



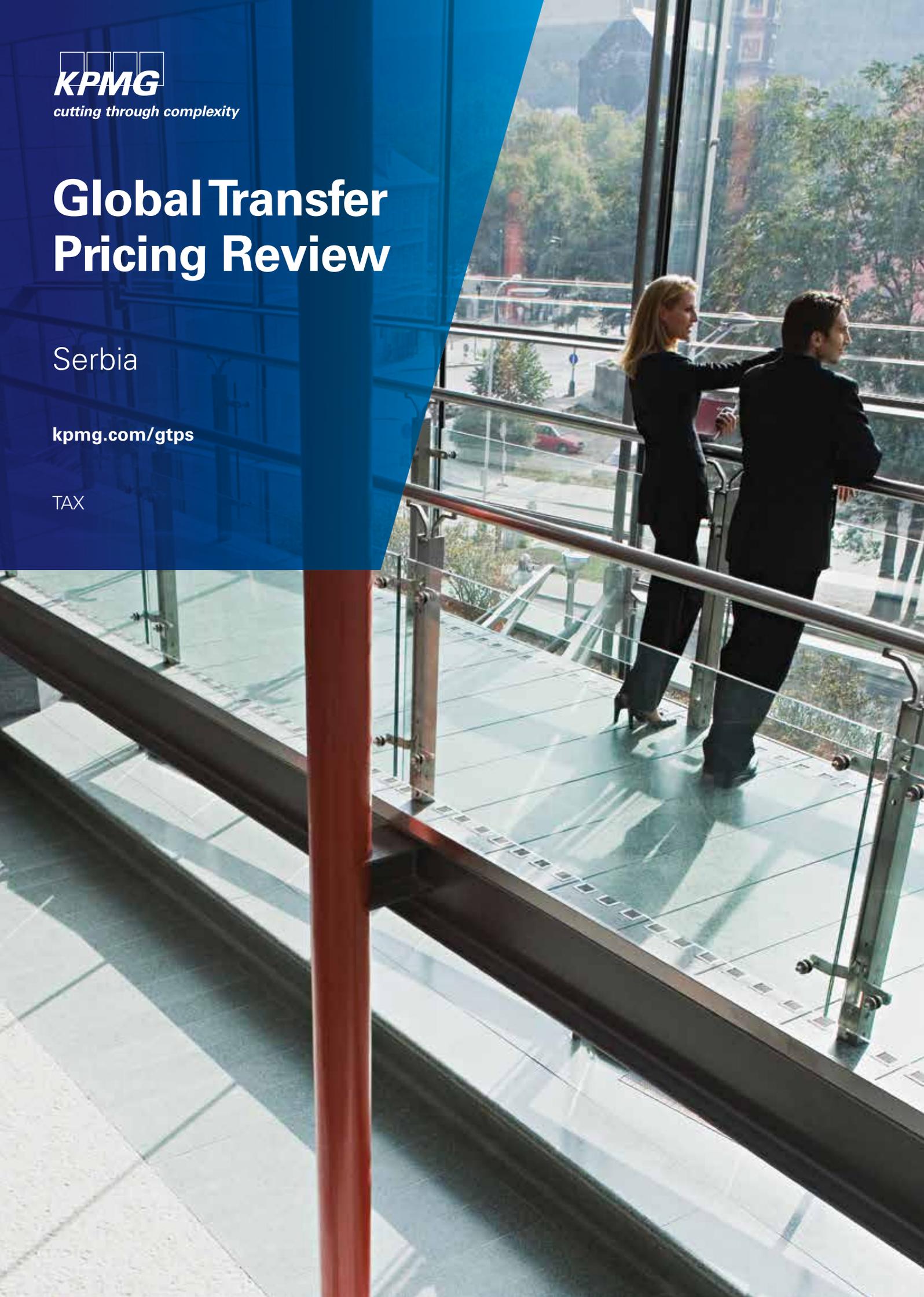
cutting through complexity

Global Transfer Pricing Review

Serbia

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TAX



Serbia



KPMG observation

Transfer pricing rules have been present for more than a decade in Serbian corporate income tax (CIT) legislation. However, specific and detailed regulations on the application of these rules were published by the Ministry of Finance only in 2013. Significant efforts have been made to align local rules and practices to established international guidelines.

Tax authorities have yet to issue an official approach regarding transfer pricing audits, which are currently conducted sporadically.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable	Required to be contemporaneous	Submission to tax authority required	Thresholds apply/exist
Legal requirements	●		●	●	●
Protection from penalties		●			
Reduce risk of adjustment	●				
Shifts burden of proof	●				

Basic information

Tax authority name

Tax Administration of Serbia.

Citation for transfer pricing rules

Articles 59, 60, 61, 61a and 62 of the CIT Law, Rulebook on Transfer Prices and Methods Applied for Determining Prices in Related Party Transactions in Accordance With the Arm's Length Principle (Rulebook) and Rulebook on 'Arm's Length' Interest Rates (Interest Rates Rulebook).

Effective date of transfer pricing rules

Rules have been present since 1 July 2001, while the latest amendments

came into force on 1 January 2013. The Rulebook was enacted on 20 July 2013, and was amended on 29 January 2014, while the latest Interest Rates Rulebook came into force on 2 March 2015. Our comments relate to the latest amendments and rules in force from 15 February 2014.

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

An entity is deemed a related party if it has the possibility of control or considerable influence on the business decisions made.

Ownership of at least 25 percent of the shares in the capital is considered as the possibility of control.

Possessing at least 25 percent of the voting rights is considered as having an influence on business decisions.

