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# Transfer Pricing Review

## Bangladesh

Tax



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## KPMG observation

Tax authorities around the world increasingly consider that international transactions provide scope for revenue leakage. As a result, National Board of Revenue (NBR) of Bangladesh introduced new regulation on transfer pricing in Bangladesh tax laws for the first time through Finance Act 2012 which has become effective from 1 July 2014.

Bangladesh transfer pricing regulation targets international transactions between two associated entities, either or both of whom are non-residents; hence transfer pricing regulation will mostly affect multinational companies or foreign companies having direct or indirect transactions with their subsidiaries, associates or other legal form of entities (e.g. branch office, agent, etc.) in Bangladesh.

Bangladesh transfer pricing regulation is broadly in line with OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010 and Transfer Pricing Legislation – A Suggested Approach 2011 issued by OECD.

In addition to necessary documentation on international transactions, Bangladesh transfer pricing regulation requires companies/enterprises to submit a statement of international transactions in a prescribed manner, and also a report from Chartered Accountants on the statement of international transactions if the aggregate value of such transactions exceeds BDT 30 million during any income year.

Given that transfer pricing regulation is very new to Bangladesh, it remains to be seen how the tax administration will implement this in practice.

## Basic information

### Tax authority name

National Board of Revenue (NBR).

### Citation for transfer pricing rules

- Chapter XIA, and sections 94 and 173 of Income Tax Ordinance (ITO), 1984
- Statutory Regulatory Order (SRO) 161/Act/Income Tax/2014
- Rules 70 to 75A of Income Tax Rules, 1984
- Income Tax Paripatra 2014 (i.e. interpretation issued by NBR)

### Effective date of transfer pricing rules

Effective from 1 July 2014  
(corresponding assessment year 2015-2016).

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

Bangladesh transfer pricing (TP) regulation incorporates a very wide definition of associated enterprises to include direct and indirect (e.g. through one or more intermediaries) participation in the management or control or capital as well as certain conditions wherein two enterprises are “deemed” to be associated enterprises. Enterprises under direct

or indirect common control of any person(s)/enterprises are also deemed to be associated enterprises.

Significant certain conditions include:

- Direct/indirect shareholding giving more than 25% of voting power, or for each of the enterprises, more than 25% voting power owned by the same person(s); or
- More than 50% of the board of directors/members of the governing board appointed by the other enterprise or more than 50% of the board of directors/members of the governing board of each of the enterprises appointed by the same person(s); or
- Any executive director /executive governing member of one enterprise

appointed by the other enterprise or any executive director/member of each of the enterprises appointed by the same person(s) or any common executive director/member for each of the enterprises; or

- Dependency relating to borrowings:
  - \* Cumulative borrowings – more than 50% of the book value of total assets or
  - \* Cumulative guarantees – more than 10% of the book value of the total borrowings; or
- Practical ability to control the decision of the other enterprise by one enterprise; or
- Bonded relationship of mutual interest between two enterprises as may be prescribed by NBR.

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

No order of assessment regarding transfer pricing adjustment under section 107C of the ITO 1984 shall be made after the expiry of three years from the end of assessment year in which the income was first assessable (except in cases involving fraud, etc.).

For example, if the accounting year ends on 31 December 2014, the first assessable assessment year would be 2015-2016. Hence no assessment of transfer pricing adjustment will be made after 30 June 2019.

## Transfer pricing disclosure overview

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

- Yes, every person who has entered into an international transaction shall furnish a statement of international transactions as per rule 75A (i.e. transfer pricing return) to the tax authority along with the return of income on annual basis.
- Furthermore, a report from Chartered Accountants must be

submitted if aggregate value of international transactions exceeds BDT 30 million during an income year.

### What types of transfer pricing information must be disclosed?

The following information is to be disclosed in the transfer pricing return:

- Item wise total expense and total revenue of the international transactions;
- Total value of international transactions;
- Nature of the transactions;
- Transfer Pricing Method (TPM) for determining arm's length price; and
- Percentage of international transactions under each item compared to total value of international transactions for that category (e.g. revenue transactions, service related transactions, financial transactions, etc.).

### What are the consequences of failure to prepare or submit disclosures?

- For failure to keep, maintain or furnish information, documents or records as required by TP regulation, a penalty not exceeding 1% of the value of each international transaction;
- For failure to comply with the notice issued by the Deputy Commissioner of Taxes regarding transfer pricing information, documents and records, a penalty of not exceeding 1% of the value of each international transaction;
- For failure to furnish a report from Chartered Accountants, a penalty not exceeding BDT 300,000; and
- In the absence of appropriate, reliable and correct documentation and records on international transactions, the Deputy Commissioner of Taxes can determine arm's length price of international transaction on the basis of information or documents or other evidence available to him.

## Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalised for mere failure to prepare a study?

No. In general, there is no obligation to prepare a complete study or a report. However, globally it is common practice to prepare a transfer pricing report in order to summarise all relevant information and to reduce penalty risks. Therefore, the taxpayer cannot be penalised for not having prepared a transfer pricing study or report.

If the aggregate value of international transactions in any income year exceeds BDT 30 million, TP regulation requires to document and maintain certain information and records (e.g. ownership profile, business profile, business relationship, function performed, risk assumed, assets employed, financial statements at individual and group level, economic & market analysis, details of comparability analysis, information of transfer pricing method chosen, etc.).

