

Transfer Pricing Country Profile
(to be posted on the OECD Internet site www.oecd.org/taxation)

Name of Country: Switzerland Date of profile: 15.4.2009

No.	Item	Reference to and wherever possible text of the provisions; Wherever needed and possible, a translation into one of the OECD official languages would be welcome
1	Reference to the Arm's Length Principle	The Swiss Tax Law does not directly include a definition of the arm's length principle nor does it specifically address the issue of transfer pricing between related parties. However, the legal basis for adjusting the profits on an arm's length basis is found in Article 58 of the Federal Law on Direct Federal Tax of December 14, 1990 and Article 24 of the Federal Law on the Harmonisation of the Cantonal and Communal Taxes of December 14, 1990. Considerably, only commercially justifiable expenditures are tax deductible; this provides the basis for adjustments to the profits under non arm's length conditions.
2	Reference to the OECD Transfer Pricing Guidelines (if any)	Switzerland has accepted the OECD Transfer Pricing Guidelines. The Federal Tax Administration submitted on March 4, 1997 a Circular Letter informing the Cantonal Tax Administrations about the contents of the OECD Transfer Pricing Guidelines and instructed the Cantonal Administrations to follow these Guidelines.
3	Definition of related parties	The Swiss Federal Supreme Court has in his jurisprudence clearly defined this expression. Accordingly, an entity is considered related if primarily a commercial or secondarily a personal close relationship exists between the two entities. Therefore, a direct or indirect participation in the management, control or capital is not required. The crucial question is if the tested transaction was conducted only because of the associated relationship or not.
4	Transfer pricing methods	Switzerland uses the methods suggested in the OECD Transfer Pricing Guidelines. These are the traditional transaction-based methods (comparable uncontrolled price method, resale price method and cost-plus method) and transaction-based profit methods (profit split method and transactional net margin method).
5	Transfer pricing documentation requirements	If challenged by the Swiss Tax Authorities, Article 126 of the Federal Law on Direct Federal Tax of December 14, 1990 and Article 42 of the Federal Law on the Harmonisation of the Cantonal and Communal Taxes of December 14, 1990 require the taxpayer to provide any documentary evidence for properly assessing the taxable income. In the case of transfer pricing, the taxpayer has to demonstrate that the transfer prices used were based on sound economic and commercial reasoning. Documents such as financial statements, records of business transactions etc. would normally be required.

		Because of the lack of sufficient unrelated comparable companies in the small Swiss market, usually a pan-European transfer pricing study would be allowed to test the arm's length nature of transactions.
6	Specific transfer pricing audit procedures and / or specific transfer pricing penalties.	There are none specific transfer pricing audit procedures or transfer pricing penalties within the Swiss Tax Law. Transfer pricing aspects are pursued on the basis of the normal tax audit procedure. The taxpayer is asked to provide any information that is relevant for properly assessing the taxable income. If the taxpayer does not cooperate with the Tax Administration, fines may be imposed.
7	Relevant regulations on Advance Pricing Arrangements	No formal procedure for Advanced Pricing Arrangements exists in Switzerland. However, bilateral Advance Pricing Agreements are conducted under the corresponding Mutual Agreement provision in the applicable double tax treaty.
8	Link to relevant Government Internet sites	www.estv.admin.ch
9	Other relevant information	none

Note

1. Relevant provisions of domestic legislation referring to the Arm's Length Principle.
2. Reference if any to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in domestic legislation or regulations.
3. Relevant legislation or regulations containing a definition of related parties or associated enterprises.
4. Relevant legislation or regulations containing guidance on transfer pricing methods including hierarchy among them if any.

5. Relevant regulations if any in relation to transfer pricing documentation requirements.
6. Relevant regulations if any on specific transfer pricing audit procedures and / or specific transfer pricing penalties.
7. Relevant regulations if any on Advance Pricing Arrangements.
8. Addresses of the Internet sites of the relevant authorities in charge of transfer pricing policy, its administration and Advance Pricing Arrangements.
9. Other relevant information, for instance having gone through a peer review, or having new transfer pricing regulations in preparation.