

Seychelles

Transfer Pricing Country Profile

December 2021

		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 Seychelles' Transfer Pricing provisions endorse the arm's length principle, as per sections 4 and 54(1) of the Business Tax Act, 2009 as amended.	Section 54(1) of Business Tax Act, 2009 Section 4 of the Business Tax Act, 2009
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	<p>The OECD Transfer Pricing Guidelines are not explicitly included in Seychelles' legislation. The Guidelines will be considered as useful literature for advisory purposes on TP and shall be consulted in conducting TP-related work.</p> <p>Thus, the OECD Transfer Pricing Guidelines alongside the UN Practical Manual on Transfer Pricing for Developing Countries are guides that could be used for referencing and interpretation when the Seychelles Revenue Commission (SRC) auditors deal with TP cases.</p>	
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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No <p>A specific definition of related parties is not provided by Seychelles' legislation. However, reference is made to the definition of associates, which is regarded as being in accordance with the definition of related parties, based on section 3 of the Business Tax Act, 2009, as follows:</p> <p>Business Tax Act, 2009 - section 3:</p> <p>(1) Subject to subsection (2), two persons are associates if the relationship between them is such that one may reasonably be expected to act in accordance with the</p>	Section 3 of Business Tax Act, 2009

intentions of the other, or both persons may reasonably be expected to act in accordance with the intentions of a third person.

(2) Two persons are not associates solely by reason of the fact that one person is an employee of the other or both persons are employees of a third person.

(3) Without limiting the generality of subsection (1), the following are treated as associates –

(a) an individual and a relative of the individual, except if the Commissioner General is satisfied that neither person may reasonably be expected to act in accordance with the intentions of the other;

(b) a partner in a partnership and the partnership, if the partner, either alone or together with an associate or associates under another application of this Seychelles Updated August 2018 section controls fifty per cent or more of the rights to income or capital of the partnership;

(c) a trust and a person who benefits or may benefit under the trust whether through the exercise of a power of appointment or otherwise;

(d) a member in an entity and the entity, if the member, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons – (i) fifty per cent or more of the voting power in the entity;

(ii) fifty per cent or more of the rights to a distribution of profits; or

(iii) fifty per cent or more of the rights to a return of capital, or

(e) two entities, if a person, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons –

(i) fifty per cent or more of the voting power in both entities;

(ii) fifty per cent or more of the rights to a distribution of profits in both entities; or

(iii) fifty per cent or more of the rights to a return of capital in both entities.

(4) In applying subsection (3)(d) or (e) holdings that are attributable to a person from an associate are not reattributed to another associate.

(5) In this section, “relative” in relation to an individual, means related by blood, marriage, or adoption.

Transfer Pricing Methods

4	<p>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</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="padding: 5px;">CUP</th> <th style="padding: 5px;">Resale Price</th> <th style="padding: 5px;">Cost Plus</th> <th style="padding: 5px;">TNMM</th> <th style="padding: 5px;">Profit Split</th> <th style="padding: 5px;">Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><input type="checkbox"/></td> </tr> </tbody> </table> <p>Seychelles' legislation does not provide for transfer pricing methods.</p> <p>However, Seychelles relies on the OECD Transfer Pricing Guidelines and the UN Practical Manual on Transfer Pricing for Developing Countries and, therefore, all the methods above are applicable.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	<input type="checkbox"/>						
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)										
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
5	<p>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</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 approaches provided by the OECD Transfer Pricing Guidelines and the UN Practical Manual on Transfer Pricing for Developing Countries are sought in the application of the transfer pricing methods.</p> <p>Moreover, Seychelles has a Public Ruling 2015-3 in place, which reflects the possibility for Seychelles to use the Most Appropriate Method.</p>	<p>Seychelles Public Rulings</p>												
6	<p>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</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 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> <p>Seychelles has not had any TP cases on commodity transactions yet.</p>													

		Seychelles relies on the OECD Transfer Pricing Guidelines and therefore the approach in paragraphs 2.18 -2.22 of the TPG may be followed.	
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	
		There is no explicit provision on comparability under domestic law. However, Seychelles shall follow the OECD Transfer Pricing Guidelines and the UN Practical Manual on Transfer Pricing for Developing Countries in this respect.	
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		There is no specific requirement to use domestic comparables or foreign comparables in the domestic law.	
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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Section 54 of the Business Tax Act, 2009
		Based on section 54(1) and 54(2) of the Business Tax Act, 2009, Seychelles' legislation allows the use of the arm's length measure for determining arm's length remuneration. Seychelles shall follow the OECD Transfer Pricing Guidelines and the UN Practical Manual on Transfer Pricing for Developing Countries in this respect.	
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Section 4 of the Business Tax Act, 2009
		The Business Tax Act, 2009, section 4, provides for comparability adjustments. Accordingly, it is provided that: "If it is not possible to determine the fair market value of an asset, property, service, or benefit at a particular time under subsection	

