

# Transfer Pricing

Russian Guides



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# Transfer Pricing

## Russian guides

### Arm's length principle

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

### Transfer pricing methods

The Tax Code includes five methods similar to those used in international transfer pricing practice. The resale price method has first priority for a routine distributor reselling goods to unrelated customers. In all other cases, the CUP method prevails, whereas the profit split is a method of last resort. However, due to the features of Russian accounting standards, as a rule, the TNMM is used rather than RPM and CPM.

RPM is most applicable in case of resale of goods to an independent entity without processing

TP methods	Examples of controlled transactions
Comparable Uncontrolled Price Method (CUP)	<ul style="list-style-type: none"><li>• sales of commodities</li><li>• simultaneous sales of goods to third parties and to related parties</li></ul>
Resale Price Method (RPM)	<ul style="list-style-type: none"><li>• resale of goods</li></ul>
Cost Plus Method (CPM)	<ul style="list-style-type: none"><li>• provision of services</li></ul>
Transactional Net Margin Method (TNMM)	<ul style="list-style-type: none"><li>• if CUP, RPM and CPM cannot be applied</li></ul>
Profit – Split Method (PSM)	<ul style="list-style-type: none"><li>• if CUP, RPM, CPM and TNMM cannot be applied, as well as transactions where the parties own the intangible assets which significantly affect the controlled transaction profitability level</li></ul>

## Definition of related parties

Companies are regarded as related under following conditions:

	Companies, where one company holds a direct and (or) indirect participating in another company and that participating interest amounts to more than 25%
	Physical person and an company, where the physical person holds a direct and (or) indirect participating in that organization and that participating interest amounts to more than 25%
	Companies, where one and the same person holds a direct and (or) indirect participating in those companies and the size of the participating interest in each company is greater than 25%
	Company and a person who has the authority to appoint (elect) the individual executive body of that company or to appoint (elect) not less than 50% of the members of the collegiate executive body or board of directors (supervisory board) of the company
	Companies whose individual executive bodies or not less than 50% of the members of whose collegiate executive body or board of directors (supervisory board) have been appointed or elected by decision of one and the same person
	Companies in which the same physical persons jointly with related persons make up more than 50% of the members of the collegiate executive body or board of directors (supervisory board)
	Company and the person who exercise the powers of its individual executive body
	The court may deem companies to be related to other grounds

## Transfer pricing notification requirements

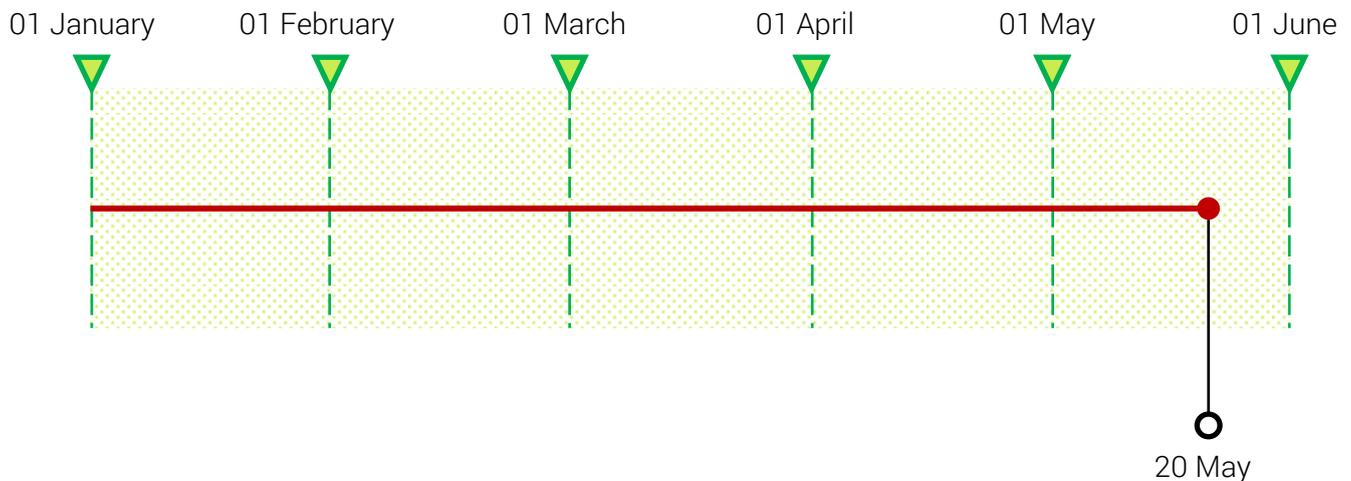
In accordance with Article 105.16 of the Russian Tax Code, taxpayers are obliged to notify tax authorities about controlled transactions that have been made in a calendar year.

