



# Transfer Pricing

## Spain

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# Laws in effect

## Arm's length principle

The law provides that corporate taxpayers are obliged to value their domestic and international intercompany transactions at arm's length prices whether or not the valuation leads to lower or deferred taxation.

## Transfer pricing methods

The consideration in transactions between related parties must be valued on an arm's length basis.

There are five methods to support that related-party transactions comply with the arm's length principle:

- comparable uncontrolled price
- cost-plus
- resale price
- profit-split and
- transactional net margin methods.

Generally accepted transfer pricing methods which are consistent with the arm's length principle are also allowed.

In line with the current wording of Chapters I through III of the OECD Guidelines, the most appropriate method must be chosen on the basis of factors such as the characteristics of the controlled transaction, the availability of reliable information and the degree of comparability with uncontrolled transactions.

The former CITL in force until 31 December 2014 established a hierarchy of the methods to value the considerations of a transaction at arm's length. However, the current CITL removes the preference for the comparable uncontrolled price (CUP), cost-plus and resale price methods over the profit split and the transactional net margin method (TNMM). This non-hierarchy is in line with the OECD Guidelines.

## Scope of legislation

The Spanish transfer pricing rules cover any kind of transactions between related parties, as described, regardless of whether they are purely domestic or cross-border. In addition, and according to the current CITR, transactions with persons or entities resident in a tax haven jurisdiction for Spanish purposes must be valued at arm's length and are subject to the documentation requirements.

Parties are taken to be related where the parties are:

1. an entity and its participants or directors (or their relatives)
2. two companies forming part of the same group of companies for accounting purposes
3. a parent holding indirectly at least 25% of the capital of the subsidiary
4. two companies participated, directly or indirectly, by the same shareholders (or their relatives) in at least 25% of the capital
5. a resident company and its permanent establishments abroad or
6. two companies where one controls the other. Where the relation is between a company and its shareholders (case (1)), a minimum shareholding of 25% is required to establish the relationship.

Contrary to former regulations, the burden of proof lies on the taxpayer, who is required to prepare and maintain specific transfer pricing documentation that reflects the reasons for electing a valuation method and the comparables used.

## Reporting requirements

Under the current CITR, any transactions with individuals or entities resident in a tax haven for Spanish purposes (except those located in the European Union and carried out for sound economic reasons in the context of a business activity) must be reported. Additionally, Spanish entities involved in transactions with tax residents of tax haven jurisdictions must identify the entities and their directors, or the individuals, involved in such transactions as part of the documentation obligations.

The CITR has strengthened the documentation obligations of transactions with non-related parties that are residents in a tax haven. These obligations are now the same as for related-party transactions with regard to country-by-country reporting, group documentation and taxpayer residence in a tax haven with which the taxpayer carries out transactions.

Failing to identify the counterparties with residence in a tax haven has a penalty of €1,000 per counterparty.

## **Order approving Form 232 regarding information on transactions between related entities and situations related to tax havens – published**

On 30 August 2017, Ministerial Order HFP/816/2017 approved Form 232, which requires taxpayers to separately report on transactions made between related entities as well as transactions and situations connected to countries or territories that are considered tax havens, was gazetted. The Order retroactively applies to tax periods starting as from 1 January 2016.

Form 232 should be submitted electronically in the month after the 10th month following the end of the fiscal period to which the information is related. However, for 2016 tax periods, the deadline is from 1 November to 30 November 2017. The following should be reported:

- transactions with related persons or entities: all transactions carried out within the tax period with the same person or related entity when the amount of overall transactions exceeds EUR 250,000 at market value; and
- specific transactions (i.e. those excluded from the simplified documentation content): whenever the combined amount of each type of transaction within the tax period exceeds EUR 100,000, irrespective of the valuation method.

Notwithstanding these thresholds, the Order establishes mandatory reporting for tax periods starting in 2016 with respect to transactions with related persons or entities of the same nature and valuation method, when the joint amount exceeds 50% of the turnover of the entity.

The details of Corporate Income Tax (CIT) Form 200 for tax period 2015 are transposed to Form 232 with regard to:

- transactions with related persons or entities in which a reduction applies on income derived from the use of, or the right to use, certain intangible assets (article 23 of the CIT Law); and
- information related to transactions with countries or territories that are considered tax havens.

## Local and master file

In order to comply with OECD BEPS Action 13 recommendations Spain introduced local and master file compliance for fiscal years starting on or after 1 January 2016.

Master file will apply to Spanish MNEs members with a turnover equal to or exceeding €45m. There is no requirement to submit the file, however it should be prepared by the annual tax return deadline (six months and 25 days after the end of a relevant fiscal year). The documentation should be prepared in Spanish. Penalties for non-compliance or for providing false information may be subject to penalties ranging between €1,000 and €10,000.

Local file has the same financial period, language and submission requirements as the master file. There is a possibility to submit a simplified local file if aggregated group revenue does not exceed €45m or super simplified local file if taxpayers revenue is below €10m.

## Safe harbour

Small and medium-sized enterprises (in this context, corporate taxpayers with less than €10m turnover) are exempt from the documentation requirements, provided the total amount of intercompany transactions does not exceed €100,000; however, transactions with related persons or entities resident in tax havens are always subject to the documentation requirements.

## Cost sharing

The Spanish legislation does not provide for a definition of cost contribution agreements (CCAs).

In order for a deduction to be allowed for the charges derived from contributions to a CCA, the CCA must meet some requirements. In this sense, contributions made by each member must be valued as a function of the expected benefits for each member, based on a rational criterion. The contributions must therefore be determined from quantitative (expected benefits) and qualitative criteria (the rationality).

There is no further guidance from the Spanish tax authorities and no specificities in relation to the criteria of the OECD Guidelines in this regard.

## Dispute resolution

If the residence state is willing to change the taxable base because it agrees with the arguments presented by the taxpayer, it should immediately adjust or refund the amounts claimed. If the residence state does not agree with the criteria applied by the other state, a mutual agreement procedure would be commenced by contacting the authorities of the other state.

In Spain, unilateral, bilateral and multilateral advance pricing agreements, APAs can be obtained. However, the most common approach is to begin APA processes for unilateral APAs.

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