		<p>(1), the fair market value is the consideration of a similar asset, property, service, or benefit would ordinarily fetch in the open market at that time, adjusted to take account of the differences between the similar asset, property, service, or benefit.”</p> <p>Furthermore, Seychelles would rely on the guidance on comparability adjustments in the OECD Transfer Pricing Guidelines and in the UN Practical Manual on Transfer Pricing for Developing Countries.</p>	
Intangible Property			
12	<p>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Seychelles’ legislation or regulations do not contain any specific guidance on the pricing of controlled transactions involving intangibles. Seychelles relies on the OECD Transfer Pricing Guidelines and the UN Practical Manual on Transfer Pricing for Developing Countries on intangibles.</p> <p>In addition to that, section 2 of the Business Tax Act, 2009, provides for the definition of intangibles as follows:</p> <p>Business Tax Act, 2009 - section 2: “Intangible” means –</p> <p>(a) Any patent, invention, design or model, secret formula or process, trademark, copyright, or other like property or right;</p> <p>(b) Contractual rights with a benefit for a period of more than one year; or</p> <p>(c) Any expenditure that provides an advantage or benefit for a period of more than one year, other than expenditure incurred to acquire any intangible movable or immovable property.</p>	Section 2 of the Business Tax Act , 2009
13	<p>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard-to-value intangibles (HTVI)?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Seychelles’ domestic laws or regulations do not provide for transfer pricing rules or special measures regarding HTVI. However, Seychelles may follow the OECD Transfer Pricing Guidelines and the UN Practical Manual on Transfer Pricing for Developing Countries.</p>	
14	<p>Are there any other rules outside transfer pricing rules that are relevant</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	

	for the tax treatment of transactions involving intangibles?		
Intra-group Services			
15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Seychelles would follow the OECD Transfer Pricing Guidelines and the UN Practical Manual on Transfer Pricing for Developing Countries.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		While there is no simplified approach for low value-adding intra-group services in Seychelles domestic law or regulation, Seychelles follows the approach in the OECD Transfer Pricing Guidelines in this respect.	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>Section 2(a) of the Business Tax (Amendment) Act, 2012</p> <p>Section 8 and 66 of the Business Tax Act</p>
		<p>Seychelles has withholding tax for technical service fees, which is defined in section 2(a) of the Business Tax (Amendment) Act, 2012, as follows:</p> <p>Section 2(a) of the Business Tax (Amendment) Act, 2012 –</p> <p>“technical service fee” means an amount whether periodical or lump sum as consideration for –</p> <p>(i) Rendering any managerial, technical or consultancy services including the services of technical or other personnel;</p> <p>(ii) The supply of any technical, industrial, commercial or scientific knowledge, experience or skill;</p> <p>(iii) The supply of services which are ancillary and subsidiary for which royalties are received.</p> <p>Based on items 3(c) of the First Schedule of the Business Tax Act, 2009, the rate of withholding tax under Section 8 and Section 66 respectively, of the same Act, is 15%, in terms of a technical service fee.</p>	

Financial Transactions

18	Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<p>Seychelles do not have any domestic legislation or regulation on transfer pricing of financial transactions. However, the guidance on the OECD TPG may be followed.</p>	
19	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Cost Contribution Agreements

20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<p>Seychelles does not have any legislation or regulation on cost contribution agreements. However, Seychelles relies on the OECD Transfer Pricing Guidelines and the UN Practical Manual on Transfer Pricing for Developing Countries in this respect.</p>	

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	
		<p><i>If affirmative, please check all that apply:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input checked="" type="checkbox"/> Other (specify): Transfer pricing documentation upon request 	

