

Switzerland

Transfer Pricing Country Profile

Updated October 2017

	SUMMARY	REFERENCE
The Arm's Length Principle		
1	<p>Does your domestic legislation or regulation make reference to the Arm's Length Principle?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>According to the case law of the Swiss Federal Supreme Court (see the specific Reference), Article 58 of the Federal Law on Federal Direct Tax of December 14, 1990 (FDTL) and Article 24 of the Federal Law on Harmonization of the Cantonal and Communal Taxes of December 14, 1990 (FTHL) create the necessary legal basis for application of the Arm's Length Principle. Both articles deal with the taxable basis for corporations.</p>	<p>Article 58(1)(b or c) of the FDTL https://www.admin.ch/opc/fr/classified-compilation/19900329/index.html</p> <p>Article 24(1)(a or b) of the FTHL https://www.admin.ch/opc/fr/classified-compilation/19900333/index.html</p> <p>And case law (see notably): 2C_1082 and 1083/2013 of January 14, 2015, para. 5.1 2C_644/2013 of October 21, 2013, para. 3.1, or 2C_834/2011 of July 6, 2012, para. 2.1 https://www.bger.ch/ext/eurospider/live/fr/php/clir/http/index.php?lang=fr</p>
2	<p>What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?</p> <p>Switzerland relies on the transfer pricing guidelines as a source for the interpretation of the arm's length principle.</p>	
3	<p>Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>Case law (see the Revue de Droit Administratif et Fiscal - RDAF):</p>

	definition contained under your domestic law or regulation.	The Swiss Federal Supreme Court has in his jurisprudence (see the reference to the Revue de Droit Administratif et Fiscal) defined this expression. Accordingly, an entity is considered related if primarily a commercial or secondarily a personal close relationship exists between the two entities. Therefore, a direct or indirect participation in the management, control or capital is not required. The crucial question is if the tested transaction was conducted only as a consequence of the associated relationship or not.	RDAF 2004 II 41 http://www.rdaf.ch/
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Transfer Pricing Methods

4	Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If affirmative, please check those provided for in your legislation: <table border="1" data-bbox="680 600 1529 759" style="margin-left: 40px;"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (If so, please describe)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </tbody> </table> <p>Switzerland relies on the methods suggested in the OECD Transfer Pricing Guidelines without having any direct reference to any method in its domestic legislation.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)										
<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	Which criterion is used in your jurisdiction for the application of transfer pricing methods?	Please check all that apply: <ul style="list-style-type: none"> <input type="checkbox"/> Hierarchy of methods <input checked="" type="checkbox"/> Most appropriate method <input type="checkbox"/> Other (if so, please explain) <p>In practice, Switzerland tends to rely on the most appropriate method as recommended by the OECD Transfer Pricing Guidelines.</p>	
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6	If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.	<input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed. <input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (if so, please explain) <input type="checkbox"/> Other (if so, please explain)	
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Swiss domestic legislation does not contain specific guidance on commodity transactions.

Comparability Analysis

7	<p>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
8		<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
9	<p>Does your tax administration use secret comparables for transfer pricing assessment purposes?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
10	<p>Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
11		<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	

In practice, where appropriate, Switzerland relies upon the OECD Transfer Pricing Guidelines.

In practice, statistical tools that take into account central tendency like the interquartile range or other percentiles are usually used to narrow the range.

Intangible Property

12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Swiss domestic legislation does not contain specific guidance on the pricing of controlled transactions involving intangibles and tend to rely on the OECD Transfer Pricing Guidelines.	
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

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	
16	Do you have any simplified approach for low value-adding intra-group services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		The Swiss competent authority has advised the Swiss tax administrations to apply the simplified approach for low value-adding intra-group services as described by the OECD.	

17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Cost Contribution Agreements			
18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Transfer Pricing Documentation			
19	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If affirmative, please check all that apply:</i> <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 checked="" 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 type="checkbox"/> Other (specify): 	<p>Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals (CbCR law; entry into force 1st December 2017) https://www.admin.ch/opc/fr/federal-gazette/2017/3977.pdf</p> <p>Ordinance on the International Automatic Exchange of Country-by-Country Reports of Multinationals (CbCR ordinance; entry into force 1st December 2017) https://www.newsd.admin.ch/newsd/message/attachments/49802.pdf</p>
20	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	Besides the obligation to file a Country-by-country report, there is no additional specific requirement concerning transfer pricing. Swiss domestic legislation (Please, see the specific Reference) require the taxpayer to provide all documents necessary for properly assessing the taxable income. In case of related transactions, the taxpayer has to demonstrate that the transfer prices used are based on the arm's length principle.	<p>Article 124 FDTL https://www.admin.ch/opc/fr/classified-compilation/19900329/index.html</p> <p>Article 42 FTHL https://www.admin.ch/opc/fr/classified-compilation/19900333/index.html</p>

