



cutting through complexity

Global Transfer Pricing Review

Israel

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TAX



Israel



KPMG observation

The Israeli transfer pricing regulations require companies to list all international transactions on the corporate tax return (Form 1385) and to declare that the transactions were conducted according to “market conditions”.

As a member of the Organisation for Economic Co-operation and Development (OECD), Israel will be affected by the planned changes relating to transfer pricing as a result of the OECD’s Base Erosion and Profit Shifting (BEPS) Action Plan. The potential effects and implications will be clearer as the specifics of the initiative take form and move closer to implementation.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Israel Tax Authority.

Citation for transfer pricing rules

Israel Tax Ordinance Section 85A and Israel Tax Regulations (Market Conditions Determination), 2006.

Effective date of transfer pricing rules

29 November 2006.

What is the relationship threshold for transfer pricing rules to apply between parties?

In general, any special relationship (controlled directly or indirectly by the same interest). Specifically (but not limited to): ownership or control of 50 percent or more.

What is the statute of limitations on assessment of transfer pricing adjustments?

Three years from end of year of tax return submission. May be extended in special cases.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. The Market Conditions Survey should be prepared and a special declaration form should be submitted with the corporate tax return (form 1385).

What types of transfer pricing information must be disclosed?

Ongoing or one-time transaction, description of intra-group transaction, details and location of foreign related party to the transaction, and total transaction price. The form must be signed under the declaration that the transaction was conducted under “market conditions” as described in Section 85A and the transfer pricing regulations.

What are the consequences of failure to submit disclosures?

Statute of limitations begins following full submission. Burden of proof falls on taxpayer.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes, English and Hebrew.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, for all transactions.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes. The Comparable Uncontrolled Price is preferable to all other methods. The transaction-based methods (cost plus or resale price) have priority over the transactional net margin method.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 60 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

Within 60 days of request.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Appeals, courts, and treaties.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

No specific transfer pricing penalties, however, general tax penalties applies.

To what extent are transfer pricing penalties enforced?

Not applicable.

What defenses are available with respect to penalties?

Documentation or negotiation.

What trends are being observed currently?

Restructuring and intellectual property (IP) migration are under scrutiny from the Israeli Tax Authority.

The Tax Authority takes the position that stock options must be included in the cost base. It should be noted that in many circumstances, stock options are not deductible expenses for tax purposes.

In addition, the Tax Authority has taken an aggressive approach and is assessing secondary adjustments in cases where a transfer pricing adjustment is made.

Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No. In the case of an Israeli tested party, the authorities generally expect US or European comparables.

Do tax authorities have requirements or preferences regarding databases for comparables?

No specific requirements (in practice, Israeli tax authorities use Osiris and Amadeus databases).

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

No.

What level of interaction do tax authorities have with customs authorities?

Low.

Are there limitations on deductibility of management fees beyond the arm's length principle?

No. Management fees conducted at arm's length are deductible.

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

No.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes, but we recommend seeking professional advice before doing so.

Other unique attributes?

Not applicable.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive, approximately 40 countries.

If extensive, is the competent authority effective in obtaining double tax relief?

Sometimes.

When may a taxpayer submit an adjustment to competent authority?

No formal domestic rules, depends on treaties.

May a taxpayer go to competent authority before paying tax?

No formal domestic rules, depends on treaties.

Advance pricing agreements

What APA options are available, if any?

Unilateral.

Is there a filing fee for APAs?

No. At this stage, there are no filing fees.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Yes. The APA procedure is lengthy.

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