EDAAIT <a href="#">Translated Version 2019</a></p> <p>Article 12(4) of EDAAIT <a href="#">Translated Version 2019</a></p>
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"/>										

5	<p><b>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</b></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>The most appropriate and reliable method should be adopted among the methods above considering all relevant factors and circumstances.</p>	<p>Article 8(1) of <a href="#">AAIT</a></p>
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6	<p><b>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</b></p>	<p><input checked="" type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input checked="" 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 type="checkbox"/> Other (<i>if so, please explain</i>)</p> <hr/> <p>Domestic law contains the specific guidance on commodity transactions consistent with paragraphs 2.18-2.22 of the TPG.</p>	<p>Article 5 of EDAAIT <a href="#">Translated Version 2019</a></p>
<b>Comparability Analysis</b>			
7	<p><b>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</b></p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <hr/> <p>Korea's domestic law is mostly consistent with Chapter III of the TPG.</p>	<p>Article 14 and 15 of EDAAIT <a href="#">Translated Version 2019</a></p>
8	<p><b>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <hr/> <p>Regardless of whether comparables are domestic or foreign, Korea's preference is choosing the best comparables.</p>	<p>Article 14(2) of EDAAIT <a href="#">Translated Version 2019</a></p>
9	<p><b>Does your tax administration use secret comparables for transfer pricing assessment purposes?</b></p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
10	<p><b>Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?</b></p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <hr/> <p>According to <i>Article 15(5) and (6) of EDAAIT</i>, in computing an arm's length, the scope of arm's length prices may be computed on the basis of two or more transactions between the unrelated parties. Where the tax authority adjusts a tax assessment on a trade price deviating from the scope of arm's length price, it shall be based on the average price, median price, mode price and other rational specific</p>	<p>Article 15(5), (6) of EDAAIT <a href="#">Translated Version 2019</a></p>

		prices computed in transactions within the relevant scope of arm's length price.	
11	<b>Are comparability adjustments required under your domestic legislation or regulations?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Article 15(4) of EDAAIT <a href="#">Translated Version 2019</a>
		According to <i>Art.15 (4) of EDAAIT</i> , comparability adjustments are required where there are material differences in the factors of comparability analysis.	
<b>Intangible Property</b>			
12	<b>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Article 13(1)(2)(3)(4) of EDAAIT <a href="#">Translated Version 2019</a>
		<p>Articles 13(1)(2)(3)(4) of EDAAIT provide guidance specific to the pricing of controlled transactions with foreign related parties involving intangibles.</p> <p>(1) "Intangible asset" means any of the following assets (neither a tangible nor financial asset) available for business activities, which is capable of being owned or controlled by a particular person, and whose use or transfer would be properly compensated had it occurred between independent business operators:</p> <p>a patent right; a utility model right; a design right; a trademark right; a copyright; a service mark right, trade name, brand, know-how, trade secret, customer information or customer network; a contractual right or a concession granted by the Government; good will or going concern value.</p> <p>(2) In calculating the arm's length price for a transaction of an intangible asset between a resident and a foreign related party, the following factors shall be considered:</p> <p>whether appropriate compensation deemed applicable to independent business operators is paid regardless of the legal ownership of the intangible asset; the amount of additional income expected to be generated from or expense savings anticipated to result from the intangible asset; whether there is any restriction on the exercise of rights; whether it is allowed to transfer it to another person or to grant a sub-license to use it.</p> <p>(3) As a transfer pricing method for a transaction of an intangible asset between a resident and a foreign related party, either the comparable uncontrolled price method or the profit split method shall be preferentially applied.</p> <p>(4) The valuation method that shall be used must calculate the present value by discounting the projected future cash flows attributable to the exploitation of the</p>	