Notification on controlled transactions must include the following information:

1	Calendar year for which information on controlled transactions concluded by the taxpayer is provided
2	Subject of transactions
3	Details of the parties to the transactions
<ul style="list-style-type: none"><li>• full name of an organization and its taxpayer identification number (if the organization is registered with tax authorities in the Russian Federation);</li><li>• surname, first name and patronymic of a private entrepreneur and his taxpayer identification number;</li><li>• surname, first name and patronymic and citizenship of a physical person who is not a private entrepreneur.</li></ul>	
4	Income/expenses received in connection with controlled transactions

Amount of income received and (or) the amount of expenses (losses incurred) in connection with controlled transactions with a separate indication of amounts of income and (or) expenses attributable to transactions for which prices are subject to regulation in accordance with legislation.

Notification of controlled transactions for the past period is submitted only once a year - no later than May 20 of the following year.



## Transfer pricing documentation requirements

### Which transactions are considered as controlled in 2018?

In accordance with Article 105.14 of the Russian Tax Code, the following transactions are deemed as controlled:

Domestic transactions	Cross-border transactions
The amount of income from transactions exceeds RUB 1 billion	Transactions are deemed controlled with a related entity - a foreign company, offshore company (in accordance with the order of the Ministry of Finance of the Russian Federation №108Н of 13 November 2007) or non-resident <b>regardless of the amount</b> of income on transactions.
Transactions with related entity - the payer of the Single agricultural tax or Single tax on imputed income, if the annual amount of income on transactions exceeds RUB 100 million	
Amount of income for the year more than RUB 60 million for transactions in which at least:	
One of the parties to the transaction is a simplified tax payer	
One of the parties to the transaction is a MET tax payer	
One of the parties to the transaction applies a special tax regime	
One of the parties is exempt from tax payer obligations	
One of the parties to the transaction is the operator or owner of the license for the development of the New Sea Field	
One of the parties to the transaction is a resident of the Skolkovo research center	
One of the parties to the transaction applies an investment income tax deduction	

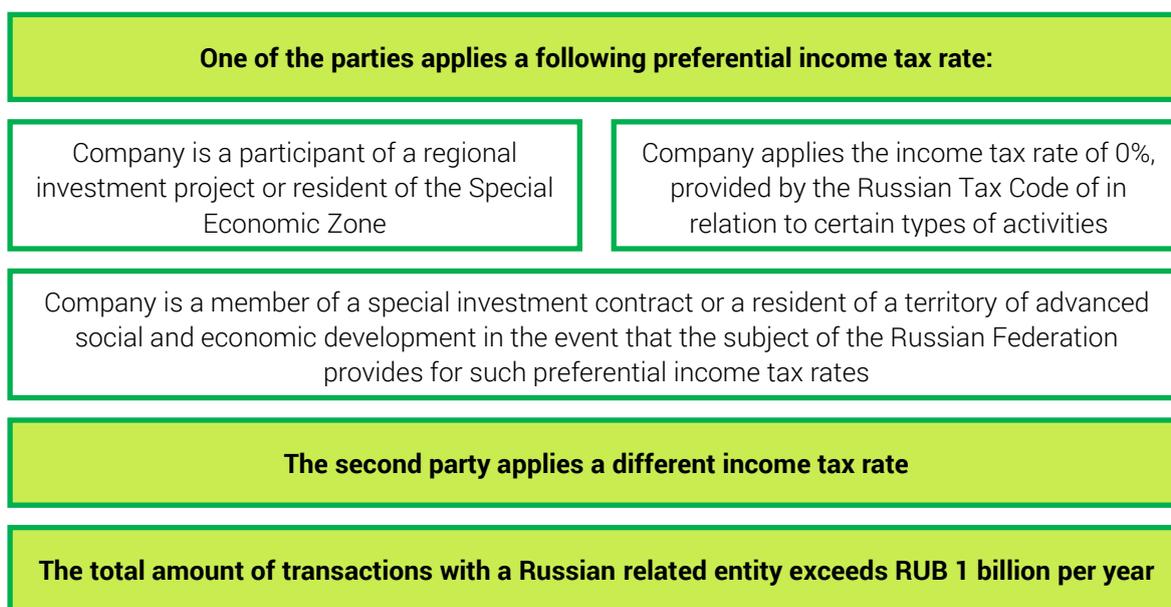
## Important changes in tax control of domestic transactions from 1<sup>st</sup> January 2019

Important changes were made to the procedure for controlling transactions between Russian related entities from 1 January 2019. These changes are provided for Art. 105.14 of the Russian Tax Code by Federal Law No. 302 - FZ "On Amendments to Part One and Two of the Tax Code of the Russian Federation" dated 3 August 2018.

After the entry into force of the new provisions, transactions between Russian companies that apply different income tax rates or special tax regimes will be treated as controlled regardless of the amount of income on transactions.

