

Skatteverkets författningssamling

Swedish Tax Agency's regulations om documentation of transfer pricing between associated enterprises

Utkom från trycket: 20 February 2007

Dnr/målnr/löpnr:
SKVFS 2007:01B

This is a translation of the Swedish text. Only the Swedish text is authentic.

decided on 14 February 2007.

Pursuant to Chapter 19, Section 2 b, second paragraph of the Tax Return and Statements of Income Act (2001:1227) as well as Chapter 12, Section 4 of the Tax Return and Statements of Income Ordinance (2001:1244), the Swedish Tax Agency stipulates the following.

Definitions

Section 1. The following definitions shall apply in the regulations:

Arm's length principle: the principle that commercial and financial transactions shall be based on the same terms and conditions that would have been applied between independent enterprises,

EUTPD: the code of conduct referred to in the resolution adopted on 27 June 2006 by the Council and representatives of the governments of the Member States assembled in the Council, regarding a code of conduct on transfer pricing documentation for transactions between associated enterprises in the European Union (OJ C 176, 28.7.2006 p 01),

Guidelines: guidelines adopted by the Organisation for Economic Co-operation and Development (OECD) in 1995, with subsequent amendments, published in the report Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations [C (95) 126/Final],

Enterprise group: a group of enterprises as referred to in Chapter 19, Section 2 a of the Tax Return and Statements of Income Act (2001:1227),
Intra-group transactions: international transactions between two or more enterprises within an enterprise group,

Transfer pricing method: one of the methods stated in the Guidelines,
Comparability factors: the factors used to establish comparability as stated in Chapter I of the Guidelines,

External comparable transactions: comparable transactions between independent enterprises which can be used to confirm that intra-group pricing and other terms and conditions are on an arm's length basis,

Internal comparable transactions: comparable transactions between enterprises in the enterprise group and independent enterprises which can be used to confirm that intra-group pricing and other terms and conditions are on an arm's length basis.

Section 2. The information that shall be included in the documentation pursuant to Sections 3-9 shall make it possible to assess whether pricing and other terms and conditions applied in intra-group transactions are in accordance with the arm's length principle. The documentation only needs to contain information which is necessary to make a reasonable assessment in these respects.

Description of the enterprise, organisation and business

Section 3. The documentation shall contain a description of the legal structure of the enterprise group, showing the ownership structure and the manner in which the enterprise controls, or is controlled by, other enterprises in the enterprise group. The business structure and the business from an operational perspective of the enterprise and the enterprise group shall be presented. Major changes in the enterprise and the enterprise group during the financial year shall be described.

Section 4. The description shall contain financial information that is relevant to the application of the chosen transfer pricing method for the financial year with regard to the enterprise and the other enterprises within the enterprise group with which the enterprise has had transactions during the financial year. The description shall also include information on industry-specific conditions and the business model which has affected the enterprise's pricing of intra-group transactions.

Information on the type and scope of the transactions

Section 5. The documentation shall include a description of the enterprise's intra-group transactions in relation to each of the enterprises with which the transactions have occurred, either transaction by transaction or in an aggregated form.

The transactions shall be described based on the comparability factors and the description shall, inter alia, include information on

1. type of transaction,
2. value,
3. volume,
4. other contractual terms and conditions,

5. any connection with other transactions which is significant to the pricing, and
6. costs incurred, allocation key and mark-up attributable to cost-based, indirect charging for intra-group services provided.

Section 6. The documentation shall also include the agreements which are important for the pricing or a compilation of such agreements. Enterprises with a large number of agreements may instead present a description of the various main categories of agreements which the enterprise has entered into and the transfer pricing methodology applied in those agreements.

Agreements and other arrangements governing matters related to transfer pricing which the enterprise or another enterprise within the enterprise group has entered into with any authority and which affect the enterprise shall be reported. The documentation shall also contain advance rulings and other similar notifications from abroad regarding matters of transfer pricing which affect the enterprise.

Functional analysis

Section 7. The functional analysis pursuant to Chapter 19, Section 2 b, first paragraph 3 of the Tax Return and Statements of Income Act (2001:1227) shall describe the enterprises' part and contain a description of the enterprises' functions, assets and risks as well as the economic significance thereof.

Description of the chosen transfer pricing method

Section 8. In the description of the chosen transfer pricing method pursuant to Chapter 19, Section 2 b, first paragraph 4 of the Tax Return and Statements of Income Act (2001:1227) the enterprise shall state how the enterprise applies the method.

Comparability analysis

Section 9. The comparability analysis referred to in Chapter 19, Section 2 b, first paragraph 5 of the Tax Return and Statements of Income Act (2001:1227) shall include a description of the internal and the external comparable transactions that have been used and the basis for their selection. The analysis shall be made considering the comparability factors and any adjustments which have been made to improve the comparability. In cases where comparable transactions have not been identified, the documentation shall contain a description of how the enterprise has arrived at the conclusion that the transfer pricing method is in accordance with the arm's length principle.

Transactions of minor value

Section 10. For intra-group transactions of minor value the documentation may contain a simplified report compared to the information required in Chapter 19, Section 2 b, first paragraph of the Tax Return and Statements of Income Act (2001:1227). 'Transactions of minor value' refers to transactions with goods where the total market value does not exceed 630 'base amounts' per enterprise within the enterprise group as well as other transactions where the total market value does not exceed 125 'base amounts' per enterprise

within the enterprise group. The simplified report shall contain the information stated in the annex to these regulations. This possibility of submitting a simplified report does not apply to transactions which involve sale and purchase of intangible property.

Compilation

Section 11. Internal documents and information which are part of the documentation shall exist for each financial year. The enterprise shall have implemented routines to make it possible, following a request by the Swedish Tax Agency, to put together a documentation for each financial year in accordance with these regulations.

Miscellaneous

Section 12. The documentation shall be submitted to the Swedish Tax Agency at the request of the Agency. Such a request may be made after the date on which the tax return for the financial year concerned shall be submitted. The enterprise shall be given the opportunity to comply with such a request within a reasonable period of time. The documentation may be submitted as a hard copy or electronically.

Section 13. The documentation shall be in Swedish, Danish, Norwegian or English.

Section 14. The documentation shall be filed for 10 years after the end of the calendar year in which the financial year came to an end.

Section 15. Documentation prepared according to EUTPD, and which satisfies all the terms and conditions stated therein, shall be regarded as having been prepared in accordance with these regulations.

If documentation is prepared according to EUTPD the stipulations in Sections 11-14 shall apply.

These regulations come into effect as from 1 March 2007 and will be applied to the financial years commencing on 1 January 2007 or later.

Annex

The following information shall be reported if the documentation may be made in a simplified way according to Section 10 of the Swedish Tax Agency's regulations (SKVFS 2007:1) on documentation of transfer pricing between associated enterprises. The documentation shall contain a description of

1. the legal structure of the enterprise group as well as the business structure and the business of the enterprise and the enterprise group,
2. the counterparty in the intra-group transaction and information about its business,

3. the transactions in question, stating the type, scope and value,
4. the method used to establish that the transfer pricing of the intra-group transactions is on an arm's length basis, and
5. any comparable transactions that may have been used.