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Methods for determining the value of transactions conducted between associated persons

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This Regulation is established on the basis of subsection 14 (8) and subsections 50 (6) and (8) of the Income Tax Act, taking into account the provisions of subsection 53 (4^6) of the same Act.

§ 1. Scope of this Regulation

(1) This Regulation shall be applied to transactions conducted:
1) between a resident legal person and an associated person;
2) between a sole proprietor and an associated person;
3) through or on account of a non-resident legal person's permanent establishment in Estonia, with a person associated with this same non-resident legal person.

(2) This Regulation shall also be applied to transactions between a non-resident legal person and its permanent establishment in Estonia, which must conform to the market value market value (subsection 8 (2)).

(3) This Regulation shall also be applied to transactions between an Estonian resident legal person and its permanent establishment abroad, which must conform to the market value market value (subsection 8 (2)).

(4) If the value of a transaction conducted between a person provided for in previous subsections of this section and an associated person differs from the value of similar transactions conducted between non-associated persons, the tax administrator may, when determining income tax, use the values of transactions applied by non-associated independent persons under similar conditions.

(5) Both the taxpayer and the tax administrator shall follow the principles provided for in this Regulation upon comparing transaction values.

§ 2. Definitions

Definitions used in this Regulation:
1) taxpayer shall mean a person who has conducted the transaction, the value of which is accounted pursuant to this Regulation;
2) associated persons shall mean persons provided for in section 8 of the Income Tax Act;
3) inspected transaction shall mean a transaction between associated persons;
4) transfer price shall mean the price of the inspected transaction;
5) market value shall mean the price that non-associated persons would have used in a similar transaction conducted under similar conditions;
6) price range shall mean a series of results determined with the same method of determining the transfer price using different comparable data or with different methods of determining the transfer price;
7) comparable transaction shall mean a transaction between non-associated persons which can be used for comparing to the inspected transaction due to the conditions of the transactions being similar;
8) combined transaction shall mean related transactions following each other in such close progression or being in such close association that they cannot be assessed separately (e.g. know-how contained in a service).

§ 3. Comparability of transactions

(1) In order to use the methods provided in this Regulation, the factors affecting the price of the inspected transaction shall be compared to the factors affecting the price of the comparable transaction.

(2) Upon assessing comparability, all such characteristics of the transaction, the transaction parties and the environment shall be analysed which can affect the value of the transaction, primarily:
1) characteristics of the transaction object (§ 4);
2) duties performed in the transaction, identified in the course of activity analysis (§ 7);
3) transaction conditions (§ 8);

4) economic conditions affecting the conducting of the transaction (§ 9);
5) business strategies of transaction parties (§ 10).

(3) Upon comparing transactions, data of transactions between the taxpayer and a non-associated person shall generally be preferred to data of transactions between a third party and a non-associated person, and data in Estonian databases shall be preferred to data in databases of foreign states.

(4) Transactions shall be deemed comparable if the differences of the transactions or of the transaction parties have no significant influence on the characteristics of the transaction being analysed via methods provided in the Regulation or if the significant influences can be eliminated by corrections. Comparable data shall be corrected; data of the inspected transaction shall not be corrected.

(5) The characteristics of each inspected transaction shall be taken into account upon comparing combined transactions.

(6) Comparing shall determine whether the differences of goods amounts and service extents necessitate a correction of the transaction value, and shall determine the discounts depending on the goods amount that non-associated persons apply between them under similar conditions.

(7) Transaction conditions determining comparability shall also include differences resulting from different delivery conditions and differences reflected in the transaction value and resulting from different obligations of the party transferring the property or providing the service and the buyer, including in relation with transportation and insurance.

§ 4. Characteristics of the transaction object

(1) All circumstances that could affect the price differences shall be taken into account upon assessing the characteristics of the transaction object, primarily the following:
1) in case of tangible property, the characteristics, quality and usability period of the property and the availability and volumes of deliveries, the validity period of the delivery contract, and also the availability of similar goods and replacement goods and the expenses and risks related to use of the property;
2) in case of intangible property, the nature and type of the property, the validity period of the property, the presumed benefits from using the property, and the expenses and risks related to creation, preservation and use of the property;
3) in case of providing a service, the type, extent and duration of the service, and the expenses and risks related to providing the service.

