

NORWAY

LEGISLATION	
Existence of Transfer Pricing Laws/Guidelines	<p>The arm's length principle is codified in Section 13-1 of the Tax Act (<i>skatteloven</i>).</p> <p>By virtue of Acts Nos. 71 and 72 of 29 June 2007 changes were made to the transfer pricing regime, mainly in respect of documentation and disclosure requirements and the burden of proof. Act No. 72 of 29 June 2007 amends Section 13 of the Tax Act on the burden of proof, and the amendments are effective as from 1 January 2008. Act No. 71 of 29 June 2007 that introduces transfer pricing disclosure and documentation requirements will take effect upon specific announcement (accordingly, the part of this document that describes the new transfer pricing regime is only applicable after the announcement is published). In the new legislation the Ministry of Finance is authorized to issue a directive and guidelines on transfer pricing disclosure and documentation requirements, and once done, the announcement of the date effect will be made. In July a draft directive, draft guidelines, a draft form for disclosure of inter-company transactions and draft guidance on comparables searches were released for public comments with a deadline of 8 October 2007. It is expected that the final versions of the directive and guidelines will be issued towards the end of 2007 and that the transfer pricing disclosure and documentation requirements will become effect as from the income tax year 2008.</p> <p>Prior to these changes there has been strong focus on transfer pricing issues for a long period of time, and the Norwegian courts have decided in several transfer pricing cases. Effectively, it has been expected that taxpayers could explain and document their inter-company prices. In addition, there are several court decisions where the courts have stated that taxpayers are obliged to submit all information relevant to a correct assessment to tax, in particular where a deduction is claimed in respect of an inter-company transaction (the Schlumberger decision, Rt 1995, at 124; the Elf Petroleum decision, Rt 1998, at 1095; the 3M decision, LRD UTV 2002, at 1293).</p> <p>The OECD Transfer Pricing Guidelines were translated into Norwegian in 2001. The revised Section 13(1)(4) of the Tax Act now states that the OECD Transfer Pricing Guidelines generally are applicable directly in Norwegian domestic law.</p> <p>Section 13(1)(1) of the Tax Act contains a rule on the burden of proof where one of the associated enterprise is resident outside Norway: If the tax administration establishes that there is a reason to believe that taxable income has been reduced, the income reduction is assumed to be caused by reasons of association, unless the taxpayer proves otherwise. This applies if the foreign resident entity is resident in a country outside the European Economic Area or if Norway cannot require exchange of information under a treaty.</p>
Transfer Pricing Scrutiny	<p>The level of transfer pricing scrutiny is high, and the Norwegian tax authorities have significant experience in dealing with transfer pricing audits. Recently, taxpayers with low risk profiles have been targeted.</p>
Definition of Related Party	<p>For corporates the main criterion for association is more than 50% capital ownership or control, either directly or indirectly. Control is widely defined and includes voting power, the right to appoint the majority of the members of management, and control on the basis contractual arrangements.</p> <p>Head office and permanent establishment relationships are also relationships that require that inter-company dealings be disclosed and documented for transfer pricing purposes.</p>

