

# Transfer pricing regulation

# Related parties

**Definition:** Transfer pricing refers to the prices applied to the transactions carried out between related parties. There are different types of related transactions, like purchasing of products, providing services, payment of royalties, interests of financial transactions, commissions, etc. and should be valued at market price.

## Related parties

In Spain, the following cases are considered related parties:

- ❑ An entity and its owners, if they own, at least, the 25% of the shares of the entity.
- ❑ An entity and the members of its Board of Directors (BoD) or Administrators. The compensation of the member of the BoD or Administrator is out of the scope of the definition.
- ❑ An entity and the spouses or people related to the owners, shareholders, members of Board of Directors or Administrators, in a direct or collateral line, by consanguinity or affinity, up to the third degree.
- ❑ Two companies that belong to the same group.
- ❑ An entity and the members of the BoD or Administrators of another company, when they belong to the same group.
- ❑ Two entities when one of them owns, indirectly, at least, 25% of the capital of the other.
- ❑ Two entities when the same natural person (or the spouse, ascendants or descendants) or the same entity owns, directly or indirectly, at least 25% of the capital of both of them.
- ❑ An entity resident in Spain and its permanent establishments in other jurisdiction.

Although the article 18 of the Spanish Corporate Income Tax Law does not include as related parties a non resident company with its permanent establishment located in Spain, the article 15.2 of the Spanish Non Resident Income Tax Law sets that, in any case, it will be understood that a permanent establishment located in Spain and its parent company are related parties. Indeed, the Spanish permanent establishment and other permanent establishments or other parties related to the parent company are also related parties.

# OBLIGACIONES FORMALES

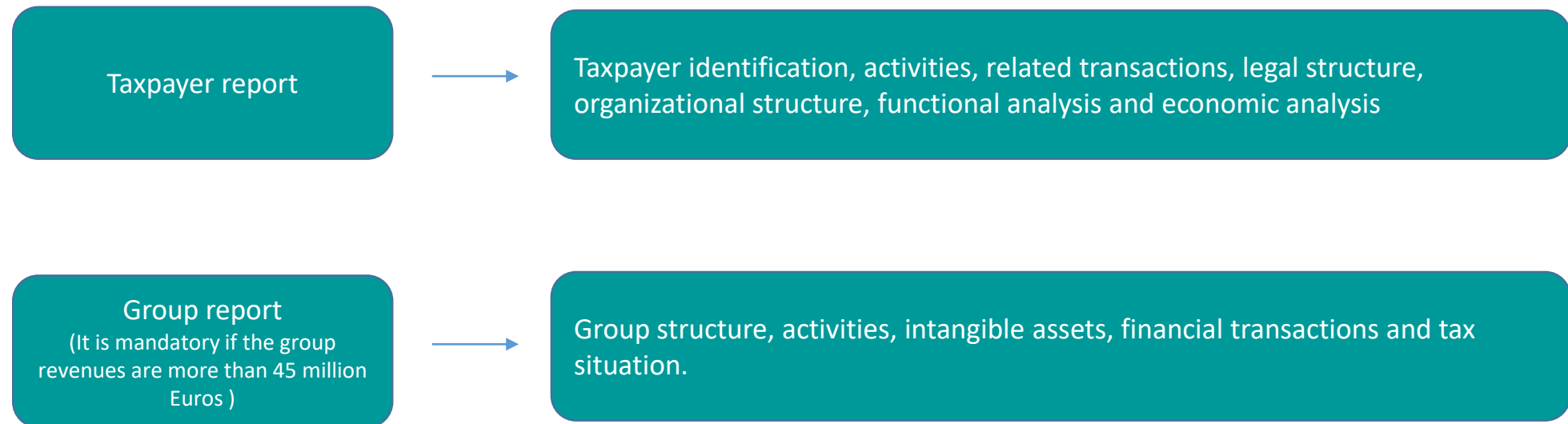
## Mandatory transfer pricing documentation

- ✓ Transactions need be documented if the total market value of the combined transactions with the same counterparty is more than Euro 250,000.
  
- ✓ There are some specific transactions carried out between related parties that have to be always documented, independent of their amount. These are the following:
  - ❑ Transactions performed with related parties that reside in countries officially blacklisted as tax haven, except when this country is a member of the European Union and the tax payer demonstrates that the transactions are based on sound business principles and that the related party actively performs business activities.;
  - ❑ Transactions performed with tax payers that are subject to the "Objective Income Estimation Regime" for business activities under the Personal Income Tax Act.
  - ❑ Transfer of businesses or securities / participations that represent an equity share, to the extent not listed on a regulated stock exchange.
  - ❑ Transfer of real estate or transactions related to intangible assets.