(2) If the transaction object is paid for in periodic instalments, then the conformity of the payments to the market value shall be assessed, taking into account the information known to the transaction parties at the time of conducting the transaction and considering the justified prognoses that the transaction parties may have made regarding the profitability of such transaction and regarding the additional expenses and risks related to such transaction.

(3) If non-associated persons agree upon conducting a similar transaction that the payment amounts or other transaction conditions will be reviewed after a certain period of time, then such transaction elements shall also be reviewed upon determining the value of the inspected transaction.

§ 5. Transactions with intangible property

(1) In case of related transactions with intangible property, the owner of the property and the party entitled to the benefits thereof shall be identified.

(2) Additional comparison criteria shall be used upon determining the market value of intangible property, primarily:
1) existence of legal protection regarding the property;
2) duration and extent of the legal protection;
3) geographic limitations on exercise of rights resulting from the property;
4) sales limitations on goods produced upon use of the property;
5) extent of the rights handed over regarding the property (common or exclusive license);
6) investments necessary for creating, preserving or using the property;
7) client lists of the licensee or franchisee;
8) possibility of the licensee to participate in the research and development activities of the licensor.

(3) If several different types of intangible property are handed over with a single transaction, the market value of the property shall be determined separately for all types if possible.

§ 6. Services

(1) The following shall be identified regarding an inspected transaction with the object of providing a service or an inspected transaction related to the providing of a service:
1) whether the service was actually provided;
2) how the service was paid for;

3) whether the service price has to conform to the market value;
4) whether the service price conforms to the market value.

(2) A transaction between associated persons shall be considered conducted, if the service has or may have in the future an economic value for the party receiving the service and if a non-associated person under comparable circumstances would be willing to pay for a similar service or to provide a similar service.

(3) Upon assessing the conformity of the service price to the market value it shall be taken into account that the service provider usually expects such price for the service which would cover the expenses related to the providing of the service and would generate profit. Under certain conditions it may be justified to provide a service without generating profit (e.g. providing new services at their cost price or at a price below that for the purpose of advertising).

(4) A service shall not be considered a service provided for the taxpayer in the sense of this Regulation, if:
1) the service is a duplication of a duty that the taxpayer is performing or a duplication of a service that the taxpayer is purchasing from a non-associated person, except if such duplication is temporary or if the duty or service is duplicated for the purpose of reducing the risk of making wrong decisions;
2) the providing of the service was beneficial for another person and the benefit for the taxpayer is of only random nature or if the taxpayer benefits only because of belonging into a consolidated group.

(5) If the taxpayer pays for the possibility of using a service but does not actually receive the service, then the service shall be considered provided only if non-associated persons under comparable circumstances would be willing to pay for only the possibility of using such service. If the taxpayer pays for a service with a lower value than the price paid for the service, the price shall be considered conforming to the market value if non-associated persons under comparable circumstances would be willing to pay the same price for the same service.

(6) The volume of using the described services in previous periods shall be assessed upon accounting the payments provided for in subsection (6).

§ 7. Activity analysis

(1) Activity analysis shall be used for comparing the duties performed in inspected transactions to duties performed by non-associated persons in similar transactions between them. The analysis shall take into account the property used for executing the transaction, the structure of and the distribution of duties in the consolidated group, the risks taken and the benefits received, and the legal status of the persons upon performing these duties.

(2) If there are significant differences between the duties of the taxpayer and a comparable person, such differences shall be eliminated by way of corrections. The number of duties performed shall not be important upon comparing tasks; the significance of these duties to the transaction parties, expressed as the frequency of performing, the content, and the value of the duties for the transaction party shall be important upon comparing tasks.

(3) Activity analysis shall identify and compare the property used for executing the inspected and the comparable transaction, and shall entail a risk analysis. The risk analysis shall identify the economically significant risks and the carriers of such risks.