These tests are applied to both direct and indirect ownership.

Furthermore, companies are deemed to be related if the same persons directly or indirectly participate in the management, ownership or control of both companies in the manner described above.

Members of the immediate family of shareholders who own at least 25 percent of shares or hold at least 25 percent of voting rights are also deemed as related parties (but the companies owned by those family members are not).

In addition, any company which is a resident of a jurisdiction with a preferential tax system is deemed to be a related party regardless of the percentage of direct or indirect ownership or voting rights in a Serbian company.

A jurisdiction with a preferential tax system exists if the relevant regulations allow for a significant reduction in income and dividend taxation when compared to Serbian regulations. A territory also qualifies as a jurisdiction with a preferential tax system if its regulations do not allow, or impede, access to information on ownership or other data relevant for resolving taxation issues.

The Ministry of Finance published a list of jurisdictions with a preferential tax system in 2013, which includes 51 tax jurisdictions, mainly tax havens.

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

The right of the Tax Administration to assess a tax liability is limited to five years from the day when the period of limitation commenced. The period commences as of 1 January of the year following the year when the tax liability became due. The absolute period of limitation is 10 years.

There is no special statute of limitations on assessment of transfer pricing adjustments.

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. A taxpayer is obliged to prepare and submit documentation presenting related party transactions at both transfer and arm's length prices along with their annual tax return. The deadline is set to 180 days from the observed period end.

What types of transfer pricing information must be disclosed?

A transfer pricing documentation study must be submitted along with the tax balance sheet. The tax balance sheet needs to disclose the volume of transactions with related parties, as well

as the amount of the tax base adjustment relating to transfer pricing if any.

Transfer pricing study must contain information on the group, industry, functional and economic analysis, as well as the assessment of "arm's length" nature of all of the transactions. In case a transaction is assessed not to be at "arm's length", the calculation of respective adjustment has to be made.

What are the consequences of failure to submit disclosures?

Failure to submit transfer pricing study or separately disclose the value of related party transactions in accordance with the arm's length principle carries penalty exposure from 100,000 Serbian dinar (RSD) to RSD2 million.

Submission of transfer pricing study after the deadline carries penalty exposure of RSD100,000.

Transfer pricing study overview

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

No.

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. Additional guidance regarding the content of the transfer pricing study is provided in the Rulebook.

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. Please note that interest rates can also be assessed using an interest rate prescribed as arm's length by the Ministry of Finance.

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, 30 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.

The documentation needs to be submitted along with the CIT return. However, an additional deadline may apply for amending the documentation as well as for providing additional information. Such additional deadline is defined as 'adequate' or 'appropriate', and may vary from 30 to 90 days.

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

Adjustments assessed by the tax authorities must be applied and then the taxpayer has an option to appeal to the second instance degree procedure with the tax authorities, or finally to the Administrative Court.

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

Yes. Penalties may range from RSD100,000 to RSD2 million (approximately between 9,000 euros (EUR) to EUR17,000) for non-disclosure of transfer prices at arm's length in the tax balance sheet. In addition, there is a potential penalty depending on the additional tax liability assessed by the tax authorities. This penalty amounts to 30 percent of the assessed additional tax liability but not less than RSD200,000 (approximately EUR1,600).

To what extent are transfer pricing penalties enforced?

Rarely, although a significant shift is expected in this respect during 2015 and 2016.

What defenses are available with respect to penalties?

Preparing documentation should mitigate the risk of penalties. Other defense strategies may include negotiation and reasonable cause but such strategies are less likely to have the desired positive effects.

What trends are being observed currently?

Outcomes from audits are revealing that the tax authorities prefer the comparable uncontrolled price (CUP) method, but apply that method in a very simplified way.

There are also strong indications that the tax authorities will place a firm focus on transfer pricing during tax audits in the following period.

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?

Yes, the Rulebook states that the search for comparables must start with local companies and only if insufficient companies are found, the search for comparables can be broadened to other jurisdictions. The consequence of not starting the search with local comparables can be that the comparable sample may be viewed as inadequate allowing the Tax Authorities to assess the arm's length nature of transactions by themselves.

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

No.

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.

Not applicable.

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

The level of interaction between tax and customs authorities with regards to VAT is high. However, it is not possible to estimate the level of interaction between these authorities regarding transfer pricing.

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

Yes, some. Please note that non-documented costs are non-deductible as are costs that are not incurred for business purposes.

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?

No. Adjustments, aimed at aligning transactions with the arm's length value and mitigating the risk of tax base increase, are not permitted in Serbian regulations. However, adjustments can be executed for specific transactions by issuing credit/debit notes relating to specific invoices.

Other unique attributes?

Local authorities publish annual arm's length interest rates which can be used to assess intercompany loans. The rates are set depending on the term and currency of the loan, and are different for financial institutions and businesses. Taxpayers can opt to use another transfer pricing method to set an interest rate but this implies an 'all or nothing' approach i.e. all intercompany loans can either be assessed by using the published interest rates or by using transfer pricing methods.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal.

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

No experience.

When may a taxpayer submit an adjustment to competent authority?

The formal procedure for obtaining a corresponding adjustment is regulated by double tax treaties mutual agreement procedure (MAP). CIT Law generally allows corresponding adjustments only when it is available through a mechanism provided in a double tax treaty signed by Serbia.

May a taxpayer go to competent authority before paying tax?

No formal rules exist in this area.

Advance pricing agreements

What APA options are available, if any?

None.

Is there a filing fee for APAs?

Not applicable.

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

Not applicable.

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

Not applicable.

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