

Global Transfer Pricing Landscape

Bangladesh



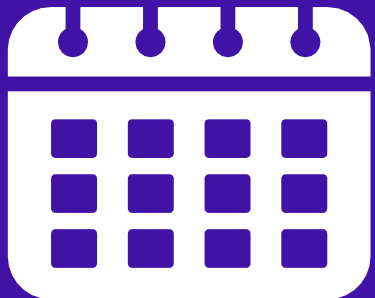
Highlights

2012

Transfer pricing rules introduced in the Finance Act 2012.

2014

Transfer pricing regulations became effective from 1 July 2014 by the Finance Act 2014.



Introduction

The Finance Act, 2012 inserted a new chapter incorporating transfer pricing provisions into the Income-tax Ordinance. Transfer pricing regulations in Bangladesh came into force on 1 July 2014.

The amount of any income, or expenditure, arising from an international transaction shall be determined with regard to the arm's length price. However, transfer pricing provisions shall not apply if it results in lowering the total income by virtue of applying the Arm's Length Principle (ALP).

Tax Authority

National Board of Revenue (NBR).

Relevant Regulations

- Section 107A to 107J of the Income-tax Ordinance, 1984
- Rules 70 to 75A of Income Tax Rules, 1984.

Associated Enterprise

The definition of an Associated Enterprise (AE) is comprehensive and includes the following relationships:

- Direct or indirect participation in the management/control/capital of an enterprise or common participation in both enterprises;
- Direct or indirect holdings of shares carrying more than 25% of the voting power in the enterprise;

- Same person or persons controls shares carrying more than 25% of the voting power in both enterprises;
- Cumulative borrowings of more than 50% of the book value of the total assets of the borrowing enterprise;
- Cumulative guarantees of more than 10% of the book value of total borrowings of other enterprises;
- Power to appoint more than 50% of the board of directors/members of the governing board of an enterprise by another enterprise/same person;
- Executive director/member of the governing board of one enterprise are appointed by other enterprises/same person or enterprises having common executive directors/members;
- Practical ability to control the decisions of the other enterprise;
- The two enterprises are bonded by a relationship of mutual interest as may be prescribed.

International Transactions

A transaction entered into between two AEs, where either one or both enterprises are non-residents, in the nature of purchase, sale, or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having bearing on the profits, income, losses, assets, financial position, or economic value of such enterprises.

International transactions also include transactions entered into by an enterprise with person other than an AE, if there exists a prior agreement between such other person and the AE with respect to the relevant transaction, or if the terms of the relevant transaction are determined in substance between such other person and the AE.

Computation of Arm's Length Price

Arm's Length Price (ALP) is determined by applying the most appropriate method from the six transfer pricing methods prescribed:

- Comparable Uncontrolled Price Method;
- Resale Price Method;
- Cost Plus Method;
- Profit Split Method;
- Transactional Net Margin Method; and
- Any other method.

If applying any of the first five methods is not reasonably possible, then **any other method** that yields consistent results may be applied. The regulation does not prescribe any hierarchy of methods.

In analyzing the comparability, data pertaining to the relevant financial year should be used. However, the rule permits the use of data before the relevant financial year, if it can be substantiated that such data bears facts that could influence the analysis of comparability.

Documentation and Accountant's Report

Documentation

Maintaining prescribed documentation is mandatory if the aggregate value of the international transactions entered into during an income year exceeds BDT 30 million (approximately USD 280,000). There is no statutory deadline for submitting transfer pricing documentation. The transfer pricing documentation needs to be finalized by the time of submission, upon request.

Extent of Documentation

Key documentation requirements are:

- Profile of the multinational group along with consolidated financial statements of the group;
- Business description of each member of the group, including the business relationships between them;
- Profile of each AE including tax registration numbers and financial statements of any enterprise operating in Bangladesh;
- The nature and terms of international transactions;
- Transfer pricing analysis/benchmarking for international transactions, including the database utilized.

The information and documents specified shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

Statement of international transaction

Every person who has entered into an international transaction shall file a Statement of International Transaction along with the tax return. There is no threshold for filing a Statement of International Transaction.

Accountant's Report

Every person who has entered into an international transaction with an aggregate value exceeding BDT 30 million during an income year shall furnish a report from a Chartered Accountant (CA) or a Cost and Management Accountant before the specified date in a prescribed form, provided a notice for filing the certificate is received from the Deputy Commissioner of Taxes.

Penalties for Non-compliance

Non-Compliance	Penalty
Failure to keep, maintain or furnish any information or documents	Not exceeding 1% of the value of the international transaction
Failure to comply with the notice or requisition by Deputy Commissioner of Taxes	Not exceeding 1% of the value of an international transaction
Failure to furnish statement of international transactions	Not exceeding 2% of the value of an international transaction
Failure to furnish a report from a CA	Not exceeding BDT 300,000

Benchmarking Search/Comparables

In the absence of Bangladesh specific database, regional benchmarking is undertaken instead of local benchmarking. There are no specific guidelines provided for use of single or multiple year data. However, as Bangladesh transfer pricing regulations are broadly based on Organisation for Economic Co-operation and Development (OECD) Guidelines, multiple year data is recommended. Furthermore, for computation of arm's length weighted average range, 30th to 70th percentile is considered in case wherein six or more than six data sets are used.

Safe Harbour Rules/Tolerance

There are no Safe Harbour rules prescribed in Bangladesh.

Advance Pricing Agreement

Bangladesh currently does not have a formal APA program.

BEPS/CbC Applicability

Bangladesh has not yet formally accepted the recommendations of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project. However, the country has clearly supported the actions undertaken under the BEPS Project while answering the questionnaire set by the UN about BEPS.

Assessment Procedure and Appeal against the Adjustment

When a TP transfer pricing assessment has been initiated, no order of assessment shall be made after three years have passed from the end of the assessment year in which the income was first assessable.

An aggrieved assessee has the option to appeal an adjustment in the following order:

- First appellate authority: Commissioner of Taxes (Appeals);
- Final fact-finding authority: Taxes Appellate Tribunal;
- High Court Division; and
- Final authority: Supreme Court

OECD/UN Guidelines

Though, Bangladesh is not a member of the OECD, the Bangladesh legislation is broadly based on the OECD transfer pricing guidelines.

Related Party Disclosure

No specific disclosure is required in the financial statement and annual report.

Filing of Income Tax Return

Every company (resident or non-resident) is required to file a return of income by the 15th day of the seventh month following the end of the income year or 15 September, following the end of the income year where the said 15th day falls before 15 September.

Domestic Transactions

There is no documentation obligation for domestic transactions undertaken by the local taxpayers.

Summary of Transfer Pricing Requirements

Effective from

1 July 2014

Compliance Requirements

- Every person with international transactions must file a Statement of international transaction
- Report from a CA/CPA if the value of transactions exceeds BDT 30 million (USD 280,000)
- Compulsory contemporaneous documentation if transactions exceed BDT 30 million (USD 280,000)

Penalties

Significant and linked to value of transactions

Method and Preference for Comparable

Six methods as defined by OECD without any hierarchy

Preference for local comparables

Peculiar features

Definition of international transaction very wide and also certain third party arrangements are deemed to be international transaction and covered.

Safe Harbour and APA

Not available as of now

BEPS/CbCR applicability

Not as of now

*The conversion rate considered is as of March 2023



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