



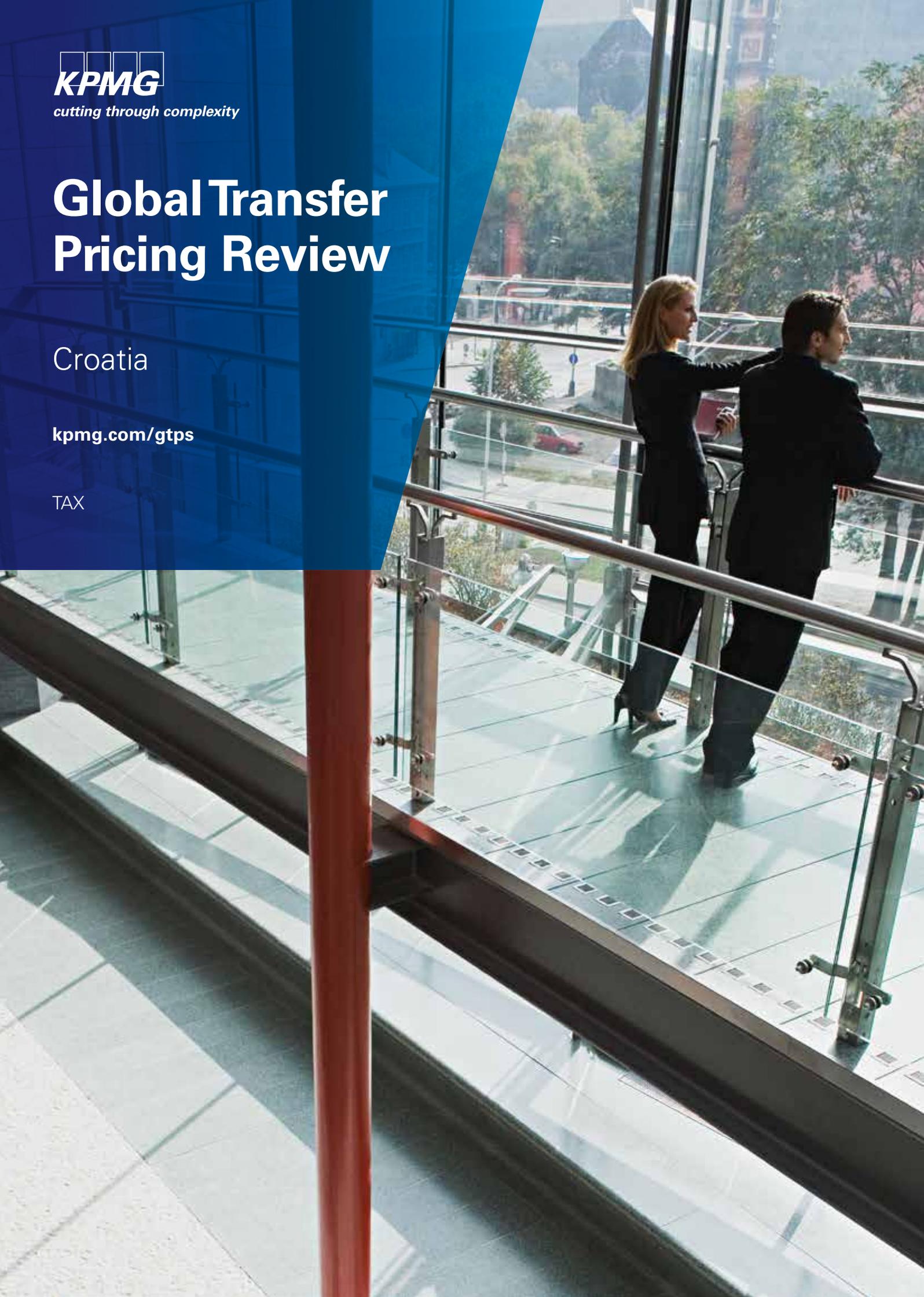
cutting through complexity

Global Transfer Pricing Review

Croatia

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TAX



Croatia



KPMG observation

The Croatian Tax Authority (CTA) is regularly performing detailed transfer pricing audits, with the primary targets being large taxpayers. Other audit triggers, apart from size, include a steep fall in profit, continuing losses and companies that are part of multinational groups.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

Basic information

Tax authority name

Ministarstvo Financija, Porezna uprava (Ministry of Finance, Tax Authority).

Citation for transfer pricing rules

Croatian Corporate Profit Tax (CPT) Law, Article 13, and CPT Regulations, Article 40.

The Institute for Public Finance, Ministry of Finance, issued in May 2014 the Manual for Inspection of Transfer Prices (the Manual). Although the Manual is not legally binding, it provides useful guidance in relation to transfer pricing matters and what the CTA might expect from taxpayers.

