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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Norway

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TAX



Norway

KPMG observation

The focus on transfer pricing in Norway remains strong. There are several court cases being decided on transfer pricing issues and the Norwegian tax authorities have increased the number of tax audits conducted on various transfer pricing topics. Furthermore, new interest deduction limitation rules have been implemented with effect from 1 January 2014. The new rules will have a significant impact on multinationals with intra-group financing relating to their operations in Norway.

The Norwegian tax authorities are following the development of the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action Plan closely. As an example, the Ministry of Finance has gathered a group of tax experts in Norway which is evaluating the entire tax system and its alignment with international practice. The recommendations of the working group are expected in October 2014.

Finally, there is a particular focus on the quality of the comparability analysis presented to the tax authorities. This is in line with the updated OECD Guidelines and there is an expectation of a much more analytical approach to the determination and evaluation of transfer prices.

Basic information

Tax authority name

Norwegian Tax Authorities (Skatteetaten in Norwegian).

Citation for transfer pricing rules

Section 13–1 in the General Tax Act (GTA). Income can be adjusted based on the general clause in section 13–1 of the GTA.

Section 6-41 in the GTA sets out the new rules on interest deduction limitation.

Section 4-12 in the Tax Assessment Act (TAA) includes the requirements to prepare transfer pricing documentation.

Effective date of transfer pricing rules

Formal transfer pricing documentation requirements commenced on 1 January 2008, cf. Section 4-12 of the Tax Assessment Act with regulations.

What is the relationship threshold for transfer pricing rules to apply between parties?

Direct or indirect ownership or control of at least 50 percent.

What is the statute of limitations on assessment of transfer pricing adjustments?

The statute of limitations is 10 years from tax year-end if the taxpayer has not provided sufficient factual information about the transfer pricing in an appendix to the tax return. 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 disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. From financial 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 exceed 10 million Norwegian krone (NOK) or if the total amount of outstanding accounts exceeds NOK 25 million.

What types of transfer pricing information must be disclosed?

The value range of related party transactions to be disclosed depends on the category of the transaction such as services, tangible property transactions, loans and interest, etc. On the front page of the yearly tax return, 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 study before being requested by the tax authorities to do so. In cases of uncertainty one should consider an appendix to the tax return in order to limit the open years of re-assessment to two years after the financial year and/or to avoid tax penalties if an adjustment is sustained.

What are the consequences of failure to prepare or submit disclosures?

If affected taxpayers do not submit form RF-1123, the tax filings can be deemed incomplete. Providing insufficient or

wrongful information can lead to penalty taxes being imposed on adjusted transfer pricing amounts in tax audits.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No. There is no penalty for mere failure to prepare a study. However, there is a risk that a subsequent re-assessment made by the tax authorities in a tax audit will attract penalties, due to provision of insufficient information. Affected taxpayers are required to prepare transfer pricing studies for each financial year. Taxpayers are given 45 days to submit the documentation upon written request from the Norwegian tax authorities, so there is some time to finalize the report if targeted by the tax authorities. The transfer pricing study must be kept on file for 10 years.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

The benefits of having a prudent transfer pricing study are meeting the expectation of the tax authorities, i.e. mitigating the risk of the tax authority making adjustments on a discretionary basis, since preparing an acceptable transfer pricing study will shift the burden of proof onto the tax authorities. In addition, the preparation of an acceptable transfer pricing study will reduce the risk of penalty tax if a reassessment is made by the tax authorities.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing study must be submitted within 45 days of a written request from the tax authorities. Generally, no extensions are granted.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Yes. There are specific transfer pricing documentation regulations which must

be adhered to. The study must include a company overview, industry analysis, functional analysis, selection of transfer pricing method and comparability analyses. There is no specific requirement to perform a database search although this is advisable if a net margin method is applied. The tax authorities can request such an analysis and the taxpayer will get an additional 60 to 90 days to file according to the transfer pricing documentation regulations in Norway.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

No, although the Norwegian tax authorities have shown a preference for the transactional profit method where no comparable uncontrolled prices are available.

If there is no priority of methods, is there a “best method” rule?

Yes, the Norwegian tax authorities acknowledge the 2010 version of the OECD Guidelines, so the “most appropriate method” rule applies.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Within 45 days of a written request. Generally, no extension is granted.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

The taxpayer can bring the case to the tax complaint board and/or the courts.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties could apply. This means that a penalty, generally of 30 percent of the tax avoided, may be levied for transfer pricing adjustments. The penalty exposure can be reduced by including an appendix to the tax return where the intra-group transactions and methods applied are described in a correct and sufficient manner. The rate of penalty tax can be increased to 60 percent in cases of gross negligence by the taxpayer.

To what extent are transfer pricing penalties enforced?

In recent years we have noted that the tax authorities enforce penalties more frequently in transfer pricing cases. On the other hand, according to a new Supreme Court decision, an increase in taxable income should not automatically lead to a penalty if the taxpayer has acted in a prudent manner.

What defences are available with respect to penalties?

Taxpayers are obliged to disclose sufficient and correct information about their transfer pricing. The defense would thus generally be to argue that the taxpayer has complied with these requirements.

What trends are being observed currently?

There is a particular focus on the quality of the comparability analyses presented to the tax authorities. This is in line with the updated OECD Guidelines, and there is an expectation of a much more analytical approach to the determination and evaluation of transfer prices. In particular, intra-group financial arrangements and the treatment of intangible assets are currently areas of great interest to the Norwegian tax authorities. A wide range of industries is being questioned by the tax authorities, however, the pharmaceutical, software and telecommunication industries are often shown particular attention with regard to questions about intangible assets. Finally, the Norwegian tax authorities have stated that they will continue to scrutinize Norwegian subsidiaries and branches with low margins or losses.

Special considerations

Are secret comparables used by tax authorities?

Yes.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No. There is no requirement to use local comparables. However, it is preferable since the tax authorities have more information on such comparables than others. That being said, the Norwegian tax authorities generally acknowledge that it is difficult to find proper comparables looking at the Norwegian market in isolation.

Do tax authorities have requirements or preferences regarding databases for comparables?

There are no specific requirements. The Norwegian tax authorities use several databases when conducting database searches, with Amadeus being the most frequently used.

What level of interaction do tax authorities have with customs authorities?

Medium.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

No.

Are year-end transfer pricing adjustments permitted?

Yes.

Other unique attributes?

None.

Other recent developments

The use of mutual agreement procedures (MAPs) has increased. We are still awaiting possible Advance Pricing Agreement (APA) rules and there is currently a pilot project on MAP APAs. Furthermore, we are aware that the Norwegian tax authorities are favourably inclined to APAs based on the general provisions in tax treaties.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

Almost always. However, there is pressure on the Norwegian tax authorities to handle MAP cases more rapidly.

When may a taxpayer submit an adjustment to competent authority?

There are no formal rules in this area.

May a taxpayer go to competent authority before paying tax?

This is permitted and meetings with the relevant tax authorities are possible. However, taxes become payable upon the tax office's decision being made, so generally taxes have to be paid prior to going to the competent authority. Taxpayers can postpone payment by obtaining a parent or bank guarantee.

Advance pricing agreements

What APA options are available, if any?

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.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties?

Not applicable.

Language

In which language or languages can documentation be filed?

English, Norwegian, Swedish, or Danish.

KPMG in Norway

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