



# Transfer Pricing

## Romania

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# Laws in effect

## Arm's length principle

Transactions are required to be made in line with the arm's length principle. This means that transactions with related companies must be made under similar terms and conditions as transactions would have been agreed between unrelated companies. The OECD Guidelines are followed.

## Transfer pricing methods

The following methods are applicable:

- the comparable uncontrolled price method, CUP,
- the resale price method,
- the cost plus method,
- the transactional net margin method, and
- the profit split method.

CUP is the preferred method.

## Definition of related companies

A company is regarded as related to another company if it holds at least 25% of the shares or voting rights in the other company. Further, two companies are related if a third company holds at least 25% of the shares or voting rights in each company.

## Reporting requirements

There are no specific reporting requirements regarding transfer pricing.

## Documentation requirements

With effect from 1 January 2016, the transfer pricing documentation file must be prepared by all taxpayers that carry on transactions with associated companies. (Before this date, the transfer pricing file was prepared only at the request of the tax authorities.) The documentation must be written in Romanian.

## Master File and Local File

On 2 February 2016, Official Gazette No. 74 published Order No. 442 (the Order), issued by the National Agency for Fiscal Administration, regarding the transfer pricing file and the procedure for adjusting/estimating transfer prices.

According to the Order, large taxpayers must prepare the transfer pricing file if the annual value of their transactions (excluding VAT) with associated companies exceeds:

- EUR 200,000 in the case of interest derived/paid in relation to financial services;
- EUR 250,000 in the case of the supply of services; and
- EUR 300,000 in the case of the purchase/sale of tangible and intangible goods.

Large taxpayers engaged in transactions not exceeding the above value thresholds and other taxpayers must prepare and present the transfer pricing file only at the request from the tax authorities, and provided that the annual value of their transactions (excluding VAT) with associated companies exceeds:

- EUR 50,000 in the case of interest derived/paid in relation to financial services;
- EUR 50,000 in the case of the supply of services; and
- EUR 100,000 in the case of the purchase/sale of tangible and intangible goods.

Taxpayers engaged in transactions whose annual value is below the above thresholds must be able to justify, during a tax audit, that their transactions with associated parties are carried on at arm's length.

The transfer pricing file must be prepared by 25 March of the year following the tax year (i.e. the term for submitting the annual tax return). Taxpayers must submit the transfer pricing file within 10 days after receiving a request from the tax authorities, but not earlier than 10 days following the deadline for preparing the file.

Taxpayers that have entered into an advance pricing agreement need not prepare the transfer pricing file.

If transactions with associated companies are not conducted at arm's length, the tax authorities may adjust (or estimate, in case the taxpayer does not provide the necessary documentation) the amount of income or expenses of either party to reflect the market price.

The Order also lays down that the OECD Transfer Pricing Guidelines and the Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD) (2006/C 176/1) must be observed.

## Cost sharing

Cost contribution arrangements, CCAs, must be made in line with the arm's length principle. CCAs may be used for cost sharing regarding research and development of intellectual property, IP. After receiving guidance from the tax authority, a CCA may also be used for cost sharing for services.

To be accepted by the tax authority, a CCA shall be a written contract and pass the benefit test, meaning that participants in the arrangement must expect to derive benefits thereof. Further, the allocation of costs must be proportional to the expected benefits for each company. Regarding research and development, the arrangement is required to stipulate that the participating companies will share the loss if the project fails and that they will have the right to use the IP without charge, if the project is successful.

The contract and documentation should include a plan for the costs over time and the estimated outcome. Also, the costs for each company should be specified in detail, as well as the activities of each company. Further, it should be clarified in the agreement how decision-making will be made and that information about the cost of the arrangement each year will be provided to the companies. The contract should also clarify the procedure of including new participants and withdrawal from the arrangement.

## Dispute resolution

If a company does not meet the documentation requirements, a fine of up to RON 14,000 may be levied. The tax authority may adjust the taxable income if transactions have been made not in line with the arm's length principle. In case of an adjustment, general penalties and late payment interest may be imposed. The limitation on transfer pricing adjustments by the tax authorities is generally five years.

Advance pricing agreements applicable for up to five years are available.

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### **Global Office**

New Bridge Street House  
30-34 New Bridge Street  
London, EC4V 6JB, United Kingdom  
[info@bakertilly.global](mailto:info@bakertilly.global)

**[bakertilly.global](https://www.bakertilly.global)**