Effective date of transfer pricing rules

1 January 2005 – new CPT Law entered into force introducing definitions of related parties and transfer pricing methods.

1 July 2010 – amendments to the CPT Law introducing provisions that transfer pricing rules also apply to domestic

related parties, provided certain conditions are met.

March 2012 – amendments to the CPT Law to harmonize with Organisation for Economic Co-operation and Development (OECD) Guidelines by abolishing the provision that the comparable uncontrolled price (CUP) method is the preferred transfer pricing method.

June 2012 – amendments to the CPT Regulations introducing terms ‘traditional transactional method’ and ‘transactional profit based method’ as well as ‘best method rule’.

What is the relationship threshold for transfer pricing rules to apply between parties?

The definition of related parties is very broad, but specifically includes situations where one party directly or indirectly participates in the management, control, or capital of another party (no specific thresholds), or if the same parties participate directly or indirectly in the management, control or capital of another party.

What is the statute of limitations on assessment of transfer pricing adjustments?

The statute of limitations is three years and commences after the end of the year in which any tax liabilities should have been assessed (e.g. for the 2014 year the statute of limitations expires at the end of 2018). Under certain conditions an absolute statute of limitations of six years may apply.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No. Not unless specifically requested by the CTA.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, for certain transactions. Croatian CPT legislation includes mandatory elements for a transfer pricing study and generally follows Chapter V of the OECD Guidelines.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

No.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

Documentation should be made available immediately upon request.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

An adjustment is proposed following a tax audit on the basis of a tax

assessment issued by the CTA. The taxpayer can appeal the tax assessment to an independent second degree body within the Ministry of Finance.

If the taxpayer receives a negative ruling from the independent second degree body, the taxpayer is required to pay the corporate profits tax assessed, penalty interest and any fixed penalties. The taxpayer can then appeal to the Administrative Court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. The CPT law prescribes fixed penalties between 2,000 and 200,000 Croatian kunas (HRK). Additional taxable income assessed is subject to the standard CPT rate of 20 percent increased by a penalty interest of 12 percent per annum.

To what extent are transfer pricing penalties enforced?

Transactions with foreign related parties are often scrutinized by the CTA and in the case of any non-compliance with the provisions of the tax legislation, the CTA can adjust taxable income and where any increase of taxable income can result in an additional CPT liability assess penalty interest. In addition, the CTA may impose fixed penalties. Tax audits are regularly performed by the CTA. Domestic transactions in certain circumstances are also focused on with similar implications.

What defenses are available with respect to penalties?

Timely prepared transfer pricing documentation.

What trends are being observed currently?

As in previous years, the CTA has shown increasing interest in related party transactions and transfer pricing documentation. Transfer pricing audits are regularly performed. Audit triggers, apart from company size, include a sharp fall in profit, continuing losses and those companies that are part of multinational groups. Further, the CTA requested a number of large taxpayers to submit transfer pricing studies with their annual CPT returns for 2014 (which were due four months after the end of the financial year). This trend is likely to continue in the future.

Special considerations

Are secret comparables used by tax authorities?

There are no specific rules in the transfer pricing provisions; however, they are often used by the CTA in practice.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No. There is no requirement to include local comparables in the benchmarking set. However, it is recommended to include them as local comparable entities are affected by some of the same developments, such as industry and economic trends.

Do tax authorities have requirements or preferences regarding databases for comparables?

There is no requirement regarding the use of a certain database for performing searches for comparables. The CTA uses the Orbis database.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, sometimes.

Does the tax authority have other preferences in benchmarking? If so, please describe.

There is no requirement regarding other preferences in benchmarking but it is recommended to use independence thresholds for comparables companies in which one shareholder being a legal person/entity holds less than 25 percent of the share capital but the company can have a shareholder which holds more than 25 percent of share capital under the condition that such shareholder is an individual.

Multiple year averages are recommended to use contrary to single year average.

What level of interaction do tax authorities have with customs authorities?

High.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes. Tax audits could attempt to scrutinize management fees if they

are beyond the arm's length principle. Assuming documentary support exists and economic benefit can be proven, management fees are deductible.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. Tax audits could attempt scrutinize royalties if they are beyond the arm's length principle. Assuming documentary support exists and economic benefit can be proven, royalties are deductible.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. CPT legislation does not include specific provisions or rules related to year-end transfer pricing adjustments. However, year-end adjustments occur in practice.

Year-end adjustments may result in assessment and penalty interest on any customs duty/VAT that was not settled in a timely manner. Also, fixed penalties may be charged due to non-compliance with the relevant legislation.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

Limited practical experience.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist in this area.

May a taxpayer go to competent authority before paying tax?

No formal rules exist in this area.

Advance pricing agreements

What APA options are available, if any?

None.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable.

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