Therefore, if both parties apply the standard income tax rate, then the transactions between them will not be considered controlled.

Transactions will be deemed controlled if the following conditions are met:



Transaction is considered as controlled in respect of activity's profit, which is taxable at different rates.

Despite this, the following conditions remained unchanged for the recognition of transactions between Russian interdependent entities controlled, if one of the parties meets one of the following criteria:

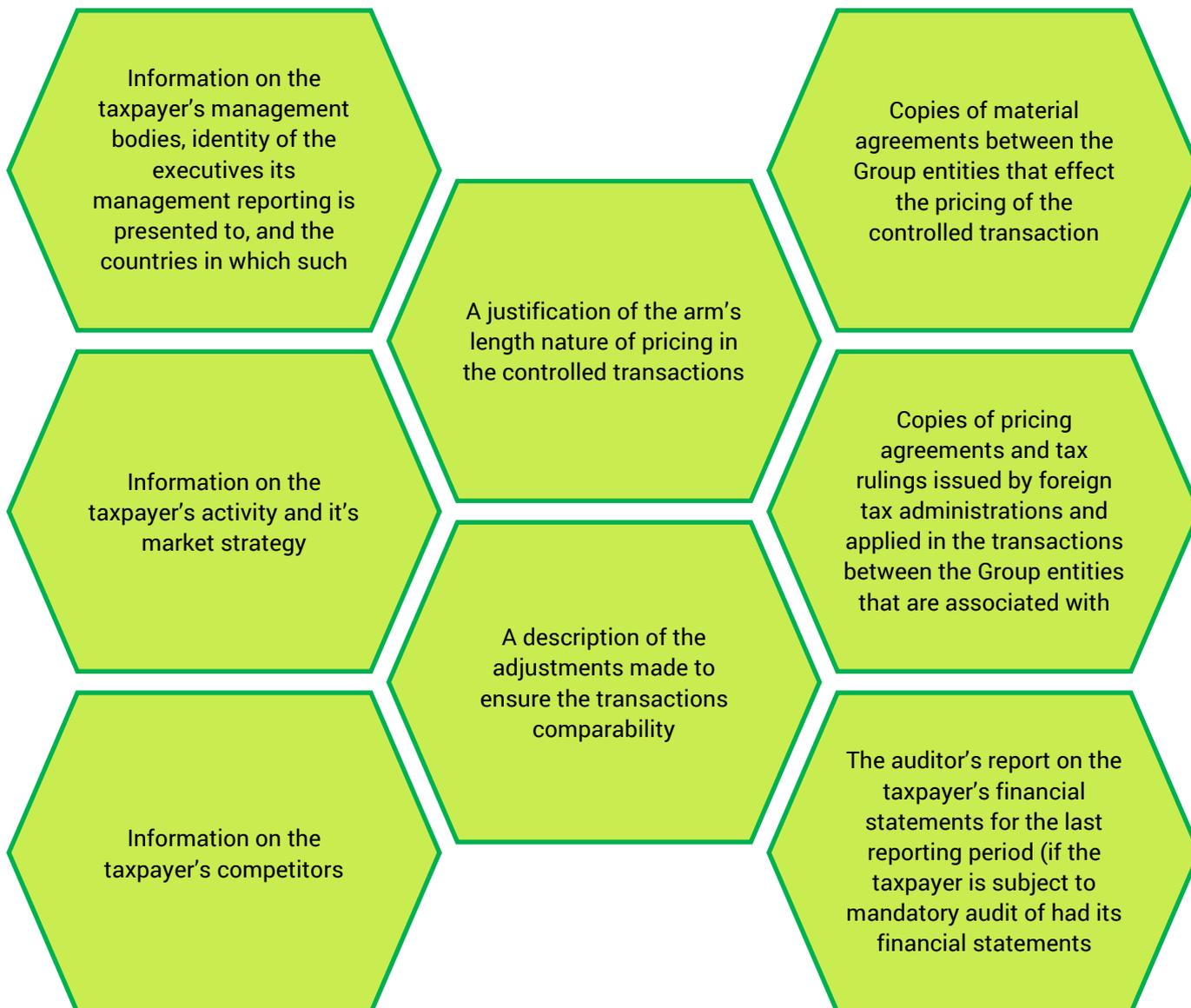
- Applies a special tax regime
- Exempt from tax payer obligations
- Resident of the Skolkovo research center
- Operator or owner of the license for the development of the New Sea Field
- MET tax payer
- Applies an investment income tax deduction

However, the minimum threshold for the amount of these transactions to be recognized as controlled will be increased to RUB 1 billion per year (in 2018 the threshold was RUB 60 million or RUB 100 million per year, depending on the type of transaction).

Also, the Law introduces a threshold for recognizing a transaction controlled with foreign interdependent entities, which will amount to RUB 60 million per year (in 2018 there was no threshold).