22	<p>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</p>	<p>Public Ruling 2015-3 states that documentation must be prepared prior to the due date for filing of the business tax return and submitted to the tax authority within five days upon written request.</p> <p>There is no specific or exact structure of documentation or submission and no prescription on the language of submission. The Revenue Commissioner expects a person to record, in writing, sufficient information and analysis to verify their transactions which are applicable to Section 54 of the Business Tax Act.</p>	<p>Section 54(1) of Business Tax Act, 2009 Public Ruling 2015-3</p>
23	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>No specific transfer pricing penalties or compliance incentives regarding transfer pricing documentation are provided by Seychelles' legislation. In the absence of transfer pricing documentation, and in cases of a transfer pricing adjustment, a penalty would apply based on the additional tax and interest for late payment of the new revenue liability. In addition to this, there are also culpability penalties that take into account the taxpayer behaviour in imposing an additional tax. Where there has been a public ruling issued, and the taxpayer has voluntarily ignored the position of the tax office on a matter, the tax office will consider that the failure of compliance is caused by recklessness and therefore the additional tax applicable would be 50% of the revenue shortfall rather than 25% of the revenue shortfall for failure to take reasonable care.</p> <p>Therefore, where a taxpayer does not abide by the directives under the Public Ruling 2015-3 on Transfer Pricing, and an adjustment is made, the person will suffer additional tax of 10% on revenue shortfall, interest for late payment and an additional tax of either 25%, 50% or 75% if the taxpayer has attempted to purposefully deceive the Tax office by failing to take reasonable care, or was reckless as to the operation of the tax law or lastly intended to disregard the tax law.</p> <p>Section 41 of the Revenue Administration Act, 2009 provides guidance on the interest applicable, as follows:</p> <p>“(1) a taxpayer who fails to pay revenue by the due date is liable for interest on the amount unpaid computed for the period commencing on the due date for payment and ending on the date that the revenue was paid.</p> <p>(2) The rate of interest for the purposes of subsection (1) is the quarterly average prime lending rate on the first day of the period specified in subsection (1) as published by the Central Bank of Seychelles increased by three percentage points.</p>	<p>Section 41 & 44(1) of the Revenue Administration Act, 2009</p> <p>Section 44A of the Revenue Administration (Amendment) Act, 2009</p> <p>Public Ruling 2015-3 on Transfer Pricing</p>

(3) Interest paid by a taxpayer under subsection (1) shall be refunded to the taxpayer to the extent that the revenue to which the interest relates is found not to have been payable.

(4) Interest payable under this section-

(a) is computed as simple interest; and

(b) is in addition to any additional tax or criminal sanction imposed in respect of the same act or omission.

(5) In this section, “revenue” does not include interest imposed under this section.”

Moreover, section 44(1) of the Revenue Administration Act, 2009 states that:

“A taxpayer who fails to pay revenue by the due date, or if the Revenue Commissioner has extended the due date under section 22, is liable for an amount of additional tax equal to 10% of the amount of unpaid revenue.”

Regarding the culpability penalty, section 44A of the Revenue Administration (Amendment) Act, 2015, reads as follows:

“Where a person –

Makes a statement to a revenue officer which is false or misleading and which results in a revenue shortfall, or is assessed in accordance with section 9 of this Act, The person is liable for an amount of additional tax in accordance with subsection (2).

The amount of additional tax referred to in subsection (1) shall be equal to – in case of the statement under subsection (1)(a)-

25% of the revenue shortfall where the statement being made by failure to take reasonable care to comply with revenue laws;

50% of the revenue shortfall where the statement being made with recklessness as to the operation of revenue laws; or

75% of the revenue shortfall where the statement is made with intentional disregard of revenue laws; or

In the case of an assessment under subsection (1)(b), 75% of the revenue liability. Where a person has been previously liable to additional tax referred to in this section, the amount of additional tax under subsection (2) shall be increased by 20%.

For the purpose of this section, a revenue shortfall is –

The amount by which the revenue liability of the person is less than it would have been if the statement was not false or misleading; or

		An amount the Commissioner must pay or credit the person that is more than it would have been if the statement were not false or misleading. The revenue liability does not include the interest or additional tax.”	
24	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	N/A	
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 checked="" type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input checked="" type="checkbox"/> Other (<i>please specify</i>): Domestic administrative dispute resolution</p>	<p>Seychelles' MAP Profile</p> <p>Section 62 of the Revenue Administration Act</p> <p>Section 70 of the Revenue Administration Act</p>
		<p>Seychelles is allowed by law to issue public rulings that would set the position of the tax office on a matter that causes difficulties of interpretation.</p> <p>Seychelles also has a DTAA network that provides for MAP.</p> <p>While there is no procedure for APAs at the moment, there is also nothing in Seychelles' law which prevents Seychelles from issuing an advance pricing agreement.</p> <p>When a taxpayer is dissatisfied with any revenue decisions, he can object to the unit in charge of dealing with objection at the tax office and, if still dissatisfied, he can appeal to the Revenue Tribunal. The Revenue Tribunal is a body created under the revenue law and is specialised in dealing with tax disputes.</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	
		Seychelles does not have any rules on safe harbours.	
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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Seychelles does not have any specific laws or regulations for year-end adjustments. However, Seychelles follows the guidance on the OECD TPG in this respect.	
29	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Currently, no secondary adjustments are available in the Seychelles legislation.	

Attribution of Profits to Permanent Establishments

30	Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input checked="" type="checkbox"/> Yes Article 7 of all the 28 tax treaties in force for Seychelles covers the Attribution of Profits to Permanent Establishment.	Tax information exchange agreements (TIEAs) and Double taxation agreements (DTAs)
		<input type="checkbox"/> No	
31	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>)	Seychelles is in the process of developing a Transfer Pricing regulation to supplement Section 54 of the Business Tax Act to provide additional provisions and set out in law the Seychelles approach to transfer pricing.	

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