

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

Name of Country: Norway Date of profile: Nov 2012

1. Reference to the Arm's Length Principle

Yes, in Section 13-1 of the Tax Act.

See question 9 with regard to a link to an unofficial English translation of Section 13-1 of the Tax Act

2. Reference to the OECD Transfer Pricing Guidelines (if any)

As from 1 January 2008 there is an explicit reference to the OECD TPG in Section 13-1, Sub-Section 4, of the Tax Act.

It follows from the above mentioned paragraph that if there is a community of interest between enterprises resident in Norway and abroad, and their commercial or financial relations are subject to arms' length terms laid down in a tax treaty between the respective states, the OECD TPG shall be taken into consideration when applying the arm's length principle under Section 13-1 of the Tax Act.

The paragraph furthermore stipulates that the OECD TPG should, to the extent applicable, be correspondingly taken into consideration when applying the arm's length principle under Section 13-1 of the Tax Act, in other cases than those mentioned above (i.e when the associated enterprises commercial or financial relations are not covered by a tax treaty).

The above references to the OECD TPG shall only prevail, however, to the extent Norway has acceded to the OECD TPG and provided that the Ministry of Finance has not decided otherwise.

There are also references to OECD TPG in case law (Supreme Court).

See question 9 with regard to a link to an unofficial English translation of Section 13-1 of the Tax Act

3. Definition of related parties

Not in the Tax Law.

In relation to the duty to specify and document controlled transactions, etc., however, associated entities are defined in Section 4-12, No 4, of the Tax Assessment Act. According to this paragraph the following entities shall be deemed to be associated:

- a. any company or entity that, directly or indirectly, is at least 50 percent owned or

- controlled by the entity obliged to specify or document;
- b. any individual, company or entity that, directly or indirectly, has at least 50 percent ownership of, or control over, the entity obliged to specify or document;
 - c. any company or entity that, directly or indirectly, is at least 50 percent owned or controlled by any entity that is deemed to be an associated party pursuant to Item b; and
 - d. any parent, sibling, child, grandchild, spouse, cohabitant, parent of a spouse and parent of a cohabitant of any individual who is deemed to be an associated party pursuant to Item b, as well as any company or entity that, directly or indirectly, is at least 50 percent owned or controlled by such individuals.

4. Transfer pricing methods

Norway adheres to the methods and the hierarchy between methods as described in the OECD TPG.

See answer to question 2 as regards TP-regulation.

5. Transfer pricing documentation requirements

Introduction

As from 2007/2008 Norway has introduced special transfer pricing filing requirements, as well as special transfer pricing documentation requirements. The special documentation requirements supplements, and expand, the general documentation requirements which is laid down in the Tax Assessment Act.

Filing requirements

The special transfer pricing filing requirements implies a duty to file a separate form, in which the nature and scope of transactions and accounts outstanding with associated companies or entities are specified. The form shall be filed as an attachment to the annual tax return. The form is to a wide extent based on the "check the box-principle". It requires brief information about the taxpayer itself, including what type of business it is carrying out and whether it has undergone any substantial reorganization during the year. Brief information is also required about the taxpayer's relationship with associated entities, and the geographical location of such associated entities. Furthermore, the form requires brief information of the kind of, and fair value of, the controlled transactions that the taxpayer has carried out during the year and its accounts outstanding with associated entities as per end of the year.

Documentation requirements

Special transfer pricing documentation, however, is only required to be submitted if requested by the tax authorities. If so, the documentation shall be submitted within 45 days after the request has been made. The documentation shall be prepared in the Norwegian, Swedish, Danish or English language, and shall be retained for a minimum of 10 years after the end of the income year.

The documentation requirements are elaborated in secondary regulations issued by the Ministry of Finance on 7 December 2007, and further explained in Guidelines issued by the Tax

Directorate. An unofficial English translation of the secondary regulations 7 December 2007 is available; for references see question 9 below. The secondary regulations require information about:

- the enterprise, the group and the business activities,
- the nature and the scope of controlled transactions,
- a functional analysis,
- the selection and application of a pricing method
- a comparability analysis

Furthermore, there are special provisions concerning information about financial matters, centralised services provided and intangible property. The regulations contain a general provision stipulating that the scope of the information, explanations and analysis given, 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.

