Transfer Pricing Country Summary

Norway

June 2018

Legislation

Existence of Transfer Pricing Laws/Guidelines

The arm's-length standard for related party transactions is incorporated into the General Tax Act (GTA) 1999 Section 13-1. The GTA Section 13-1 (4) makes reference to OECD Transfer Pricing Guidelines (TPG), regarding the arm's-length principle and the transfer pricing methods. It is also assumed that the reference includes the OECD guidance on business restructuring.

Transfer pricing regulation regarding the requirements to prepare Transfer pricing documentation is laid down by the Ministry of Finance on 7 December 2007, pursuant to Section 4-12, of the Tax Administration Act. Section 6-41 in the GTA sets out the new rules on interest deduction limitation.

Norway has specific legislation (in the Petroleum Tax Act) to deal with the pricing of petroleum for tax purposes. Taxation of income from the sale of crude oil produced on the Norwegian Continental Shelf is based on a so-called 'norm price', which shall be equivalent to the price at which it could be sold between unrelated parties in a free market (i.e. an arm's-length price). When establishing the norm price, a number of factors shall be taken into account, including 'the realized and quoted prices for petroleum of the same or a corresponding type with necessary adjustments for quality variations, transport costs, etc. to the North Sea area or other possible markets, delivery time, time allowed for payment and other terms'.

Definition of Related Party

The term associated entities is defined in Section 4-12 (4) of the Tax Administration Act, stating that the following entities are considered associated if:

- One of the entities has direct or indirect ownership or control of at least 50 percent;
- 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;
- 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
- 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.

Transfer Pricing Scrutiny

The Norwegian tax authorities consider transfer pricing a priority and have considerable resources. It is fairly common for the tax authorities to pick test cases that are subject to extensive assessments. Such cases may easily end up in courts. Settlements have traditionally not been common, but are now more frequent during audits.

During the most recent years, the tax authority's focus has been inter alia on intra-group financing arrangements, intra-group services, business restructuring and commissionaire arrangements.

Transfer Pricing Penalties

On the first page of the annual tax return, the taxpayers have to confirm whether they are covered by the formal transfer pricing documentation requirements and/or reporting requirements (RF–1123). There is no requirement to file the transfer pricing documentation before the tax authorities request this.

If the taxpayers do not file the required form RF 1123, the tax filings may be deemed as incomplete. When incomplete or incorrect information have been provided to the tax authorities, this may lead to penalty taxes being imposed on adjusted transfer pricing amounts in tax audits.

A penalty in the range of 20-60 percent of the tax avoided, may be levied for transfer pricing adjustments. Note that the the rate of penalty tax of 60 percent may be imposed in cases of gross negligence by the taxpayer.

Where additional corporation tax becomes due following a transfer pricing adjustment, any corporation tax paid late will carry interest.

Advance Pricing Agreement (APA)

Advance rulings are only available for companies under the Petroleum Taxation Act. There are currently no formal APAs available in Norway. Therefore, unilateral APAs are thus not available in Norway, however, the Norwegian tax authorities regularly enter into bilateral APA negotiations based on the general provisions in tax treaties.

There is only one exception which involves the sale of gas. This sort of transactions may be covered by APAs in accordance with the Petroleum Tax Act Section 6 (5).

Documentation And Disclosure Requirements

Tax Return Disclosures

From the income year 2007, taxpayers are obliged to file the form RF–1123 regarding intra-group transactions with the annual tax return, if the total amount of controlled transactions exceeds NOK 10 million or if the total amount of outstanding accounts exceeds NOK 25 million.

Form RF-1123 must be filed together with the corporate tax return, the deadline for filing which is 30 April. The deadline is 31 May if the return is submitted electronically.

Level of Documentation

In Norway the company can chose to prepare the documentation pursuant to the EU Transfer Pricing Documentation (TPD) concept to document internal pricing. However, the taxpayer must ensure that the information presented fulfils the requirements in the regulations sections 4-13, cf section 16 (3), as listed above. Documentation prepared in line with the OECD Guidelines will generally meet the Norwegian requirements.

There are specific transfer pricing documentation regulations which must be adhered to. The documentation must include:

- a company overview;
- financial overview;
- information about type and scope of controlled transactions;
- industry analysis;
- functional analysis;
- selection of transfer pricing method;
- comparability analysis;
- Information about agreements;
- Overview of immaterial transactions (if the transactions take place on a stand alone basis, are of limited economic significance and do not form part of the core business of the enterprise.);
- Information about centralized services;
- Information about intellectual property.

Note that he 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 arm's 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.

Record Keeping

The record keeping regulation states that Transfer pricing documentation must be kept on file for 10 years.

Language for Documentation

Transfer pricing documentation may be submitted in English, Norwegian, Swedish, or Danish. The Country-by-Country Report must be filled in English.

Small and Medium Sized Enterprises (SMEs)

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 NOK 400 million; or
- total assets not exceeding NOK 350 million.

This exemption does not apply to enterprises subject to the special tax on petroleum.

Multinational enterprises with a consolidated revenue of NOK 6,5 billion or less are exempt from the obligation to file Country-by-Country Report.

Deadline to Prepare Documentation

The documentation must be prepared for each income year. The documentation does not need to be filed with the tax authorities, unless this is requested. The documentation must be kept for at least ten years.

Deadline to Submit Documentation

The statutory deadline to submit Transfer pricing documentation is 45 days after the written request from the tax authorities. Generally, no extension is granted.

Statute Of Limitations

The new statute of limitations period is 5 years from tax-year end. The statute of limitations of 10 years from tax-year end is only applicable when the taxpayer has demonstrated gross negligence. If taxpayers include an appendix to the tax return setting out sufficient factual information about the transfer pricing, the statute of limitations will be two years after the financial year.

Transfer Pricing Methods

The Norwegian Tax Authorities accept the pricing methods listed in the OECD Guidelines. The traditional transactional methods (CUP, resale price and cost-plus) are generally preferred to the profit-based methods (TNMM and profit split). However, support for applying the profit-based methods under certain circumstances is increasing. The tax authorities generally do not accept the use of Pan-European searches anymore because the tax authorities believe that the Norwegian market, in general, has higher profit margins since Norway has not been affected by the financial crisis in the same way as many other European countries.

There is no specified priority of methods under the Norwegian tax law. As stated by the Norwegian Supreme Court, the Taxation Act (1999) section 13-1 allows for the use of several transfer pricing methods, including methods not described in the OECD Guidelines, provided those methods provide arm's-length results.

Comparables

There is no requirement to use local comparables. However, it is preferable since the tax authorities have more information on such comparables than others. The Norwegian tax authorities use several databases when conducting database searches, with Amadeus being the most frequently used. The use of secret comparables as the basis for an assessment is an approach of last resort.