		intangible asset being valued. In such cases, the projected future cash flows, growth rate, discount rate, service life and residual value of the intangible asset, tax burden and other factors shall be collected and calculated in an objective and reasonable manner.	
13	<b>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Article 13(5) of EDAAIT <a href="#">Translated Version 2019</a>
		According to <i>Art.13(5) of EDAAIT</i> , with respect to a hard-to-value intangible asset that meets all the requirements therein, if there is a substantial difference between the <i>ex-post</i> price and <i>ex-ante</i> price of the intangible asset, which exceeds 20/100 of the <i>ex-ante</i> price of the intangible asset, the tax authority may presume that the relevant price is not rational, and may calculate the arm's length price again, based on the circumstances of the transaction, economic conditions, etc. changed after the transaction in relation to the intangible asset, such as the economic benefits actually generated from the intangible asset.	<a href="#">HTVI Implementation Questionnaire</a>
14	<b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
<b>Intra-Group Services</b>			
15	<b>Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Article 12 (1) of EDAAIT <a href="#">Translated Version 2019</a>
		According to <i>Article 12 (1) of EDAAIT</i> , where the arm's length pricing method for intra-group services transactions between a resident and a foreign related person applies the cost plus method or the transactional net profit margin method, it shall be calculated in accordance with the following criteria (the cost shall include all expenses incurred directly or indirectly in the course of provision of the services, and etc.) as prescribed by Presidential Decree.	
16		<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Article 12 (2), (3) of EDAAIT <a href="#">Translated Version 2019</a>

	<b>Do you have any simplified approach for low value-adding intra-group services?</b>	<p>Articles 12(2) and (3) of EDAAT provide guidance on a simplified approach for low value-adding intra-group services.</p> <p>Where a resident applies an amount obtained by adding 5% to the cost of a service transaction as the price of the service transaction (hereinafter referred to as a low value-adding service transaction) that meets all of the following requirements, the amount shall be deemed an arm's length price. In such cases, the cost of the relevant services shall be calculated in accordance with the criteria in each subparagraph of the paragraph (1).</p>	
17	<b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Financial Transactions</b>			
18	<b>[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Article 11 of <a href="#">AAIT</a>
		<p>The Adjustment of International Taxes Act applies to the arm's length pricing method for certain financial transactions (limited to loans and financial guarantees and etc.).</p> <p>In addition, Korea's domestic legislation is underway to be applied to financial transactions of TPG in line with Inclusive Framework BEPS Action 4, 8-10 (due to be applied by February 2022).</p>	
19	<b>[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Article 22, 23, 24 and 25 of <a href="#">AAIT</a>
		Articles 22 to 25 of AAIT provide the rules to limit interest deductions in line with BEPS Action 4.	
<b>Cost Contribution Agreements</b>			

20	<p><b>Does your jurisdiction have legislation or regulations on cost contribution agreements?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p>According to <i>Art.9(1) of AAIT</i>, where a resident enters into an agreement with a foreign related party on the sharing of the cost, expenses, risks to jointly develop or secure intangible property and performs such joint development in accordance with the agreement, the tax authority may adjust the cost share of the resident based on the arm's length cost share to determine or rectify the tax base and tax amount of the resident, if the cost share of the resident is less or more than the arm's length cost share.</p>	Article 9(1) of <a href="#">AAIT</a>
<b>Transfer Pricing Documentation</b>			
21	<p><b>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p><i>If affirmative, please check all that apply:</i></p> <p><input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG</p> <p><input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG</p> <p><input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return)</p> <p><input type="checkbox"/> Other (specify):</p>	<p>Article 16(2) of <a href="#">AAIT</a></p> <p>Article 33 of EDAAIT <a href="#">Translated Version 2019</a></p>
22	<p><b>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</b></p>	<p>TP documentation shall be filed within 12 months from the last day of the month during which the fiscal year ends.</p> <p>Languages:</p> <p>(1) Master file may be initially submitted in English but must be submitted in Korean within one month of the submission of the English MF</p> <p>(2) Local file has to be submitted in Korean</p> <p>(3) CBCR should be submitted both in Korean and English</p>	<p>Article 16 of <a href="#">AAIT</a></p> <p>Article 34(3),(4) and 35(4) of EDAAIT <a href="#">Translated Version 2019</a></p>
23	<p><b>Does your legislation provide for specific transfer pricing penalties</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p>	Article 60(1) of <a href="#">AAIT</a>

	<b>and/or compliance incentives regarding transfer pricing documentation?</b>	<p>A taxpayer who fails to submit or falsely submits MF, LF or CBCR shall be subject to an administrative fine of KRW 30 million won for each report.</p> <p>An administrative fine may be reduced or increased by up to half thereof, based on the severity, frequency, motive and consequences, etc. of the relevant violation, provided that, where increased, the administrative fine shall not exceed the maximum limit on administrative fine.</p> <p>When a person submitting data fails to submit some of the data due to a minor mistake or makes trivial errors in certain items, the tax authority may decide not to assess the administrative fine after receiving supplementary materials.</p>	Article 100(2) of EDAAIT <a href="#">Translated Version 2019</a>
24	<b>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</b>	<p>Domestic and foreign corporations with permanent establishments in Korea are exempted from TP documentation (MF, LF) obligations, in cases where (1) the total transaction volume is less than KRW 50 billion, or (2) net sales are less than KRW 100 billion.</p> <p>MNEs are exempted from TP documentation (CBCR) obligations in cases where the total consolidated revenue for the preceding fiscal year is less than KRW one trillion won.</p>	Article 35(1),(3) of EDAAIT <a href="#">Translated Version 2019</a>

