

# The People's Republic of China

## Transfer Pricing Country Profile

February 2022

		SUMMARY	REFERENCE
<b>The Arm's Length Principle</b>			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<a href="#">Enterprise Income Tax Law</a> , Chapter 6, Article 41
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	China respects OECD TPG and incorporates the basic aspects of OECD TPG in the domestic legislation.	Public Notice of the State Administration of Taxation <a href="#">[2017] No.6</a>  Public Notice of the State Administration of Taxation on Issuing the "Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure"
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  Any of the following relationships of an enterprise (one party) with other enterprises, organisations or individuals (the other party) shall constitute a "related party relationship":  (i) One party directly or indirectly owns 25% or more shares of the other party; or a common third party directly or indirectly owns 25% or more of shares of both parties.  (ii) One party owns shares of the other party, or a common third party owns shares of both parties, even though the percentage of shares held in either situation is less than the percentage as specified in item (i), the total debt between both parties accounts for 50% or more of either party's total paid-in capital, or 10% or more of	Public Notice of the State Administration of Taxation <a href="#">[2016] 42</a>  Public Notice on Matters Regarding Refining the Filing of Related Party Transactions and Administration of Contemporaneous Transfer Pricing Documentation

		<p>one party's total debt is guaranteed by the other party (except for loans or guarantees from or between independent financial institutions).</p> <p>(iii) One party owns shares of the other party, or a common third party owns shares of both parties, even though the percentage of shares held in either situation is less than the percentage as specified in item (i), the business operations of one party depend on the proprietary rights, such as patents, non-patented technological know-how, trademarks, copyrights, etc., provided by the other party.</p> <p>(iv) One party owns shares of the other party, or a common third party owns shares of both parties, even though the percentage of shares held in either situation is less than the percentage as specified in item (i), the business activities, such as purchases, sales, receipt of services, provision of services, etc., of one party are controlled by the other party.</p> <p>(v) More than half of the directors or senior management (including secretaries of the board of directors of listed companies, managers, deputy managers, financial controllers and other personnel specified in the company's articles of association) of one party are appointed or assigned by the other party, or simultaneously serve as directors or senior management of the other party; or more than half of the directors or senior management of both parties are appointed or assigned by a common third party.</p> <p>(vi) Two natural persons who are spouses, related by lineal consanguinity, siblings, or in other custodianship/family maintenance relationships have one of the relationships as specified in items (i) to (v) with one party and the other party respectively.</p> <p>(vii) Two parties substantially have common interests in other ways.</p>	
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### Transfer Pricing Methods

4	<p><b>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</b></p>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" data-bbox="692 1254 1543 1414"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (If so, please describe)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </tbody> </table> <p>Other methods may refer to assets appraisal methods like cost approach, market approach and income approach, and some other methods that are in line with the</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Public Notice of the State Administration of Taxation <a href="#">[2017] No.6</a></p> <p>Public Notice of the State Administration of Taxation on Issuing the “Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure”</p>
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)										
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>										

		principle of “profits should be taxed in the jurisdiction where economic activities occur and value is created”.	
5	<b>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</b>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p>	<p>Article 16-22</p> <p>Public Notice of the State Administration of Taxation <a href="#">[2017] No.6</a></p>
		Tax authorities should select the appropriate transfer pricing method(s) to analyze and examine enterprises’ related party transactions based on comparability analysis.	
6	<b>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</b>	<p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p>	
		No specific guidance on commodity transactions is provided in our domestic legislation.	
<b>Comparability Analysis</b>			
7	<b>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</b>	<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p>	<p>Article 15</p> <p>Public Notice of the State Administration of Taxation <a href="#">[2017] No.6</a></p>
		When carrying out a transfer pricing investigation, tax authorities should conduct comparability analysis under the framework of TPG.	
8	<b>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</b>	<p><input type="checkbox"/> <b>Yes</b></p> <p><input checked="" type="checkbox"/> <b>No</b></p>	
9		<p><input checked="" type="checkbox"/> <b>Yes</b></p> <p><input type="checkbox"/> <b>No</b></p>	<p>Public Notice of the State Administration of Taxation <a href="#">[2017] No.6</a></p>