If the taxpayer does not provide upon request by the tax authority appropriate transfer pricing documentation, the result may be considerable penalties (e.g. additional tax payments, estimation of transfer prices and income corrections to the disadvantage of the taxpayer and cash penalties previously stated).

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

The preparation and maintenance of a transfer pricing study cannot be regarded as a simple compliance issue, rather as a proactive risk management exercise with regard to upcoming tax audits. In order to reduce the risk of double taxation, it is best practice to have proper and consistent transfer pricing studies across the group. Additionally, a transfer pricing study plays an important role in defending against penalties in case of an adjustment in the arms' length price.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Taxpayers have to submit required documentation, information and records on international transactions as per notice issued by the tax authority if TP tax audit is initiated.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Bangladesh is not a member of OECD, so it is not mandatory to follow content of transfer pricing study as per Chapter V of the OECD Guidelines. However, the taxpayers can follow the OECD Guidelines to support principles found in the Bangladesh Transfer Pricing Regulation. The Bangladesh Transfer Pricing Regulation should be relied upon where there are differences from the OECD Guidelines.  
United Nations Practical Manual on Transfer Pricing for Developing Countries issued in 2013 can also be followed.

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

Bangladesh transfer pricing regulation does not prescribe/mandate a specific designation which one must have to prepare transfer pricing documentation. Nevertheless, considering the onerous requirements of the law, taxpayers at times prefer to have the required transfer pricing documentation prepared by professionals who have requisite knowledge and expertise with regards to the same. Further, this would become especially important in light of the newly proposed stringent penalty provisions for non-reporting of international transactions.

## Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes. The following TP methods mentioned in Bangladesh TP regulation are in line with the OECD guidelines:

- comparable uncontrolled price method;
- resale price method;
- cost plus method;
- profit split method;
- transactional net margin method;
- any other method, if defensible

Is there a priority among the acceptable methods?

No.

If there is no priority of methods, is there a “best method” rule?

Yes. The most appropriate method will be the method which is best suited to the facts and circumstances of each particular international transaction, and which provides the most reliable measure of an arm’s length price in relation to an international transaction.

## Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The notice of TP tax audit (if initiated by the tax authority) shall specify the period within which the taxpayer will be required to furnish information as specified in the notice.

The transfer pricing documentation must be prepared on a contemporaneous basis, and should be maintained by the taxpayer for a period of 8 years from the end of the relevant assessment year.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

The taxpayer has the right to appeal against a transfer pricing adjustment to the following authorities:

- Commissioner of Taxes (Appeal)
- Tribunal
- High Court

There is now an additional option of trying to resolve the dispute called Alternative Dispute Resolution (ADR) to avoid the appeal going at any authorities mentioned above.

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

Under the general penalty regime, a

transfer pricing adjustment may lead to a penalty based on a percentage of actual tax loss not exceeding 10%.

Furthermore, interest at 10% p.a. on additional tax arising from TP adjustments following tax audit, can be added to the tax demand.

To what extent are transfer pricing penalties enforced?

The imposition of penalties is discretionary and depends upon the facts and circumstances of each individual case.

What defences are available with respect to penalties?

- Transfer pricing documentation represents the first line of defence against transfer pricing audits and is crucial for mitigating transfer pricing risk.
- Penalties may also be mitigated through cooperation with tax authorities.

What trends are being observed currently?

Not applicable since transfer pricing regulation has been made effective in Bangladesh from 1 July 2014.

Enlargement/ Clarification of definition of ‘International Transaction’

None after original definition provided in 2012 as follows:

International transaction means a transaction between associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses, assets, financial position or economic value of such enterprises, and includes-

- a) a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises; and
- b) a transaction entered into by an

enterprise with a person other than an associated enterprise, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise.

## Special considerations

Are secret comparables used by tax authorities?

Unknown.

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

Unknown.

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

So far there are no legal requirements to use any particular database.

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

Low level of interaction with customs authorities.

Are management fees deductible?

Head office expenses in the hand of branch office in Bangladesh is allowable up to 10% of branch profit as per audited accounts subject to double taxation avoidance agreement.

For both company and branch office, if management expenses fall under the broad definitions of royalty, technical services fee, technical assistance fee and technical know-how fee, such expense is allowable up to 8% of the profit as per audited accounts.

Are management fees subject to withholding income tax?

Yes. Management fees are subject to withholding income tax at 10% at the time of making payments of such fees.

Are year-end transfer pricing adjustments permitted?

Yes, but only upward adjustments to income are permitted.

Other unique attributes?

None.

## Other recent developments

Transfer pricing regulation is new in Bangladesh and effective from 1 July 2014. No other recent developments.

## Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Bangladesh has wide range of tax treaty network and has entered into comprehensive tax treaties with 32 countries. Bangladesh is also party to a series of treaties under negotiation.

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

Sometimes.

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?

Tax payer can go to the Commissioner (Appeal) and ADR without paying the tax. For other authorities (e.g. tribunal and High Court) certain amount of tax is required to be paid first.

## Advance pricing agreements

What advance pricing agreement (APA) options are available, if any?

APA has not yet been introduced in Bangladesh.

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.

Please provide some information on how successful the APA programme is and whether there are any known difficulties?

Not applicable.

## Language

In which language or languages can documentation be filed?

Not specified in the transfer pricing regulations. However, English language is well accepted by the tax authority.



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