The taxpayer is not initially obliged to prepare a database-analysis. Under certain conditions the documentation may initially be submitted without containing a comparability analysis at all. In such cases the enterprise shall 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. Following an evaluation of the documentation received in the first hand, the tax authorities may request, however, the enterprise to prepare and submit a comparability analysis, hereunder a database analysis. The taxpayer shall be granted a time limit of 60-90 days for complying with such requests.

There are made exemptions as far as immaterial transactions are concerned. 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.

Scope of the filing and the documentation requirements

The special transfer pricing filing and documentation requirements apply to cross border as well as domestic controlled transactions.

Both the special transfer pricing filing and documentation requirements applies correspondingly to dealings between a permanent establishment of an enterprise and other parts of the enterprise.

The transfer pricing filing requirements apply to a wider range of entities than the more comprehensive documentation requirements. Which entities are obliged under the rules follows from Section 4-12 of the Tax Assessment Act subject to limitations laid down in secondary Regulations.

See question 9 with regard to a link to an unofficial English translation of Section 4-12 of the Tax Assessment Act and the relevant secondary Regulations.

The obligations lies with companies and entities that are obliged to file a tax return under the Tax Assessment Law, unless the entity:

- has, during the income year, controlled transactions with an aggregate fair value of less than 10 million kroner, and
- has, as per the end of the income year, accounts outstanding with associated companies or entities in an amount of less than 25 million kroner,

The term associated enterprise is defined in litra a-d of Section 4-12, No 4, of the Tax assessment Act, see question 3 above.

As far as the documentation requirements are concerned, entities are in general exempted from the obligations if it belongs to a small or medium sized group of entities, i.e. that it has, together with associated enterprises, in the relevant financial year:

- fewer than 250 employees; and either
- sales income not exceeding 400 million kroner; or
- total assets not exceeding 350 million kroner.

The exemption applicable for entities belonging to small and medium sized groups does not apply, however, to the extent that the taxpayer has transactions or accounts outstanding with an associated entity that is resident in a state from which Norway cannot demand information concerning the income and wealth of such other contracting party pursuant to an international law agreement. Nor does this exemption apply to any company or entity liable to pay special tax pursuant to the Petroleum Taxation Act.

Entry into force

The special transfer pricing documentation requirements are effective for transactions that are entered into on 1 January 2008 or any later date.

The special transfer pricing filing requirements is effective from the income year 2007, i.e. it should be filed as an attachment to the income tax return for 2007.

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

None

7. Relevant regulations on Advance Pricing Arrangements

None

8. Link to relevant Government Internet sites

Ministry of Finance:

<http://www.regjeringen.no/en/ministries/fin.html?id=216>

Directorate of Taxes:

<http://www.skatteetaten.no/Templates/Emne.aspx?id=7429&epslanguage=NO>

9. Other relevant information

Unofficial English translation of Section 13-1 of the Tax Act

<http://www.skatteetaten.no/Templates/Artikkel.aspx?id=73998&epslanguage=NO>

Unofficial English translation of Section 4-12 of the Tax Assessment Act

<http://www.skatteetaten.no/Templates/Artikkel.aspx?id=73999&epslanguage=NO>

Unofficial English translation of Regulations relating to Documentation of Price Determination for Controlled Transactions and Transfers, 7 December 2007 No 1369

<http://www.skatteetaten.no/Templates/Artikkel.aspx?id=74000&epslanguage=NO>

Unofficial English translation of Regulations relating to the Duty to Specify Controlled Transactions and Accounts Outstanding, 7 December 2007, No 1368

<http://www.skatteetaten.no/Templates/Artikkel.aspx?id=73997&epslanguage=NO>

Guidelines on the application of the transfer pricing documentations provided by the Tax Directorate (Norwegian text only)

[http://skatteetaten.no/upload/PDFer/Retningslinjer_for_dokumentasjon_06_12_07_-_2\[1\].pdf](http://skatteetaten.no/upload/PDFer/Retningslinjer_for_dokumentasjon_06_12_07_-_2[1].pdf)

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.