

Overview

Selmer Law firm, Taxand Norway

Selmer is a full service law firm based in Oslo and Stavanger, Norway. We offer a full range of tax advisory and litigation services, covering in practice all business sectors.

Selmer's team can assist in every aspect of transfer pricing services, including compliance and reporting, analysis, tax planning and strategy and disputes.

General: Transfer Pricing Framework

Norway has implemented the OECD TP Guidelines as Norwegian law and, accordingly, also the arm's-length principle. Thus, the transfer pricing rules and arm's length principle are generally in line with the OECD Guidelines.

The legal framework is outlined in the Income Tax Act ("ITA").

Accepted Transfer Pricing Methodologies

In general, Norway follows the OECD TP guidelines as to which transfer pricing methodologies are accepted and preferred.

The taxpayer must be able to substantiate why the chosen method is considered appropriate, based on the relevant facts and circumstances.

In principle, the CUP method is the preferred method by the DTA but because comparable uncontrolled transactions are difficult to find, in practice, the cost plus method (typically for group services) and the TNMM method are the most popular transfer pricing methods.

Transfer Pricing Documentation Requirements

The NTA requires taxpayers to be able to substantiate all related party / intercompany transactions in transfer pricing documentation. There is no threshold to this obligation, and the requirement must be seen as a general requirement for all controlled transactions. The requirements are:

- ❖ Duty to disclose; The disclosure and reporting of controlled transactions are made in a form delivered as part of the annual tax return. This obligation applies for all businesses, except if the controlled transactions of the taxpayer in aggregate is less than 10 million NOK and at year end the total receivables/debt between related parties is less than 25 million NOK.
- ❖ Duty to document; Taxpayers subject to the disclosure requirement shall also prepare TP documentation, unless the business has less than 250 employees, and either sales income less than 400 million NOK or a total balance (in its accounts) less than 350 million NOK (all values on a consolidated basis).

The documentation should be in the form of a group master file and local file in accordance with the OECD TPG. The documentation must be delivered to the NTA within 45 days after written notice.

The documentation generally should include information on the related party/group structure, the business carried out, the legal and management structure, the intra group transactions, and the choice of TP methodology used. There is no fixed requirement as to prepare a benchmark of the transactions involved, but this is often used to substantiate the chosen mark-up/margin.

Local Jurisdiction Benchmarks

In Norway, a benchmark analysis is not mandatory. However, if a benchmark analysis is not prepared the taxpayer may have substantial problems documenting and substantiating the margin/mark-up used and the NTA will be in a better position to amend the taxpayer's pricing and increase the taxpayer's taxable income.

It is therefore generally recommended that a benchmark analysis is carried out, at least if the amounts involved are material.

The NTA accepts both local and pan-European benchmarks, provided that they meet comparable search strategy standards. The NTA generally refers to multiple year data and the interquartile range in terms of benchmarking. Most taxpayers update their benchmark searches every 1-3 years, depending also on if the business activity has undergone significant changes or not.

Benchmark analyses prepared in accordance with generally accepted standards are normally accepted by the tax authorities, but we also see cases where the benchmark studies are challenged.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

In Norway there is no legal framework for APA's, but APA's are used more and more over the last 4-5 years, and may be entered into in accordance with the relevant tax treaty and the MAP procedures.

An APA will normally not be granted if the main purpose of the transaction is to avoid taxes in Norway or abroad.

Transfer Pricing Audits

In Norway, transfer pricing is a focus area of the NTA and the NTA performs TP audits on a regular basis. The NTA defines matters of interest on an annual or regular basis. Taxpayers with significant cross border controlled transactions should expect a TP tax audit. The TP audits may cover practically all areas, including financial transactions.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In Norway the burden of proof in transfer pricing matters depends on if the related party is a business resident in a country inside or outside of the EEA area. If the related party *is resident outside of the EEA*, and there is reason to believe that income or wealth is reduced, the reduction shall be deemed to be a consequence of the intra-group relation unless the taxpayer proves that this is not the case. In other words: The taxpayer must prove that the price and other terms are on arms-length conditions. The same applies if the related party is resident within an EEA country with which the Norway cannot require information about the related party's income and wealth according to a treaty.

If the related party *is resident within the EEA*, the burden of proof is formally the opposite: In these cases, the tax authorities bear the responsibility of demonstrating that the prices set by a taxpayer are not at arm's length. However, if a taxpayer fails to meet certain documentation requirements, the burden of proof may shift to the taxpayer also in these cases. Norwegian law prescribes that taxpayers must maintain sufficient documentation to substantiate their transfer prices, which impose Master File and Local File obligations according to the OECD Guidelines.

The Norwegian rules implies, that the distribution of the burden of proof does not always align with the legal framework. The tax authorities often rely on assumptions and positions, shifting in practice the burden of proof onto the taxpayer also for EEA resident related parties, which is in practice forced to provide proof that the transactions are actually on arms-length terms. This implies that in disputes, taxpayers may find themselves in a defensive position, despite the legal principle that the tax office should bear the initial burden of proof. Given this, taxpayers must ensure that their transfer pricing documentation is both robust and sufficient comprehensive. High-quality documentation is not just a compliance requirement but also a strategic step to minimize the risk of an unfavorable shift in the burden of proof.

Transfer Pricing Penalties

In Norway penalty tax may be levied with a rate of up to 60% of the tax that should have been paid had the taxpayer filed correct information. The base requirement for imposing penalty tax is that the taxpayer has provided the NTA with insufficient or wrongful information, and penalty tax is not levied due only to lack of documentation. A requirement is that the lack of documentation had or could have led to reduced taxable income.

In cases where the taxpayer has been negligent, only the maximum penalty tax is 30%. In cases with gross negligence or willful tax fraud the rates are up to 60%. There is no maximum nominal amount.

Local Hot Topics and Recent Updates

In Norway it seems that the NTA over the last few years have had a strong focus on financial transactions and the application of arm-length interest rates.

NORWAY



Documentation threshold

Master file	MNOK 400 (or balance MNOK 350)
Local file	MNOK 400 (or balance MNOK 350)
CbCR	6 500 000 000 NOK (appr. MEuro 600)

Submission deadline

Master file	45 days from request from NTA
Local file	45 days from request from NTA
CbCR	Within 12 months after end of tax year

Penalty Provisions

Documentation – late filing provision	N/A - Norway applies penalty tax if taxable income is increased and the taxpayer negligently has provided wrongful or incomplete information.
Tax return disclosure – late/incomplete/no filing	N/A – see above
CbCR – late/incomplete/no filing	N/A – see above



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