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Regulations relating to the Documentation of Price Determination for Controlled Transactions and Transfers

Uofisiell engelsk oversettelse/unofficial translation

Laid down by the Ministry of Finance on 7 December 2007, pursuant to Section 4-12, No. 6, of Act No. 24 of 13 June 1980 relating to Tax Administration (the Tax Administration Act).

Section 1. Scope of the Regulations

These Regulations shall apply to enterprises that are obliged, pursuant to Section 4-12, No. 2, cf. Nos. 3 and 5, of the Tax Administration Act, to prepare and, at the request of the tax authorities, present written documentation as to how prices and terms are determined for controlled transactions.

The obligation to prepare and present documentation pursuant to Section 4-12, No. 2, cf. Nos. 3 and 5, of the Tax Administration Act, shall not apply to enterprises that:

- a. during the tax year have controlled transactions with an aggregate fair value of less than 10 million kroner, and
- b. have accounts outstanding with associated companies or entities in an amount of less than 25 million kroner as per the end of the tax year, cf. Section 4-12, No. 4, of the Tax Administration Act.

Section 2. Definitions

The following meanings shall for purposes of these Regulations be attributed to the expressions set out below:

Controlled transactions: Transactions and transfers between companies or entities that are classified as associated entities pursuant to Section 4-12, No. 4, of the Tax Administration Act, as well as dealings between a permanent establishment and other parts of the enterprise.

Arms' length principle: The principle that commercial and financial relations between associated enterprises shall take place on the same terms as if the transaction had taken place between independent enterprises under comparable conditions and circumstances, cf. Section 13-1 of the Tax Act and Article 9, No. 1, of the OECD Model Tax Convention.

Permanent establishment: A business activity that represents, or shall be deemed as, a permanent establishment pursuant to the provisions of tax treaties entered into by Norway. If the business activity of the enterprise does not fall within the scope of any tax treaty entered into by Norway, it shall, for the purpose of these Regulations, be deemed as a permanent establishment if the conditions stipulated in Article 5 of the OECD Model Tax Convention have been met.

OECD Model Tax Convention: The OECD Model Tax Convention on Income and on Capital, as updated on an ongoing basis and recommended used by the OECD Council.

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

Internal comparable transactions: Comparable transactions that the enterprise has made with an independent enterprise, and that can be used as a benchmark when assessing whether the prices and terms applied to the controlled transactions of the enterprise are in conformity with the arms' length principle.

External comparable transactions: Comparable transactions made between independent enterprises, and that can be used as a benchmark when assessing whether the prices and terms applied to the controlled transactions of the enterprise are in conformity with the arms' length principle.

Section 3. General provisions

(1) The documentation prepared pursuant to Section 4-12, No. 2, of the Tax Administration Act shall provide a basis for evaluating whether the prices and terms of controlled transactions have been determined in conformity with the arms' length principle.

(2) The documentation shall contain the information, explanations and analyses outlined in Sections 4-13 below. The scope of such information, explanations and analyses shall be adapted to the financial magnitude and complexity of the controlled transaction, and to what is necessary to enable the tax authorities to evaluate whether the prices and terms of the transaction are in conformity with the arms' length principle.

(3) The documentation shall be organised in a readily understandable manner, but it is not a requirement that it adheres to the structure of Sections 4-13. The documentation shall, if it is extensive, contain a summary of its main features.

Section 4. Information concerning the enterprise, the group and the business activities

The documentation shall include a general description of the enterprise and the group to which it belongs, as well as the business activities operated thereby. It shall include:

a. A description of the legal ownership structure of the group and the geographical affiliation of the various entities.

- b. A description of the operational structure of the group, hereunder the most important business areas of the various entities.
- c. A brief historic description of the group, its business activities and any previously implemented reorganisations.
- d. A description of the industry, hereunder important competition parameters.
- e. A description of material changes to the enterprise or the group during the income year, hereunder an explanation of reorganisations and material changes to the functions performed by the enterprise, the property it uses in its business activities and the risks it assumes.

Section 5. Information concerning financial matters

- (1) The documentation shall include information concerning the turnover and operating profits/losses for the last three years of the enterprise and other enterprises in the group with which the enterprise has had controlled transactions during the income year.
- (2) An explanation shall be provided for any losses incurred by the enterprise during the last three income years.

Section 6. Information concerning the nature and scope of controlled transactions

- (1) The documentation shall include a description of the controlled transactions that the enterprise has been involved in during the income year. The nature and scope of the transaction shall be specified in respect of each of the associated enterprises with which the enterprise has been involved in controlled transactions.
- (2) Similar or closely related transactions may be described jointly (in aggregate). It shall be explained what transactions are described in aggregate.
- (3) Furthermore, the transactions shall be described in relation to the five comparability factors stipulated in Chapter I of the OECD Guidelines. These are:
 - a. characteristics of the property or services;
 - b. a functional analysis, cf. Section 7;
 - c. contractual terms;
 - d. economic circumstances (market analysis); and
 - e. business strategies that may influence price setting.
- (4) Any cost contribution arrangements in which the enterprise participates shall be explained, cf. Chapter VIII of the OECD Guidelines.

Section 7. Functional analysis

The functional analysis pursuant to Section 6, Sub-section 3, litra b, shall describe what functions each of the parties perform, what assets they use and what risks they assume, as well

as the economic significance of the various functions, assets and risks in relation to the transaction.