(4) An inspected transaction shall be considered not comparable to a transaction between non-associated persons if there are significant and incorrigible differences in duties performed, property used or risks taken.

§ 8. Transaction conditions

(1) Analysis of transaction conditions shall identify whether the behaviour of the transaction parties conforms to the agreed conditions. If the behaviour of the transaction parties does not conform to the previously agreed conditions, then the actual transaction conditions shall be identified.

(2) Assessment of the value of a transaction between a non-resident and its permanent establishment situated in Estonia or a transaction between a legal person being a resident of Estonia and its permanent establishment situated in a foreign state shall be based on the specific transaction; in certain cases, assessment of transaction value on the basis of expenses may be justified. If a non-resident or a legal person being a resident of Estonia does not provide the same type of service to non-associated persons or if the purpose of selling goods to a permanent establishment is not further marketing of such goods via the permanent establishment, the transaction value may be determined on the basis of expenses.

§ 9. Economic conditions

(1) Analysis of economic conditions shall identify the market positions of the inspected and the comparable transaction, the availability of replacement goods or services, the differences of capital prices, and other circumstances determining the comparability of business environments.

(2) Economic conditions must be comparable and differences of business environments must not have significant influence on the transaction price or such differences must be corrigible.

§ 10. Business strategy

(1) The business strategy and the development stage of the entrepreneurship of the taxpayer and a non-associated person shall be analysed upon determining the comparability, taking into account the various aspects affecting the activities of entrepreneurs, primarily:
1) innovations and product development;
2) strategy for increasing market share;
3) plan for expanding business activities;
4) risk hedging;
5) assessment of political changes;
6) effects of existing and planned legislation regulating the market.

(2) Business strategy analysis shall identify whether the business strategy has been prepared by the consolidated group or by the taxpayer and what is the role of other members of the consolidated group in implementing the business strategy.

§ 11. Methods of determining the market value of the transfer price

(1) One or several of the following methods shall be used for determining the market value of the transfer price, whereas the methods differ from each other by the information required as the basis for the analysis:
1) comparable price method – this method requires a comparable transaction for determining the market value of the transfer price and provides the most accurate result with comprehensive comparison data;
2) resale price method – this method is based on the price of a resale transaction and requires comparison data about the price mark-up of comparable transactions;
3) expense method – this method is based on the expenses of the inspected transaction and requires comparison data about the profit margin of comparable transactions;
4) distributed profit method – this method uses data about comparable transactions primarily for assessing the contribution of a transaction party;
5) transaction yield method – this method uses data about yield of comparable transactions.

(2) The method providing the most reliable result shall be selected on the basis of the specifics of the inspected transaction, the reliability of the available data about comparable transactions, the justification of the assumptions and prognoses, and the level of similarity of comparable transactions.

(3) If the circumstances related to the transaction do not allow for using the methods listed in subsection (1), another method may be used for determining the market value of the transfer price. Justifications must be given for such use of another method.

(4) The tax administrator shall have the right to request from the taxpayer an explanation of the reasons for choosing the utilised method. If the method chosen by the taxpayer is not suitable, the tax administrator may use another method for determining the market value of the transfer price. The tax administrator must give justifications for such use of another method.

(5) The market value of the transfer price shall be determined separately for each transaction, if possible. In case of combined transactions, the total value of the transactions shall be determined; the payments accounted upon determining the total value shall not be accounted additionally upon calculating the tax liability.

(6) The actual transaction shall be identified for determining the market value of the transfer price. A seeming transaction shall not be taken into account. If the seeming transaction is conducted in order to conceal another transaction, the comparison of transactions shall be based on the concealed transaction conducted between the associated persons.

(7) Data of several years about a party of the inspected transaction and about a party of the comparable transaction may be taken into account in order to assess the effect of the useful life and seasonal nature of the product on the transaction yield.

(8) The transfer price shall be considered conformant to the market value if it is within the price range determined on the basis of the comparison data. If the transfer price is outside such price range, the tax administrator shall have the right to correct the transaction price in such a way that the result is within the price range. If the determined price range of market value is very wide, the analysis shall be repeated with more specific data or with other methods.

