

International Tax News*

**Proposal for transfer pricing
documentation rules**

Norway

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Proposal for transfer pricing documentation rules

Discussion paper presented by the Ministry of Finance

On 7 November 2006, the Ministry of Finance issued a discussion paper containing a proposal of new Transfer Pricing documentation rules.

The proposed rules will essentially apply to all Norwegian entities (including permanent establishments) which hold or control more than 50% of another entity, or which are owned or controlled by another entity to the same extent.

According to the proposal, these taxpayers will be required to submit a summary statement of all inter-company transactions to which they are party. The statement shall be submitted along with the tax return.

In addition, within 45 days upon demand from the Tax Authorities, these taxpayers will be required to submit extensive documentation on the determination of prices and other terms in inter-company transactions. The extent of the documentation required implies that documentation will typically have to be prepared consecutively.

Even if both parties to the relevant inter-company transactions are Norwegian entities, both the obligation to submit a summary statement and the documentation requirements apply.

Documentation requirements

To a large degree, the proposed documentation rules are based on the OECD Transfer Pricing Guidelines. The documentation shall constitute a basis for the evaluation of whether prices and terms are at arm's length, and should contain i.e.:

- a description of the taxpayer's and the related parties' businesses and the group of which the taxpayer is a part,
- a description of the inter-company transactions (type and extent),
- a functional analysis and normally a comparability analysis, as well, and
- a description of the transfer pricing method applied.

As a general rule, benchmark studies are not required.

Documentation requirements not applicable to small enterprises

The documentation rules shall not apply to smaller enterprises, i.e. enterprises which, on a group basis, employ no more than 250 people and i) whose sales revenues do not exceed MNOK 400, or ii) whose balance sheet total does not exceed MNOK 350.

Sanctions

The discussion paper does not indicate that failure to comply with the documentation requirements will trigger any particular sanctions. However, in case of failure to submit the required documentation within 45 days, the Tax Authorities may estimate the taxpayer's tax liability on a discretionary basis. Similarly, if documentation has not been submitted as required, the Tax Authorities are under no obligation to hear a possible complaint from the taxpayer.

Entry into force of the proposed rules

If the proposed rules are passed, they will most likely be effective from 2008 onwards. As such, taxpayers will, at the earliest, be required to submit documentation as described in the paper during the summer of 2009. In the meantime, the Tax Directorate will probably prepare more detailed guidelines as to the preparation of the required documentation.

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