Section 8. Special requirements pertaining to centralised services

In case a centralised service is provided within the group, hereunder services of an administrative, technical and financial nature, the enterprise receiving such services shall explain its expected benefits from the services. In case of cost-based allocation or price setting, the enterprise shall explain the cost base, the allocation ratio and any mark-up. If no mark-up is applied, this shall be explained separately by the enterprise providing the service.

Section 9. Special information concerning intangible property

A separate description shall be provided as to such intangible property of the group as is of relevance to the evaluation of the controlled transactions of the enterprise. The description shall include specification of the ownership, utilisation, development and maintenance of the intangible property.

Section 10. Information concerning the selection and application of the price setting method

The documentation shall include an explanation of the price setting method applied to a controlled transaction. It shall be explained why such method has been chosen, and why the price setting resulting from the use of such method is deemed to be in conformity with the arms' length principle. Furthermore, it shall be specified to what extent the price setting method is compatible with the methods described in Chapters II and III of the OECD Guidelines.

Section 11. Information concerning comparability analysis

(1) Unless otherwise set out below, the documentation shall include a comparability analysis that can, together with the information provided pursuant to Sections 4-10 and Section 12, form the basis for an evaluation as to whether the prices and terms of controlled transactions are in conformity with the arms' length principle.

(2) The comparability analysis entails the comparison of the prices and other terms of controlled transactions with the prices and other terms of transactions entered into between independent parties. The analyses shall be carried out on the basis of internal and external comparable transactions, taking into account the comparability factors described in Chapter I of the OECD Guidelines. Any adjustments made to improve comparability shall be explained. It shall also be explained what principles underpin the selection of comparable transactions.

(3) If there exist no internal comparable transactions, and it would be unreasonably difficult or costly to gather and process information concerning external comparable transactions, the obligation under Section 4-12, No. 2, of the Tax Administration Act shall be deemed to have been met without any comparability analysis as mentioned in Sub-section 2 being presented within the time limit stipulated therein. The enterprise shall in such case explain why no such analysis has been prepared, as well as explain what financial evaluations and analyses form the

basis for the price setting that has actually taken place, and why this is deemed to be in conformity with the arms' length principle.

(4) The enterprise shall not be obliged to carry out database analysis, cf. nevertheless Section 15, Sub-section 2. If one or more database analysis has been carried out, these shall be enclosed with the documentation.

Section 12. Information concerning agreements, etc.

(1) The documentation shall include those agreements that are of relevance to the prices and other terms of controlled transactions.

(2) Agreements respecting the pricing of controlled transactions that the enterprise has entered into with the authorities in other countries shall be enclosed. The same shall apply to binding advance tax rulings or similar communications that the enterprise has obtained from foreign tax authorities and that relate to the pricing of the controlled transactions of the enterprise.

(3) Agreements respecting the pricing of controlled transactions that another enterprise has entered into with the authorities in other countries shall be enclosed if the enterprise invokes these as a basis for the pricing of controlled transactions. The same shall apply to binding advance tax rulings or similar communications that another enterprise has obtained from foreign tax authorities, if the enterprise invokes these communications as a basis for the pricing of its controlled transactions.

Section 13. Exemption pertaining to immaterial transactions

(1) The requirements stipulated in Sections 4-12 shall not apply to controlled transactions that are immaterial. As far as immaterial transactions are concerned, it shall only be specified what types of transactions the enterprise has engaged in that the enterprise itself deems to be immaterial.

(2) Transactions are deemed to be immaterial if they take place on a stand alone basis, are of limited economic significance and do not form part of the core business of the enterprise.

Section 14. Preparation and collocation of the documentation

Documentation in conformity with Sections 4-13 shall be gathered in respect of each income year. The enterprise shall have procedures that enable it to collocate and present documentation for each income year within 45 days after a request having been made by the tax authorities, cf. Section 4-12, No. 2, of the Tax Administration Act.

Section 15. Presentation at the request of the tax authorities

(1) The documentation shall, at the request of the tax authorities, be presented, submitted or sent within 45 days, cf. Section 4-12, No. 2, of the Tax Administration Act. The time limit stipulated in the preceding sentence shall be calculated by reference to, at the earliest, the expiry of the time limit for filing the tax return.

(2) If the documentation pursuant to Sub-section 1 does not include a comparability analysis, cf. Section 11, Sub-section 3, the tax authorities may request, following evaluation of the documentation received, the enterprise to present a comparability analysis. The tax authorities may, hereunder, request the enterprise to prepare a database analysis. The enterprise shall be granted a time limit of 60-90 days for complying with requests pursuant to the present Sub-section.

(3) The present Regulations entail no limitation as to the right of the tax authorities to request information pursuant to Section 4-8 and Section 4-10 of the Tax Administration Act, hereunder information expanding on descriptions and materials as mentioned in Sections 4-13.

Section 16. Concluding provisions

(1) The documentation shall be prepared in the Norwegian, Swedish, Danish or English language.

(2) The documentation shall be retained for a minimum of ten years after the end of the income year, cf. Section 4-12, No. 2, of the Tax Administration Act.

(3) The enterprise may opt to prepare the documentation in accordance with the Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union (2006/C 176/01) of 28 July 2006. In such case the information required under Sections 4-13 shall be included either in the masterfile or in the country-specific documentation. The provisions of Section 3 and Section 12 to Section 16, Sub-section 2, inclusive, shall apply correspondingly.

These Regulations shall enter into force from 1 January 2008.