## Transfer pricing documentation requirements

In accordance with Article 105.15 of the Russian Tax Code, transfer pricing documentation must include:



Transfer pricing documentation may be prepared in any form and by either one of the companies involved in the transactions, but shall be submitted by the company that has received the request.

### Dispute resolution

Transfer pricing documentation has to be submitted upon request of the tax authority within 30 days of receiving such request. Transfer pricing documentation may be requested starting from 1 June of the year following the calendar year in which the controlled transactions took place. An underpayment of tax may result in the imposition of a fine corresponding to 40% of the additional tax amount but not less than RUB 30 thousand. The limitation on transfer pricing adjustments by the tax authorities is three years.

### Cost sharing

According to a decision by the Supreme Arbitration Court made on 15 July 2013, the Russian tax law does not allow cost sharing between companies, irrespective of any pursuant service agreement. In order to be deductible for tax purposes, service fees must directly relate to services that the taxpayer has actually received and evidence must be presented with sufficient documentation. The Court also declared that Russian tax law conflicting with the OECD Transfer Pricing Guidelines will have priority over the guidelines.

## Country – by – Country Law

On 22 November 2017, the Federation Council approved the Federal Law on Amendments to Part One of the Russian Tax Code (the “CbC Law”), aimed at implementing the international automatic exchange of financial account and multinational enterprise (MNE) information.

In accordance with the new regulations, members of MNE groups with annual consolidated group revenue over RUB 50 billion in the preceding fiscal year to submit to tax authorities a three-tier documentation, including a Country-by-Country Report (CbC Report), global documentation (Master File), and national documentation (Local File), as well as a notification on their membership in an MNE group (CbC Notification).

If the ultimate parent company of the MNE group isn't the Russian resident should be used local threshold in a respective foreign jurisdiction (in case the foreign resident's parent entity has relevant regulations on the CbCR threshold in its jurisdiction).

The scope of documentation includes:

- The ultimate parent company is a Russian entity:

<p style="text-align: center;"><b>CbC Report</b></p> <p><b>Reporting:</b> Obligatory to submit  <b>Timing:</b> not later than 12 months after the end of the reporting period  <b>Fines:</b> RUB 100,000 starting from 2020  <b>Language:</b> Russian</p>	<p style="text-align: center;"><b>CbC Notification</b></p> <p><b>Reporting:</b> Obligatory to submit  <b>Timing:</b> 8 months after the last day of the group reporting period  <b>Fines:</b> RUB 50,000 starting from 2020  <b>Language:</b> Russian</p>
<p style="text-align: center;"><b>Master file</b></p> <p><b>Reporting:</b> Upon request of tax authorities  <b>Timing:</b> 3 months after the day of tax authorities request  <b>Fines:</b> RUB 100,000 starting from 2020  <b>Language:</b> Russian</p>	<p style="text-align: center;"><b>Local file</b></p> <p><b>Reporting:</b> Upon request of tax authorities  <b>Timing:</b> Filed after tax authorities request  <b>Fines:</b> RUB 100,000 starting from 2019  <b>Language:</b> Russian language</p>

- The ultimate parent company is not a Russian entity:

<p style="text-align: center;"><b>CbC Report</b></p> <p><b>Reporting:</b> Upon request of tax authorities*.  <b>Timing:</b> Not less than three months after the date of receiving the request  <b>Fines:</b> RUB 100,000 starting from 2020  <b>Language:</b> CbC report should to be provided in English or Russian language</p>	<p style="text-align: center;"><b>CbC Notification</b></p> <p><b>Reporting:</b> Obligatory to submit  <b>Timing:</b> 8 months after the last day of the group reporting period  <b>Fines:</b> RUB 50,000 starting from 2020  <b>Language:</b> CbC notification should to be provided in Russian language</p>
<p style="text-align: center;"><b>Local file</b></p> <p><b>Reporting:</b> Upon request of tax authorities  <b>Timing:</b> Filed after tax authorities request  <b>Fines:</b> RUB 100,000 starting from 2019  <b>Language:</b> Local File should to be provided in Russian language</p>	<p style="text-align: center;"><b>Master file</b></p> <p><b>Reporting:</b> Upon request of tax authorities  <b>Timing:</b> 3 months after the day of tax authorities request  <b>Fines:</b> RUB 100,000 starting from 2020  <b>Language:</b> Master File should to be provided in Russian language</p>

\* Exemption from reporting: if the ultimate parent company of the MNE group submits CbC Report, provided there is an automatic exchange of CbC Report between the Russian Federation and the relevant jurisdiction.

# Contacts

Below you will find the contact details for the Baker Tilly in Russia Tax Team, who can evaluate your specific requirements:



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We have been providing audit and advisory services in the Russian market for over 20 years, and boast an impressive track record in various sectors of economy.

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