



cutting through complexity

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, intra-group interest deduction limitation rules have been implemented with effect from 1 January 2014. These 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 gathered a group of tax experts in Norway which evaluated the entire tax system and its alignment with international practice. The recommendations were presented at the end of 2014 but it remains to be seen whether any of these recommendations result any new legislation.

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.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Thresholds apply/exist
Legal requirements	●
Protection from penalties	●
Reduce risk of adjustment	●
Shifts burden of proof	●

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 rules on intra-group 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 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. In addition, the form RF-1315 is to be used regarding the rules on intra-group interest deduction limitation.

What types of transfer pricing information must be disclosed?

The value 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 reduce the risk of penalty taxes if an adjustment is sustained.

What are the consequences of failure to 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

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes. English, Norwegian, Swedish, or Danish.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (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

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 45 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

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

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

The taxpayer can bring the case to the tax appeal board and/or the courts. In addition, taxpayers can opt for the international route, i.e. Mutual Agreement Procedure.

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 defenses 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, 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.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, sometimes.

Does the tax authority have other preferences in benchmarking? If so, please describe.

In cases where the Norwegian taxpayer is a limited risk entity, the Norwegian tax authorities expect loss-making entities to be excluded from the final set of comparables.

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

Medium.

Are there limitations on deductibility of management fees beyond the arm's length principle?

No.

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

No.

Are royalties subject to withholding?

No.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. There are situations where income and/or costs are treated differently for book and tax purposes. However, as a main principle, taxpayers should avoid discrepancies between book and tax numbers.

Other unique attributes?

None.

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. As a result, the Norwegian tax

authorities have put in place a separate group exclusively dealing with MAP and APA cases.

When may a taxpayer submit an adjustment to competent authority?

There are no formal rules in this area, however, it must be in line with the applicable tax treaty.

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?

Bilateral.

Is there a filing fee for APAs?

No.

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.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable. Norway does not have a formal APA program in place. The APAs currently negotiated are based on tax treaty provisions.

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