	<b>Does your tax administration use secret comparables for transfer pricing assessment purposes?</b>	Tax authorities are allowed to use both public and secret comparables for TP assessment purpose.	
10	<b>Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Article 25 Public Notice of the State Administration of Taxation <a href="#">[2017] No.6</a>
		When analysing and evaluating whether a related party transaction is consistent with the arm's length principle, tax authorities may calculate different statistics, such as arithmetic average, weighted average or the inter-quartile range to determine the point or range of the profit or price of the comparables. The calculation can be done on a year-by-year basis or multiple-year average basis.	
11	<b>Are comparability adjustments required under your domestic legislation or regulations?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Article 17-20 Public Notice of the State Administration of Taxation <a href="#">[2017] No.6</a>
		If there are significant differences between related party transactions and unrelated party transactions, reasonable adjustments should be made to account for the effect of these differences.	
<b>Intangible Property</b>			
12	<b>Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Article 30-32 Public Notice of the State Administration of Taxation <a href="#">[2017] No.6</a>
		<p>Value contributions are the main factors to be taken into account for the allocation of income derived from intangible assets, and full consideration should be given to the contributions of the parties with respect to the DEMPE functions relating to the intangibles.</p> <p>If an enterprise pays royalties to a related party that merely owns the intangible assets but does not contribute to the value of the assets, and the arm's length principle has not been followed, the tax authorities may make a special tax adjustment.</p> <p>Royalties received from or paid to related parties must correspond to the economic benefit the intangible assets bring to the enterprise and its related parties. If there are no economic benefits and the arm's length principle has not been followed, the tax authority may make a special tax adjustment.</p>	

13	<b>Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14	<b>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  Assets appraisal methods like cost approach, market approach and income approach can be applied where appropriate.	Article 22  Public Notice of the State Administration of Taxation <a href="#">[2017] No.6</a>
<b>Intra-group Services</b>			
15	<b>Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  Fees paid by subsidiaries that receive intra-group services should not simply be regarded as fees for low value-adding services to which the safe harbor rule applies, but instead, the following "six tests" should be used to determine the arm's length nature of the services: "benefit test," "necessity test," "duplication test," "value creation test," "remuneration test," and "authenticity test."  In the following circumstances, if the arm's length principle is not followed, the tax authorities may make a special tax adjustment: <ul style="list-style-type: none"> <li>• Where an enterprise make payments to its related parties for non-beneficial services;</li> <li>• Where an enterprise make payments to an overseas related party that does not perform functions, does not bear risks, and has no substantial operating activities;</li> <li>• Where an enterprise establishes a holding company or financing company overseas for the main purpose of financing and listing, and the enterprise pays royalties to an overseas related party due to the spinoff benefits generated from the relevant financing and listing activities.</li> </ul>	Article 34-36  Public Notice of the State Administration of Taxation <a href="#">[2017] No.6</a>
16	<b>Do you have any simplified approach for low value-adding intra-group services?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Financial transactions</b>			
18	<b>[NEW]</b> Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
19	<b>[NEW]</b> Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions? <i>(e.g. whether your jurisdiction has implemented the measures in BEPS Action 4 to limit interest deductions and other financial payments or any similar rules)</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  The thin capitalization rule set out in the Implementation Measures of Special Tax Adjustments (Trial Version) (more commonly known as the “Circular 2”) requires that the related party debt to equity ratio should not exceed the standard ratio. Otherwise the interest expense will not be deductible for income tax purposes unless it can be demonstrated that the related party pricing is consistent with the Arm’s Length Principle. The standard ratio is explicitly provided in Circular Cai Shui [2008] No.121 as 2:1 for business in most industries and 5:1 for companies in financial service sector. The thin capitalization rule in this sense, is not considered other rules outside transfer pricing rules.	
<b>Cost Contribution Agreements</b>			
20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  The cost incurred in joint development of intangibles by related parties shall be determined by arm’s length principle.	<a href="#">Enterprise Income Tax Law</a> , Chapter 6, Article 41
<b>Transfer Pricing Documentation</b>			
21	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  <i>If affirmative, please check all that apply:</i> <input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG	Public Notice of the State Administration of Taxation <a href="#">[2016] 42</a>