§ 12. Comparable price method

(1) The comparable price method compares the inspected transaction to the price of a comparable transaction. The market value of the transfer price shall be determined in a comparison of the price of the inspected transaction with an internal or external comparable price.

(2) The internal comparable price shall be determined from a transaction where one party is the taxpayer and where:
1) the taxpayer transfers similar property or provides similar service under similar conditions to a non-associated person; or
2) the taxpayer purchases similar property or similar service under similar conditions from a non-associated person.

(3) The external comparable price shall be determined from a transaction where the parties are non-associated persons and where:
1) a third party transfers similar property or provides similar service under similar conditions to a non-associated person; or
2) a third party purchases similar property or similar service under similar conditions from a non-associated person.

(4) The comparable price method gives the most reliable result if there is an internal comparable price available for comparison and if:
1) the object of the inspected transaction is consumer goods or standard services, so that small differences in the characteristics of the product or service have no significant effect on the price; or
2) the market value of the interest rate of loans granted between the associated persons is determined.

(5) The comparable price method shall not be used if:
1) gathering information about conducting or conditions of a comparable transaction is unfeasible due to resource use; or
2) the differences in data of compared transactions cannot be corrected with sufficient precision for determining the comparable price.

§ 13. Resale price method

(1) The resale price method shall be used if the taxpayer has purchased a property or a service from an associated person and resells it to a non-associated person.

(2) The resale price method is based on the transaction price for which the property or service purchased from an associated person by the taxpayer is resold by the taxpayer to a non-associated person. The above mentioned transaction price shall be reduced by the calculated mark-up of resale price; such mark-up shall be compared to the mark-up used in a comparable transaction.

(3) The following formula shall be used in the resale price method for determining from a comparable transaction the necessary price mark-up: [(resale price – acquisition cost) / resale price] × 100.

(4) The price mark-up to be deducted must cover the expenses incurred by the taxpayer in relation with the transaction and also a proportional part of the expenses of the period. The price mark-up must also include the taxpayer’s profit which conforms to the duties performed in the transaction and to the market conditions present at the time of the transaction, and which is similar to the usual profit gained in a similar transaction by a non-associated person being the seller of the goods or the provider of the service.

(5) The following formula shall be used in the resale price method for determining from a comparable transaction the necessary acquisition cost of the sold goods or provided service conforming to the market value: resale price – [(resale price × resale price mark-up) / 100].

(6) The similarity of duties performed in the transaction is important upon comparing price mark-ups. The price mark-up conforming to the market value shall be determined by comparing the price mark-up of the inspected transaction:
1) to the price mark-up of a transaction conducted between the taxpayer and a non-associated person, yielding an internal comparable price mark-up for comparison; or
2) to the price mark-up of a transaction conducted between non-associated persons, yielding an external comparable price mark-up for comparison.

(7) If expenses are presented differently in the accounting of the inspected person and a comparable person, the expense accounting shall be corrected in such a way that expenses of the same type are used as a basis for calculating the price mark-up.

(8) The resale price method gives the most reliable results if there is an internal comparable price mark-up available or comparison and if:
1) tangible property or standard service is acquired for resale and the reseller does not add any significant value to it before reselling. For the purpose of this Regulation, adding a significant value shall mean physical changing of the property or changing the characteristics of a service or creating and administrating intangible property related to the resold goods or service. Packaging, repackaging, labelling and small-scale assembly works shall generally not be considered physical changing;

2) the time period between acquisition and resale of the goods or the service is as short as possible.

(9) The resale price method shall not be used if:
1) gathering information about conducting or conditions of a comparable transaction is unfeasible due to resource use; or
2) the differences in data of compared transactions cannot be corrected with sufficient precision for determining the comparable price mark-up.

§ 14. Expense method

(1) The expense method is based on the taxpayer’s expenses related to the execution of the inspected transaction. The acquisition cost of the property or the expenses related to the providing of the service shall be increased by the calculated gross profit margin (hereinafter profit margin), which shall be compared to the profit margin to be added in the comparable transaction.

