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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 8 of § 14 and subsections 6 and 8 of § 50 of the Income Tax Act, taking into account the provisions of subsection $4^6$ of § 53 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 the 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 (subsection 2 of § 8).

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

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

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

**§ 2. Definitions**

Definitions used in this Regulation shall have the following meaning:
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 specified in § 8 of the Income Tax Act;
3) *controlled transaction*shall mean a transaction between associated persons;
4) *transfer price*shall mean the price of the controlled 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 in interquartile range determined with the same method of determining the transfer price using different comparable data or with different methods of determining the transfer price;
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]
7) *comparable transaction*shall mean a transaction between non-associated persons which can be used for comparing to the controlled 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);

9) *low value-adding intra-group services*shall mean services of a supportive nature which are not part of the core business of the multinational enterprise (MNE) group, do not require the use of unique or valuable intangible assets, do not lead to the creation of unique or valuable intangible assets and do not give rise to the creation of significant risk for the service provider and which are only provided by one or more members of the MNE group to other members of the group.
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]

**§ 3. Comparability of transactions**

(1) In order to use the methods provided for in this Regulation, the factors affecting the price of the controlled 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, assets used and risks taken, identified in the course of functional analysis (§ 7);
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]
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 for in the Regulation or if the significant influences can be eliminated by corrections.
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]

(5) The characteristics of each controlled 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 assets or providing the service and the buyer, including in relation with transport and insurance.

(8) The comparison of financial transactions shall take into account, among other things, the existence of a fixed repayment date, the obligation to pay interest, the right to enforce payment of principal and interest, the ability of the lender to grant the loan compared to unrelated creditors, the existence of a loan agreement and collateral, the source of interest payments, the ability of the recipient of the funds to obtain loans from unrelated credit institutions and the purpose for which the loan was borrowed.
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]

**§ 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 assets, the characteristics, quality and usability period of the assets 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 assets;
2) in case of intangible assets, the nature and type of the assets, the validity period of the assets, the presumed benefits from using the assets, and the expenses and risks related to creation, preservation and use of the assets;
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, 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, such transaction elements shall also be reviewed upon determining the value of the controlled transaction.

**§ 5. Transactions with intangible assets**

(1) In case of transactions with intangible assets, the owner of the assets 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 assets, primarily:
1) existence of legal protection regarding the assets;
2) duration and extent of the legal protection;
3) geographic limitations on exercise of rights resulting from the assets;
4) sales limitations on goods produced in the course of using the assets;
5) extent of the rights handed over regarding the assets (non-exclusive or exclusive licence);
6) investments necessary for creating, preserving or using the assets;
7) client lists of the licensee or franchisee;
8) possibility of the licensee to participate in the research and development activities of the licensor;
9) expectation of future profit from the assets;
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]
10) stage of development and useful life of the assets;
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]
11) if the assets are accompanied by rights to enhancements and updates;
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]
12) uniqueness and value of the assets.
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]

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

**§ 6. Services**

(1) The following shall be identified regarding a controlled transaction with the object of providing a service or a controlled 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 service between associated persons shall be considered provided, 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). The conformity of the five per cent mark-up on low value-adding intra-group services to the market value does not need to be justified by comparison data.
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]

(4) A service shall not be considered a service provided to the taxpayer within the meaning 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 risks 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 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 only for the possibility of using such service. If the taxpayer pays for a service the value of which is lower 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 of taxation shall be assessed upon accounting the payments specified in subsection 5.
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**§ 7. Functional analysis**

(1) Functional analysis shall be used for comparing the duties performed in controlled transactions to duties performed by non-associated persons in similar transactions between them. The analysis shall take into account the assets used for executing the transaction, the structure of and the allocation of duties in the 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 duties; 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 duties.

(3) Functional analysis shall identify and compare the assets used for executing the controlled 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) A controlled transaction shall be considered not comparable to a transaction between non-associated persons if there are significant and incorrigible differences in duties performed, assets 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 in Estonia or a transaction between an Estonian resident legal person and its permanent establishment 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 an Estonian resident legal person 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 controlled 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 may not have a significant influence on the transaction price or such differences must be corrigible.

**§ 10. Business strategy**

(1) The development stage and the business strategy of the entrepreneurship of the taxpayer and a non-associated person shall be analysed upon determining comparability, taking into account the various aspects affecting the activities of enterprises, 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 group or by the taxpayer and what the role of other members of the group is 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 uncontrolled 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 margin of comparable transactions;
3) cost plus method – this method is based on the expenses of the controlled transaction and requires comparison data about the profit margin of comparable transactions;
4) profit split method – this method uses data about comparable transactions primarily for assessing the contribution of a transaction party;
5) transactional net margin method – this method uses data about net margin of comparable transactions.

