

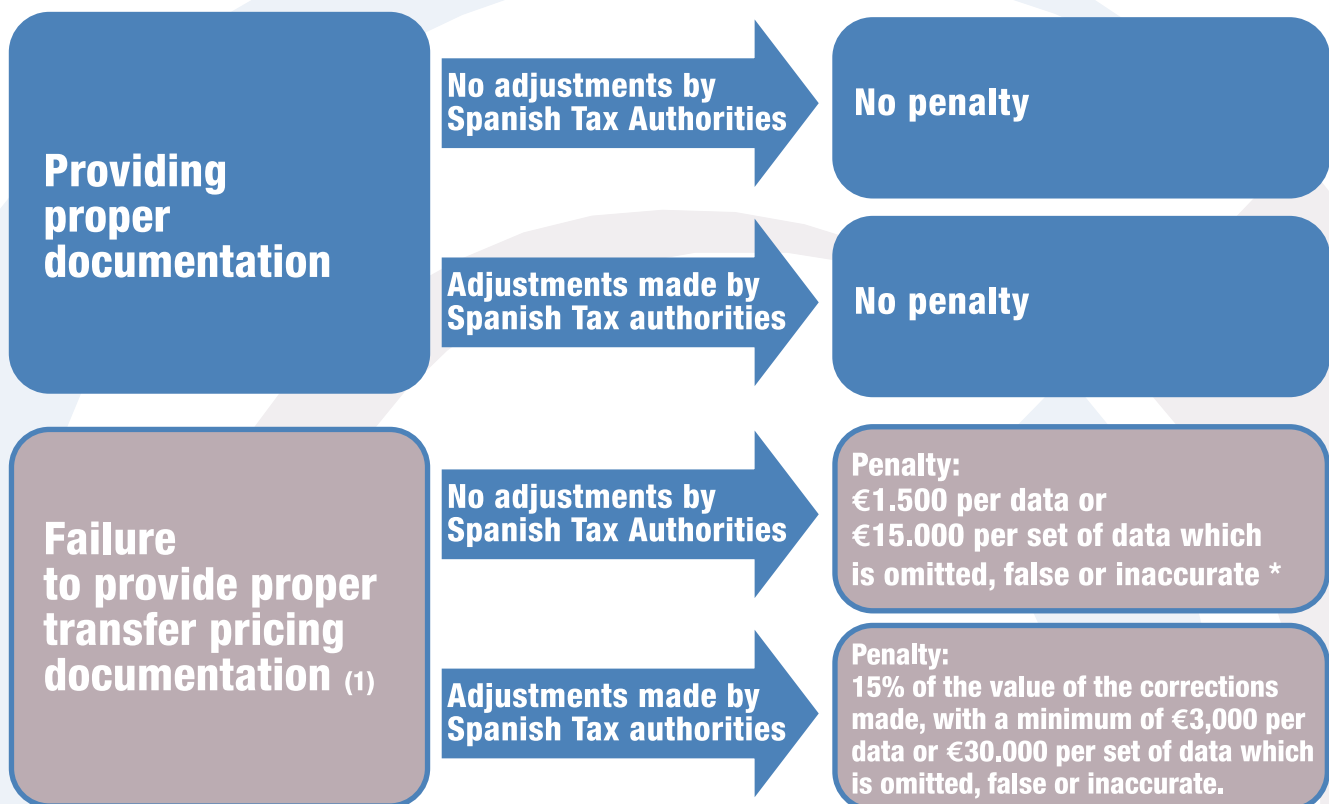
Transfer Pricing R I S C

The Law 36/2006 on Measures for Preventing Tax Fraud (LMPTF) modified the basic regulations related to transfer pricing, contained in article 16 of the Corporate Income Tax Law (CIT). This Law has been developed afterwards by several Regulations.

The most relevant changes from the previous regulations were as follows:

- ① Taxpayers are required to perform their controlled transactions at market value, thus incorporating the arm's length principle laid down in the OECD Model Tax Convention.
- ① Burden of proof: the taxpayer must justify before the Spanish Tax Authorities that the prices set in their controlled transactions are fulfilled under the arm's length principle. Regarding previous regulation, this measure means the shift of the burden of proof.
- ① Application of the new rules and obligations to domestic transactions.
- ① Documentation requirements: the taxpayer is required to properly document that the price used in related company's transactions are arm's length and to make this documentation available at the tax authorities' request. This documentation is based on the requirements and recommendations of the Code of Conduct of EU Joint Transfer Forum Council and is detailed in the regulatory development approved by Royal Decree 1793/2008 of 3 November and in the Royal Decree 897/2010 of 9 July. This requirement applies to transactions that in total and with one related person or entity exceed the amount of 250.000,-Euro. The small and medium size companies, which total related transactions do not exceed the amount of 100.000,-Euro are not obliged to fulfill the Documentation requirements.
- ① Information requirements in the Corporate Tax: additionally to the documentation the taxpayer has to prepare, the Ministerial Instruction, that annually approves the Corporate Tax Form and develops the procedure to file the Corporate Tax, determines the obligation to include specific information regarding controlled transactions in the Corporate Tax Return.
- ① Assessment Methods: acceptance of all methods of transfer pricing of the OECD, even when the hierarchy of transfer pricing methods is modified, and the TNMM is newly included as an accepted transfer pricing method.
- ① Specific penalties related to transfer pricing documentation requirements are introduced and are linked to the failure of a suitable documentation to justify the market valuation of controlled transactions.
- ① New modifications are introduced in the procedure of market value verification.
- ① Advance Price Agreements: Several modifications are introduced with the aim of stressing the efficiency of these procedures and encouraging their use. For example, APA rules have been modified extending the period in which the APA can be in force to up to 4 years plus a maximum of a two-year rollback period.
- ① The requirements to allow the deductibility of expenses in relation with cost sharing agreements' and intra-group services have been modified in accordance with OECD Guidelines. The key point here is how to provide evidence of the advantage or the benefit for the taxpayer.

- ⦿ The LMPFT states a new penalty regime for transfer pricing operations linked to the failure to have proper documentation, that justify the market valuation applied to controlled transactions.



* Existència of a maximum limit for small/medium size companies.