(2) The following formula shall be used in the expense method for determining from a comparable transaction the necessary profit margin: [(sales price – transaction expenses) / transaction expenses] × 100.

(3) The profit margin must ensure the taxpayer’s profit which conforms to the duties performed in the transaction and to the market conditions present at the time of the transaction, and which is similar to the usual profit gained in a similar transaction by a non-associated person being the seller of the goods or the provider of the service.

(4) The following formula shall be used in the expense method for determining from a comparable transaction the necessary sales price conforming to the market value: [(transaction expenses × profit margin)/100] + transaction expenses.

(5) The similarity of duties performed in the transaction is important upon comparing profit margins. The profit margin conforming to the market value shall be determined by comparing the profit margin of the inspected transaction:
1) to the profit margin of a transaction conducted between the taxpayer and a non-associated person, yielding an internal comparable profit margin for comparison; or
2) to the profit margin of a transaction conducted between non-associated persons, yielding an external comparable profit margin for comparison.

(6) If expenses are presented differently in the accounting of the inspected person and a comparable person, the expense accounting shall be corrected in such a way that expenses of the same type are used as a basis for calculating the profit.

(7) The expense method gives the most reliable results if there is an internal comparable profit margin available and if:
1) activities in the inspected transaction are related to production or assembly works;
2) service is provided in the inspected transaction;
3) the producer is not significantly involved in creation of intangible values.

(8) The expense method shall not be used if:
1) gathering information about conducting or conditions of a comparable transaction is unfeasible due to resource use; or
2) the differences in data of compared transactions cannot be corrected with sufficient precision for determining the comparable profit margin.

§ 15. Distributed profit method

(1) The distributed profit method shall be used if the inspected transactions are so closely related to each other that they cannot be assessed separately or if the transaction parties use valuable intangible property or other unique property in the transaction.

(2) The distributed profit method determines the profit which the associated persons should gain from the inspected transaction; after activity analysis, this profit shall be distributed between the transaction parties in an economically justified way which would be used by non-associated persons for distributing the profit gained from a similar transaction. The basis for profit distribution may be the property used for executing the transaction, the yield of the transaction, or the risks taken for the transaction. If several types of products or services are sold by associated persons, this method shall be used separately for each group of products or services.

(3) The distributed profit method is based on information available to the transaction parties before conducting the transaction, considering the prognoses made by the transaction parties about the future expenses and the expected profit at the time of conducting the transaction.

(4) The distributed profit method may be used in both of the following ways:
1) profit distribution on the basis of the contributions of the transaction parties, where the profit of the transaction parties gained from the inspected transaction is distributed between the transaction parties according

to the duties performed in the transaction. The contribution of the transaction parties in the execution of the transaction is determined by activity analysis and, if possible, comparison data about the way of distribution that non-associated persons would have used for distributing the profit gained from a similar transaction is utilised as comparison data;
2) distribution of remaining profit, where the profit gained by the transaction parties from the inspected transaction is distributed between the transaction parties in two stages. First, the part of the profit related to the routine duties performed in the transaction is distributed between the transaction parties via other methods. Thereafter the rest of the profit, related to the yield of the intangible property or other unique property used in the transaction, is distributed between the transaction parties.

§ 16. Transaction yield method

(1) In the transaction yield method, the yield ratio of the inspected transaction is compared to the yield ratio of a comparable transaction. The yield ratio of a transaction is calculated by dividing the business profit from the transaction by a suitable element of the transaction (for example total expenses of the transaction, sales revenue, property used for executing the transaction).

(2) The transaction yield method is used:
1) if the market conditions of the inspected transaction and the comparable transaction and the structure of the expenses related to these transactions are so different that the resale price method or the expense method would not give reliable results;
2) if the objects of the inspected transaction and the comparable transaction or the duties performed in these transactions are significantly different;
3) for verifying results obtained by other methods.

(3) The transaction yield method shall not be used if valuable intangible property or other unique property has been used for executing the inspected transaction.