# FORMAL OBLIGATIONS

## TRANSFR PRICING DOCUMENTATION CONTENT

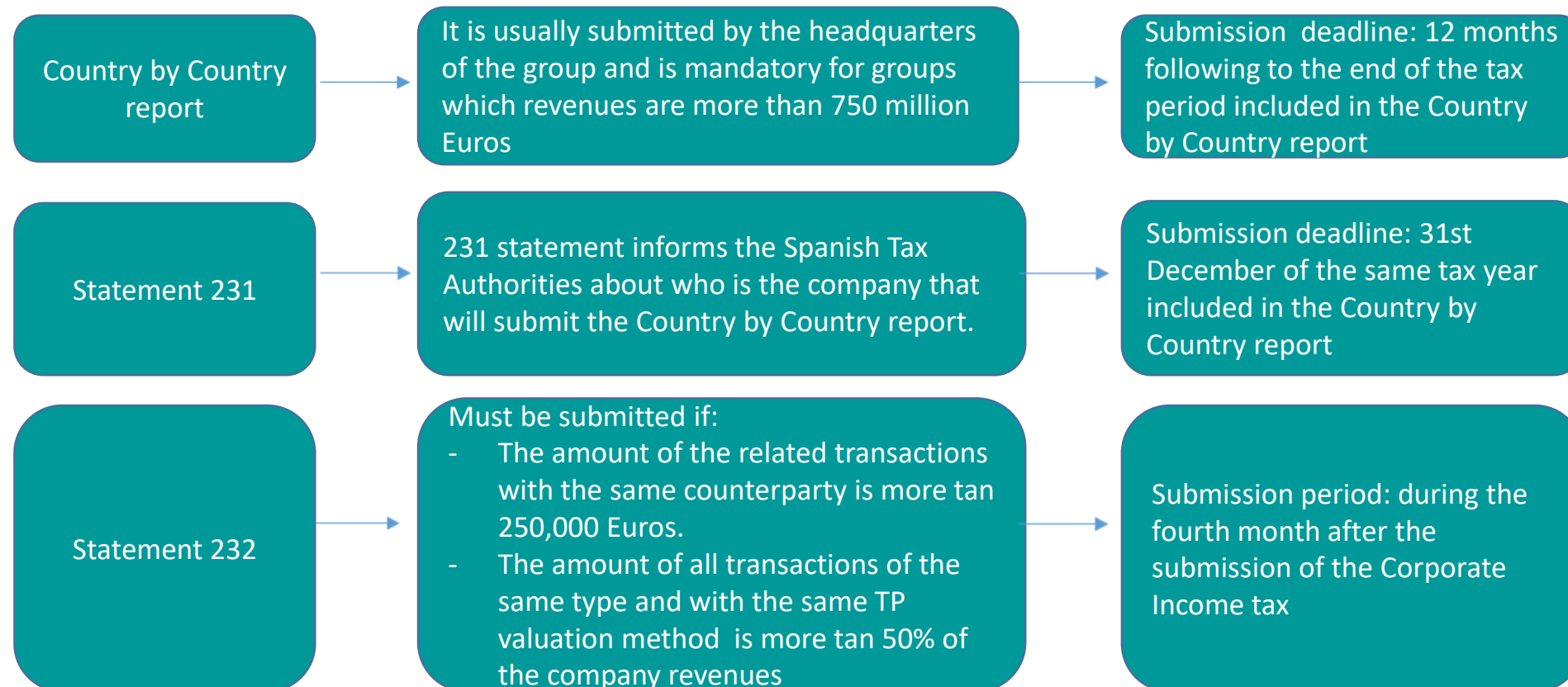
✓ Transfer pricing documentation includes two documents:



# FORMAL OBLIGATIONS

## TRANSFER PRICING DOCUMENTATION CONTENT

- ✓ Apart from the documentation detailed in the previous slide, taxpayers have to submit the following statements related to transfer pricing:

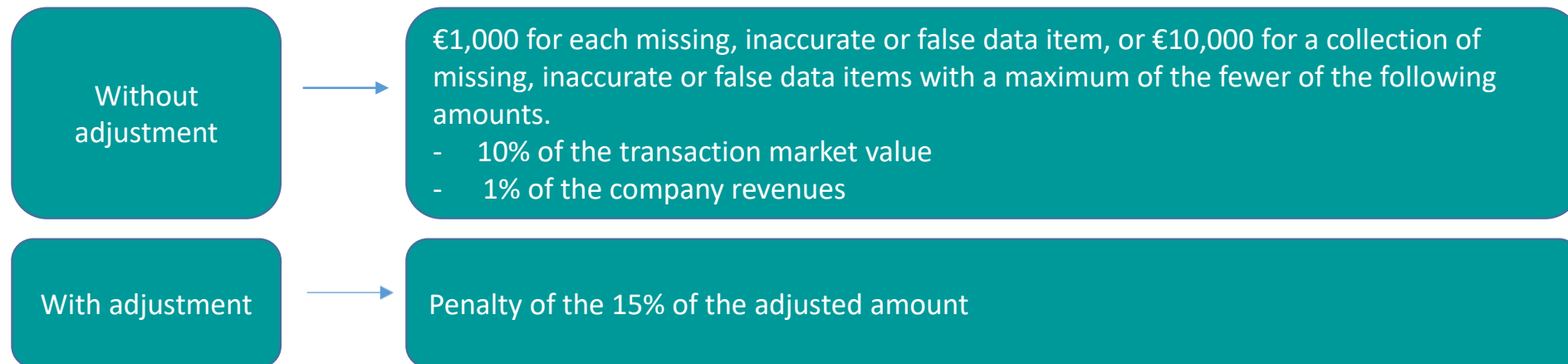


# PENALTIES

## TRANSFER PRICING PENALTY REGIME

- ✓ Partial or non-compliance of the transfer pricing documentation requirements shall be subject to an adverse penalty regime. Any missing, inaccurate or incorrect data item or collection of data items is subject to penalties. This is especially the case if the value declared does not coincide with the value derived from the documentation.

The penalty amount will depend on whether the Tax Administration decides to make an adjustment. The following two cases may apply:



- ✓ The above-mentioned penalties are not applicable for the statements included in this presentation (Statement 231, Statement 232 and Country by Country report).

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