

BANGLADESH

TRANSFER PRICING LANDSCAPE

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, 1984. 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.

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' is comprehensive and includes the following relationships:

- Direct or indirect participation in the management/control/capital of an enterprise
- Direct or indirect holdings of shares carrying more than 25% of the voting power in the enterprise
- 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
- 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 associated enterprises, where either one or both enterprises are non-residents, and it has a bearing on the profits, income, losses, assets, financial position or economic value of such enterprises.

International transactions also include deemed international transactions i.e. transactions entered into by an enterprise with a third party, and if there exists a prior agreement between the third party and the associated enterprise with respect to the relevant transaction, or if the terms of the relevant transaction are determined in substance between third party and the associated enterprise.

Computation of arm's length price

Arm's length price is determined by applying the most appropriate method from the six transfer pricing methods prescribed:

- Comparable uncontrolled price;
- 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 use of prior-period data is permitted if such data bears such facts which can influence the comparability analysis.

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 390,000).

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 associated enterprise 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 the international transactions.

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 on or before the specified date in a prescribed form, a report from a Chartered Accountant.

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 international transaction
Failure to furnish report from a Chartered Accountant	Not exceeding BDT 300,000

Safe harbour rules/tolerance band

There are no safe harbour rules prescribed in Bangladesh.

Furthermore, the provisions are silent with regard to the determination of an arm's length price when more than one comparable price is available; whether a single arm's length price is allowed, or whether a range concept is preferred.

Benchmarking search/comparables

The provisions are silent on which databases would be accepted for benchmarking search/determining comparable companies and what is the preference for local comparables vis-a-vis regional comparables.

OECD/UN Guidelines

The documentation requirements are largely based on the Organization for Economic Co-operation and Development transfer pricing guidelines and UN transfer pricing manual.

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.

SUMMARY OF TRANSFER PRICING REQUIREMENTS

Effective from	1 July 2014
Compliance requirements	<ul style="list-style-type: none">• 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 0.38 million)• Compulsory contemporaneous documentation if transactions exceed BDT 30 million (USD 0.38 million)
Penalties	Significant and linked to value of transactions
Method and preference for comparable	Five 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/CbC applicability	Not as of now

*The conversion rate considered is as on 23 May 2016

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