§ 17. Expenses distribution agreement

(1) An expenses distribution agreement (hereinafter agreement) shall mean a contract signed between associated persons, regulating the distributing of the expenses and risks related to development, creation or acquisition of property, services or rights (hereinafter agreement object) between the agreement parties and stating the rights of the parties regarding the agreement object.

(2) An agreement party shall have the right to use the part of the agreement object belonging to the agreement party, without paying to other agreement parties for such use.

(3) Analysis of the agreement conditions shall identify whether all agreement parties are entitled to benefits from the agreement object, shall determine the contribution of each agreement party to the agreement object, and shall identify whether the contribution of the agreement party is in proportion to the share of the agreement party in the expected or earned revenue.

(4) The taxpayer shall not be considered an agreement party if there is no reasonable basis for an assumption that the taxpayer receives any benefit from the agreement object.

(5) The estimated revenue from the object shall be determined upon verifying the proportionality of the contribution. If the actual revenue of the agreement is significantly different from the estimated revenue, the estimates made upon signing the agreement shall be compared to the estimates which non-associated persons would have made upon signing an agreement under similar conditions.

(6) Contributions shall be accounted similarly to expenses that the taxpayer would have incurred for acquiring the agreement object without the contract. A contribution shall not be accounted as a license fee or a rental or lease fee for use of the agreement object, except if the contribution grants the contributor only the right to use the agreement object, without the right to receive revenue from the agreement object.

(7) Upon signing the agreement, the following information shall be determined and documented:
1) agreement parties;
2) taxpayer's associated persons involved in the agreement;
3) agreement object;
4) agreement duration;
5) shares of agreement parties in the estimated results, and the assumptions and principles used for determining such shares;
6) distribution of rights and obligations of agreement parties and their associated persons;
7) form and value of the contribution of an agreement party and the principles used for determining such value, together with description of the accounting rules followed upon evaluating the contribution;
8) description of the procedure and consequences of joining, withdrawing from and ending the agreement;

9) rules for balancing the contributions and for amending the conditions of the agreement according to changes of the external environment.

(8) The amount and level of detail of the required documents must conform to the circumstances of the specific transaction and to the transaction price and must be sufficient to prove the conformity of the agreement to the market value.

(9) A contribution shall be considered to conform to the market value if non-associated persons would have made an equivalent contribution to an agreement signed under similar conditions. If the contribution of an agreement party does not conform to the earned or estimated revenue, the tax administrator shall have the right to correct the contribution amount accordingly.

(10) The expense distribution agreement may also be extended to property owned by an agreement party before that.

(11) If the agreement is not followed, then the tax administrator may refrain from taking into account the agreement or may take into account such an agreement which would have been signed by non-associated persons under similar conditions.

(12) During the validity of the agreement, the amendments made to the agreement shall be documented and the initial estimates of the revenue from the agreement shall be compared to the actual results. In the end of a financial year, the form and value of the contributions made during the financial year shall be documented.

§ 18. Documenting the determining of the market value of transfer prices

(1) Documenting the determining of the market value of transfer prices shall follow the general requirements for documenting economic transactions. The additional requirements for documentation as provided for in this section shall be applied regarding transactions listed section 1 of this Regulation:
1) for a resident credit institution, insurance undertaking and business association registered in a securities market;
2) if one transaction party is a person situated in a low tax rate territory;
3) for a resident business association having 250 or more employees including associated persons, or having a turnover or 50 million Euros or more including associated persons in the financial year preceding the transaction, or having a consolidated balance sheet total of 43 million Euros or more;
4) for a non-resident being active in Estonia via a permanent establishment and having 250 or more employees including associated persons or having a turnover or 50 million Euros or more including associated persons in the financial year preceding the transaction, or having a consolidated balance sheet total of 43 million Euros or more.

(2) Upon documenting the inspected transaction, the taxpayer shall present the information available to the taxpayer at the time of conducting the transaction. Documentation may present later information if this discloses circumstances important for determining the market value of the transfer price.