### Administrative Approaches to Avoiding and Resolving Disputes

25	<b>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</b>	<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><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p>	<p>Article 6 of <a href="#">AAIT</a></p> <p>Article 29 of EDAAIT <a href="#">Translated Version 2019</a></p> <p>Article 42 of <a href="#">AAIT</a></p> <p><a href="#">Korea's OECD MAP Profile</a></p>
		For further information, please refer to Korea's OECD MAP Profile.	

### Safe Harbours and Other Simplification Measures

26	<p><b>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p><i>Article 11 of EDAAIT</i> provides for an interest rate construed as a normal interest rate prescribed by Ordinance of the Ministry of Economy and Finance, considering the transaction amount and the prevailing interest rate in the international financial market.</p> <p>Where a resident grants a loan to a foreign related party: The interest rate on overdraft referred to in Article 43 (2) of the Enforcement Rule of the Corporate Tax Act.</p> <p>Where a resident borrows funds from a foreign related party: The London Inter-Bank Offered Rate on 12-month loans by currency as at the end of the immediately preceding business year plus 15/1,000, provided that, in cases of a currency for which no London Inter-Bank Offered Rate on 12-month loans exists, the interest rate shall be the London Inter-Bank Offered Rate on the United States currency loans with maturity of 12 months plus 15/1,000.</p> <p>The normal interest rate for money transactions applicable to international transaction between a resident and a foreign related party shall consider any of the following matters: (a) Amount of the obligation; (b) Maturity of the obligation; (c) Whether the obligation is secured; (d) Credit rating of the obligor.</p> <p>In such cases, monetary transactions between the resident and the foreign related party shall include de facto monetary transactions such as collection of claims and payment of obligations which are overdue beyond the ordinary time limit for collection or payment.</p>	Article 11 of EDAAIT <a href="#">Translated Version 2019</a>
27	<p><b>Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.</b></p>	<p><input type="checkbox"/> <b>Yes</b></p> <p><input checked="" type="checkbox"/> <b>No</b></p>	
<b>Other Legislative Aspects or Administrative Procedures</b>			
28	<p><b>Does your jurisdiction allow/require taxpayers to make year-end adjustments?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p>According to <i>Article 6 of AAIT</i>, in an international transaction with a foreign related party in which the transfer price is lower or higher than the arm's length</p>	Article 6 of <a href="#">AAIT</a>

		price, a resident may file a report on, or a rectification claim for, the tax base or the amount of tax adjusted based on the arm's length price with the head of a tax office having jurisdiction over the place for tax payment by any of the following deadlines (the reporting deadline under the Income Tax Act or the Corporate Tax Act, a revised return under the Framework Act on National Taxes, etc.), along with a report on adjustment of transfer price.	
29	<b>Does your jurisdiction make secondary adjustments?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <p>According to <i>Article 13 of AAIT</i>, where it is not verified that the amount to be included in the gains of a domestic corporation has been returned by a foreign related party to such corporation as prescribed by Presidential Decree, such amount shall be disposed of as a dividend to, or adjusted as an investment in, the foreign related party.</p>	<p>Article 13 of <a href="#">AAIT</a></p> <p>Article 22 and 23 of EDAAIT <a href="#">Translated Version 2019</a></p>
<b>Attribution of Profits to Permanent Establishments</b>			
30	<b>[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?</b>	<input type="checkbox"/> <b>Yes</b> <i>In how many tax treaties?</i> <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>	<p>Article 130 and 132 of EDCT <a href="#">Translated Version 2018</a></p>
		<input checked="" type="checkbox"/> <b>No</b> <p>Korea's domestic legislation already applies the AOA (since February 2020). However, it has not yet been reflected in the tax treaties because prior consultation or agreement with the contracting states is required.</p>	
31	<b>[NEW] Does your jurisdiction follow also another approach?</b>	<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
<b>Other Relevant Information</b>			
32	<b>Other legislative aspects or administrative procedures regarding transfer pricing</b>	N/A	

33	<b>Other relevant information</b> (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire)	N/A	
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For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>