21	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The Country by Country (CbC) law contains notification mechanisms that will apply to Ultimate Parent Entities and Surrogate Parent Entities in Switzerlandⁱ. Furthermore, there are also penalties in relation to the filing and registration obligations of CbC reportingⁱⁱ: (i) penalties for non-filing or late filing (ii) penalties for incorrect or inaccurate filing and (iii) general penalties for non-compliance with the Swiss Federal Tax Administration's orders. Switzerland may also conduct inspections to verify that the obligations of the Constituent Entities are fulfilledⁱⁱⁱ.</p> <p>Besides the obligation to file a Country-by-country report, Switzerland does not have specific transfer pricing legal documentation requirements, but if requested by the Swiss Federal Tax Administration or the cantonal tax authorities, taxpayers must demonstrate that the transfer prices applied rely on sound economic and commercial reasoning and comply with the arm's length principle. Sanctions may apply if the taxpayer does not collaborate with the tax authorities.</p>	<p>Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals (CbCR law; entry into force 1st December 2017) https://www.admin.ch/opc/fr/federal-gazette/2017/3977.pdf</p> <p>Circular Letter of the Federal Tax Administration of 4 March 1997 (not available online)</p>
22	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>The CbC law provides for exemptions only consistent with Annex III to Chapter V of the TPG (e.g. for MNE with a total consolidated group revenue of 900 million Swiss Francs or less [see Article 6 CbC law and Article 2 CbC ordinance]).</p>	<p>Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals (CbCR law; entry into force 1st December 2017) https://www.admin.ch/opc/fr/federal-gazette/2017/3977.pdf</p> <p>Ordinance on the International Automatic Exchange of Country-by-Country Reports of Multinationals (CbCR ordinance; entry into force 1st December 2017) https://www.news.admin.ch/news/message/attachments/49802.pdf</p>

Administrative Approaches to Avoiding and Resolving Disputes

23	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	Please check those that apply: <input checked="" type="checkbox"/> Rulings <input type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (APA) <input checked="" type="checkbox"/> Unilateral APAs <input checked="" type="checkbox"/> Bilateral APAs <input checked="" type="checkbox"/> Multilateral APAs <input checked="" type="checkbox"/> Mutual Agreement Procedures <input type="checkbox"/> Other (<i>please specify</i>):	
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Safe Harbours and Other Simplification Measures

24	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No The Federal Tax Administration has issued circulars containing safe harbours rules with regard to thin capitalization and intra-group interest rate.	Circular No. 6 of the Federal Tax Administration of 6 June 1997 on hidden capital (not available online) Circular-letters of the Federal Tax Administration on the admissible interest rate for the loans in Swiss francs or foreign currencies (updated regularly and published on the website of the Federal Tax Administration) (https://www.estv.admin.ch/estv/fr/home/direkte-bundessteuer/direkte-bundessteuer/fachinformationen/rundschreiben.html)
25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.		

Other Legislative Aspects or Administrative Procedures

26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		<p>The financial statements of a company can be changed, among other things to make year-end adjustments, until they are formally approved by the competent organ.</p>	
27	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		<p>In practice, secondary adjustments are not required. If a secondary adjustment is made in the context of primary and corresponding adjustments that have been agreed upon in a MAP then no withholding tax should be withheld.</p>	

Other Relevant Information

28	Other legislative aspects or administrative procedures regarding transfer pricing		
29	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>)		

ⁱ See Article 10 of the CbCR law.

ⁱⁱ See Articles 12, 25 and 26 of the CbCR law. Article 12 of the CbCR law contains a penalty for late filing or failure to file of 200 Swiss Francs per day after the filing deadline (with a maximum of 50 000 Swiss Francs). Article 25 of the CbCR law contains a maximum penalty of 100 000 Swiss Francs for willfully incorrect or incomplete CbC reports. Article 26 of the CbCR law contains a maximum penalty of 10 000 Swiss Francs for not following the administrative order of the Swiss Federal Tax Administration issued according to Article 22 of the CbCR law.

ⁱⁱⁱ See Article 22 of the CbCR law.