(3) The prepared documents must convince the tax administrator that the taxpayer had reason to believe that the transfer price conforms to the market value. The documents to be presented to the tax administrator are divided as follows:
1) documents related to an international consolidated group, comprising a main file;
2) documents related to a legal person being a resident of Estonia or a non-resident person being active in Estonia via a permanent establishment and the transactions conducted by them, comprising state-specific documents.

(4) The comparison data necessary for determining the market value of transfer prices must be available to both the tax administrator and the taxpayer.

(5) The main file may be prepared separately for each branch of activity of the consolidated group and shall contain the following information:
1) overview of the business activities of the consolidated group, describing also the changes in the business strategy when compared to the previous financial year;
2) description of the ownership relations within the consolidated group (a scheme of parent undertakings, subsidiaries and associated enterprises), an overview of the activities of the members of the consolidated group, and the changes in the structure of the consolidated group and in the activities of the members of the consolidated group having taken place during the previous financial year;
3) general information about the associated enterprises participating in the inspected transaction and about the inspected transactions – the type of transactions (tangible or intangible property, services) and the transaction values;
4) overview of the duties undertaken and risks taken in the inspected transactions, and changes having taken place when compared to the previous financial year;
5) overview of the intangible property belonging to the consolidated group;
6) description of the policy of determining the market value of the transfer prices in the consolidated group;
7) list of expense distribution agreements and preliminary decisions regarding transfer prices.

(6) State-specific documents shall supplement the main file and shall contain the following information:

1) description of the taxpayer's activities, presenting also the changes in the business strategy when compared to the previous financial year;
2) description of the inspected transactions conducted by the taxpayer – sales volume of goods and value of provided services, volume of rented and leased property, revenue received from use and handover of intangible property, interest received and paid on loans, changes in trade conditions, and changes in existing agreements;
3) analysis of inspected transactions and comparable transactions – description of property and services, activity analysis, transaction conditions, economic conditions, business strategies, corrections made in the data of comparable transactions;
4) description of reasons for choosing the method or methods for determining the transfer prices and the use of such methods;
5) if possible, the relevant internal and external comparison data and references to sources of comparable transactions.

(7) The amount and level of detail of the required documents must conform to the circumstances of the specific transaction and to the transaction price and must be sufficient to prove the conformity of the transfer price to the market value.

(8) The taxpayer shall have the right to submit additional documents besides the above mentioned documents, if these prove that the transfer price conforms to the market value.

(9) If documents have been prepared in a foreign language, the taxpayer shall submit the documents to the tax administrator in the foreign language. The tax administrator may request a translation of the documents into Estonian language, assigning a reasonable deadline for submitting the translation.

§ 19. Elimination of double taxation

(1) If the transfer price differs from the market value and the tax administrator uses the market value for determining the income tax amount, a double taxation of associated persons takes place. Double taxation can be eliminated if the tax administrator also corrects accordingly the profit of the other transaction party.

(2) A request for elimination of double taxation shall be submitted within three years after the first notice of the activity resulting or possibly resulting in double taxation in the sense of subsection (1).

(3) Upon the legal grounds for paying tax ceases to exist, the tax administrator shall allow a tax return to the other transaction party in a larger amount than determined or shall allow settlement pursuant to the Taxation Act, in order to avoid domestic double taxation.

(4) A procedure for eliminating international double taxation shall be initiated by the tax administrator with a tax administrator of a Member State of the European Union pursuant to the Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, or with a tax administrator of a third country if Estonia has entered into an international agreement with that country stating the possibility of information exchange and mutual agreement procedure.

§ 20. Auxiliary materials for applying the Regulation

It is recommended to follow the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations upon applying this Regulation, inasmuch these guidelines do not conflict with the Regulation.

§ 21. Regulation entering into force

(1) This Regulation shall enter into force on January 1, 2007.

(2) Clause 1 3) of the Regulation No. 120 "Approval of legislation resulting from the Income Tax Act" of the Minister of Finances from December 29, 1999 (RTL[1]2000, 1, 2; 2006, 6, 94) and the Annex "Methods for determining the transaction value of a transaction conducted between associated persons" to this Regulation shall be repealed.