

# International Tax News\*

## New Transfer Pricing Documentation Rules

## Norway

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On 29 June 2007, new requirements for the documentation of controlled transactions, that is, transactions and transfers between related entities, were introduced into Norwegian statute.

The documentation rules are set out in Section 4-12 of the Tax Assessment Act (TAA) and apply to all controlled transactions, including transactions within Norway. Further specifics as to which taxpayers are subject to the new rules and to the required content of the documentation are set out in two sets of regulations issued 7 December 2007.

### Level of Documentation

The new rules provide for two different levels of documentation:

1. A high-level statement (form RF-1123) to be submitted along with the tax return (the Filing Requirement)
2. A more detailed and extensive transfer pricing documentation to be submitted following a specific request from the tax authorities (the Documentation Requirement)

### Who is covered?

Basically, the rules apply to any Norwegian legal entity (including branches and permanent establishments) that is taxable to Norway and holds or controls at least 50% of another entity (Norwegian or foreign), or which is owned or controlled by another Norwegian or foreign entity to the same extent.

However, the Norwegian entity will be exempt from the rules – both from the Filing Requirement and the Documentation Requirement<sup>1</sup> – if

- a. the inter-company transactions to which the Norwegian taxpayer is party total less than Nkr 10 million; and

- b. the outstanding accounts between the Norwegian taxpayer and all related parties total less than Nkr 25 million.

Both conditions must be met in order for the entity to be exempt from the rules.

**The Filing Requirement** is met by submitting the standard form RF-1123<sup>2</sup> along with the tax return. The Directorate of Taxes has issued guidelines (RF-1124) for the completion of the form. The final version of the form has been altered somewhat from the draft issued earlier this fall, but the requirements as to the content of the form are basically the same.

**The Documentation Requirement** is met by submitting comparatively extensive documentation on how the terms of controlled transactions are determined. The documentation must be submitted in 45 days following a specific request from the Tax Authorities.

As the Documentation Requirement places a significantly heavier burden on the taxpayers than does the Filing Requirement, the former's range of application is somewhat narrower than the latter's. Hence, entities which are part of a small or medium-sized group are exempt from the Documentation Requirement.

As such, a Norwegian taxpayer is exempt from the Documentation Requirement if it is part of a group which, on a consolidated (the total group) basis

- a. employs less than 250 people; and
- b. whose turnover does not exceed Nkr 400 million or whose balance sheet total does not exceed Nkr 350 million.

The exemption does not apply to entities which are subject to Special Tax under the Petroleum Tax Act. In addition, any controlled transactions with an entity located in a jurisdiction from which Norway may not require tax information are subject to the documentation requirements.

The documentation shall constitute a basis for the Tax Authorities' detailed evaluation of whether the taxpayer's

<sup>1</sup> This is changed from the earlier draft regulations. In the drafts, the threshold amounts were only relevant in the context of the Filing Requirement. In principle, it was possible for an entity to be subject to the Documentation Requirement and, at the same time, be exempt from the Filing Requirement. Under the finalized rules, only the exemption for small and medium-sized groups separates the two different levels' respective ranges of application.

<sup>2</sup> The form and the guidelines can be found (in Norwegian only) at <http://www.skatteetaten.no/Template/Skjema.aspx?id=60779&epslanguage=NO>

transfer pricing is in accordance with the arm's length principle and should contain, inter alia:

- a description of the taxpayer's and the related parties' businesses;
- a description of the group of which the taxpayer is a part;
- a detailed description of the controlled transactions (type and extent);
- a functional analysis (an analysis of all relevant functions performed, risks carried and assets applied in the controlled transactions);
- a comparability analysis (an analysis of the comparability between the controlled transactions and transactions between unrelated parties); and
- a description and justification of the transfer pricing method applied.

The new Norwegian documentation requirements are to a large degree based on the OECD Transfer Pricing Guidelines, and their extent entails that the documentation will typically have to be prepared on a consecutive basis. The Directorate of Taxes has issued comparatively detailed guidelines<sup>3</sup> on the preparation of the documentation.

According to regulations issued 7 December 2007, documentation prepared in accordance with the EU Code of Conduct<sup>4</sup> for transfer pricing documentation (EUTPD) will basically suffice for Norwegian purposes.

Failure to meet the Filing and/or Documentation Requirement entails that the Tax Authorities may estimate the taxpayer's tax liability (TAA Section 8-2 Nos. 2 and 3). In addition, such failure entails that the Tax Authorities are under no obligation to hear a possible complaint from the taxpayer (TAA Section 9-2 No. 7 d)

The Filing Requirement is effective from 2007 whereas the Documentation Requirements will come into effect from 2008 onwards.

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<sup>3</sup> The guidelines can be found (in Norwegian only) at <http://www.skatteetaten.no/Templates/Skjema.aspx?id=60780&epslanguage=NO>

<sup>4</sup> Ref. [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c\\_176/c\\_17620060728en00010007.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_176/c_17620060728en00010007.pdf)

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