<p>Transfer Pricing Penalties</p>	<p>There is no transfer pricing specific penalty regime but the general penalty regime with penalties between 15% and 45% applies in case a taxpayer has submitted incorrect or insufficient information which has or could have caused a too low determination of the taxable income or capital. In case of gross negligence, a penalty of up to 60% applies.</p> <p>In addition, under the new regime for transfer pricing, the income tax return of a taxpayer may be rejected in case of non-compliance with transfer pricing documentation requirements. Also, in case the transfer pricing disclosure requirements are not met, the taxpayer's taxable income may be estimated. Finally, under the new regime, a taxpayer may not appeal its assessment if the taxpayer did not comply with the transfer pricing disclosure requirements or did not submit its transfer pricing documentation upon request.</p>
<p>Advance Pricing Agreement (APA)</p>	<p>There is no regime for APAs under Norwegian domestic law, and the Norwegian tax authorities have been reluctant to concluded APAs under income tax treaties.</p> <p>However, there is a general regime for unilateral advance rulings. As from 1 January 2006, there is also a regime for advance rulings in respect of petroleum taxation which specifically relate to inter-company pricing for the sale of gas.</p>
<p>DOCUMENTATION AND DISCLOSURE REQUIREMENTS</p>	
<p>Tax Return Disclosures</p>	<p>Although there is no general obligation to disclose with the tax return information on inter-company transactions, a number of obligations do exist as follows: In general, a Norwegian resident taxpayer that owns directly or indirectly at least 10% of the share capital in a foreign resident company must enclose an appendix (<i>utenlandsoppgave</i>) with its income tax return in which summary information on ownership, financial association, inter-company transactions and financial information for the foreign resident company must be given. In addition, there are separate information disclosure requirements for (i) inter-company transactions with Norwegian controlled foreign companies (<i>NOKUS</i>) and (ii) inter-company transactions related to business carried out by foreign resident companies on the Norwegian conventional shelf or onshore where the company is assessed to tax by the Central Office for Foreign Taxpayers (<i>Sentralskattekontoret for utenlandssaker</i>).</p> <p>Once effective, Law No. 71 of 29 June 2007 mentioned above will introduce a general obligation for associated companies to disclose with the corporate income tax return the type and level of inter-company transactions.</p>
<p>Level of Documentation</p>	<p>The law states that related parties must prepare transfer pricing documentation that can be used as a basis to assessing if prices and terms of inter-company transactions are at arm's length. The explanatory report to Acts Nos. 71 and 72 of 29 June 2007 states that the documentation requirements will be centered around the following 5 categories of information:</p> <ol style="list-style-type: none"> 1. Description of the organization and enterprise; 2. Description of the type and level of inter-company transactions; 3. Functional analysis; 4. Comparability analysis; 5. Choice of transfer pricing method, including justification. <p>A comparability analysis based on external comparables obtained from commercial databases is not required to be part of the documentation but such analysis may be requested by the tax authorities.</p> <p>Transfer pricing documentation that complies with the standards of the EU Code of</p>

	<p>Conduct on transfer pricing documentation for associated enterprises in the European Union is expected to meet the Norwegian requirements.</p> <p>In the new legislation the Ministry of Finance is authorized to issue a directive and guidelines on transfer pricing disclosure and documentation requirements.</p>
Record keeping	<p>Transfer pricing documentation must be kept for a period of at least 10 years after the end of the financial year to which it relates.</p> <p>Documentation must be in writing but may be kept electronically.</p>
Language for documentation	<p>Documentation may be prepared in the following languages: Danish, English, Norwegian and Swedish.</p>
Small and medium sized enterprises (SMEs)	<p>An SME is exempt from the documentation requirements if it on a consolidated basis:</p> <ol style="list-style-type: none"> 1. Has less than 250 employees; and 2. Either has (i) revenues that are not in excess of NOK 400 million or (ii) a balance that does not exceed NOK 250 million. <p>However, an entity or permanent establishment that has inter-company transactions with a related party resident in a country from which Norway cannot request information under a treaty shall prepare transfer pricing documentation in respect of such transactions.</p>
Deadline to Prepare Documentation	<p>Except for the deadline to submit documentation (see below), there is no requirement that transfer pricing documentation be prepared by a certain deadline. Thus, it is not a requirement that transfer pricing documentation has been prepared before the corporate income tax return is filed.</p>
Deadline to Submit Documentation	<p>Under the current law there is no specific deadline for submitting transfer pricing documentation. In general, tax authorities may request information that is relevant to the assessment and the deadline for such information requests is typically one month.</p> <p>Under the revised transfer pricing regime, upon request, the taxpayer must submit or make available transfer pricing documentation within 45 days.</p>

STATUTE OF LIMITATIONS

The general statute of limitations is 2 years on the condition that the taxpayer has submitted correct and sufficient information for the authorities to make an assessment. However, given that transfer pricing audits require a significant amount of information, the “sufficient and correct information test” might not be considered satisfied in transfer pricing cases, and in such situations the statute of limitations may be extended to up to 10 years.

TRANSFER PRICING METHODS

Consistent with the OECD Transfer Pricing Guidelines, the CUP method, the resale price method, the cost plus method, the profit split method and the transactional net margin method are acceptable. Other methods may also be applied, provided the resulting pricing is in accordance with the arm’s length principle. There is no requirement to perform analysis under more than one method but in certain cases it might be useful to explain why a certain method was not applied.

COMPARABLES

The Norwegian tax authorities have access to the Amadeus database. Pan-European comparables might be acceptable where a sufficient number of local comparables are not available to establish a reasonable economic reference.

Date: 27 September 2007