		<input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input checked="" type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify):	
22	<b>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</b>	<p>A master file shall be completed within 12 months of the fiscal year end of the ultimate holding company of the enterprise group.</p> <p>Local file and special issue file shall be completed by 30 June of the year following the year during which the related party transactions occur.</p> <p>Contemporaneous documentation shall be submitted within 30 days after receiving a request from the tax administrations.</p> <p>Contemporaneous documentation shall be prepared in Chinese. The source of information used should be specified.</p>	<p>Article 19-24</p> <p>Public Notice of the State Administration of Taxation <a href="#">[2016] 42</a></p>
23	<b>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</b>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<p>Article 25</p> <p>Public Notice of the State Administration of Taxation <a href="#">[2016] 42</a></p>
		<p>For enterprises that file related party transactions, submit contemporaneous documentation and other relevant information in accordance with relevant provisions, when additional tax is imposed by the tax administrations during the special tax investigation, an interest can be levied based on the People's Bank of China central base lending rates for the same period to which the tax payment is related, in accordance with the provisions under Article 122 of the implementation regulations of the Enterprise Income Tax Law.</p>	
24	<b>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</b>	<p>Enterprises with effective advance pricing agreements in place may choose not to prepare local file and special issue file with respect to the related party transactions covered by such advance pricing agreements.</p>	<p>Article 18</p> <p>Public Notice of the State Administration of Taxation <a href="#">[2016] 42</a></p>

### Administrative Approaches to Avoiding and Resolving Disputes

25	<b>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</b>	Please check those that apply: <input type="checkbox"/> Rulings <input type="checkbox"/> Enhanced engagement programs <input checked="" type="checkbox"/> Advance Pricing Agreements (APA) <input checked="" type="checkbox"/> Unilateral APAs <input checked="" type="checkbox"/> Bilateral APAs <input checked="" type="checkbox"/> Multilateral APAs <input checked="" type="checkbox"/> Mutual Agreement Procedures <input type="checkbox"/> Other ( <i>please specify</i> ):	Public Notice of the State Administration of Taxation <a href="#">[2016] 64</a>  Public Notice on Matters Regarding Enhancing the Administration of Advance Pricing Arrangements  Article 47  SPublic Notice of the State Administration of Taxation <a href="#">[2017] No.6</a>
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### Safe Harbours and Other Simplification Measures

26	<b>Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
27	<b>Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.</b>	N/A	

### Other Legislative Aspects or Administrative Procedures

28	<b>Does your jurisdiction allow/require taxpayers to make year-end adjustments?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Article 3  Public Notice of the State Administration of Taxation <a href="#">[2017] No.6</a>
		Taxpayers are allowed to make year-end self-adjustments to amend their taxable profits in related-party transactions.	
29	<b>Does your jurisdiction make secondary adjustments?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		China is now researching on this issue.	



### Attribution of Profits to Permanent Establishments

30	<b>[NEW]</b> Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input type="checkbox"/> Yes	
		<input checked="" type="checkbox"/> No	
31	<b>[NEW]</b> Does your jurisdiction follow also another approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

### Other Relevant Information

32	<b>Other legislative aspects or administrative procedures regarding transfer pricing</b>	<p>1. Rules and Procedures for Panel Review of Major Cases under Special Tax Adjustments (Guoshuifa [2012] 16) ;</p> <p>2. Internal Working Rules and Procedures for Special Tax Adjustments (Shuizhongfa [2016] No. 137)</p>	These are internal administrative rules and no public references are available.
33	<b>Other relevant information</b> (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i> )	N/A	

For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>