(2) The method providing the most reliable result shall be selected on the basis of the specifics of the controlled 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 specified 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 authority shall have the right to request from the taxpayer an explanation of the reasons for selecting the method used. If the method selected by the taxpayer is not suitable, the tax authority may use another method for determining the market value of the transfer price. The tax authority must give justifications for the new method selected.

(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 and 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 controlled 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 net margin of the transactions.

(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 authority 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 values is very wide, the analysis shall be repeated with more specific data or with other methods.

**§ 12. Comparable uncontrolled price method**

(1) The comparable uncontrolled price method compares the price of a controlled 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 controlled 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 assets or provides similar service under similar conditions to a non-associated person; or
2) the taxpayer purchases similar assets 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 assets or provides similar service under similar conditions to a non-associated person; or
2) a third party purchases similar assets or similar service under similar conditions from a non-associated person.

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

(5) The comparable uncontrolled price method shall not be used if:
1) gathering information about conducting or conditions of a comparable transaction is inexpedient 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 assets or services from an associated person and resells the same to a non-associated person.

(2) The resale price method is based on the transaction price for which the assets or services purchased by the taxpayer from an associated person are resold by the taxpayer to a non-associated person. The above-mentioned transaction price shall be reduced by the calculated resale price margin; such price margin shall be compared to the price margin 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 margin: [(resale price – acquisition cost) / resale price] × 100.

(4) The price margin 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 margin 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 margin) / 100].

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

(7) If expenses are presented differently in the accounting of the controlled 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 margin.

(8) The resale price method gives the most reliable result if there is an internal comparable price margin available for comparison and if:
1) tangible assets or standard services are acquired for resale and the reseller does not add any significant value to these before reselling. Adding a significant value shall mean physical changing of the assets or changing the characteristics of a service or creating and administrating intangible assets related to the resold goods or service. Packaging, repackaging, labelling or 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 inexpedient due to resource use; or
2) the differences in data of compared transactions cannot be corrected with sufficient precision for determining the comparable price margin.

**§ 14. Cost plus method**

(1) The cost plus method is based on the taxpayer's expenses related to the execution of the controlled transaction. The acquisition cost of the assets 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 cost plus 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 cost plus 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 controlled 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 controlled 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 margin.

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

(8) The cost plus method shall not be used if:
1) gathering information about conducting or conditions of a comparable transaction is inexpedient 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. Profit split method**

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

(2) The profit split method determines the profit which the associated persons should gain from the controlled transaction and, after functional analysis, this profit shall be split between the transaction parties in an economically justified way which would be used by non-associated persons for splitting the profit gained from a similar transaction. The basis for profit splitting may be the assets used for executing the transaction, the net margin 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 profit split 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 profit split method may be used in both of the following ways:
1) profit splitting on the basis of the contributions of the transaction parties, where the profit of the transaction parties gained from the controlled transaction is split 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 functional analysis and, if possible, comparison data about the way of splitting that non-associated persons would have used for splitting the profit gained from a similar transaction is used as comparison data;
2) splitting of remaining profit, where the profit gained by the transaction parties from the controlled transaction is split between the transaction parties in two stages. First, the part of the profit related to the routine duties performed in the transaction is split between the transaction parties via other methods. Thereafter the rest of the profit, related to the net margin of the intangible assets or other unique assets used in the transaction, is split between the transaction parties.

**§ 16. Transactional net margin method**

(1) In the transactional net margin method, the net margin of the controlled transaction is compared to the net margin of a comparable transaction. The net margin 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, assets used for executing the transaction).

(2) The transactional net margin method is used:
1) if the market conditions of the controlled transaction and the comparable transaction and the structures of the expenses related to these transactions are so different that the resale price method or the cost plus method would not give a reliable result;
2) if the objects of the controlled transaction and the comparable transaction or the duties performed in these transactions are significantly different;
3) for verifying the results obtained by other methods.

(3) The transactional net margin method shall not be used if valuable intangible assets or other unique assets have been used for executing the controlled transaction.

**§ 17. Cost contribution arrangement**

(1) A cost contribution arrangement (hereinafter arrangement) shall mean a contract signed between associated persons, regulating the allocation of the expenses and risks related to development, creation or acquisition of

assets, services or rights (hereinafter object of the arrangement) between the parties to the arrangement and stating the rights of the parties regarding the object of the arrangement.

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

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

(4) The taxpayer shall not be considered a party to the arrangement if there is no reasonable basis for an assumption that the taxpayer receives any benefit from the object of the arrangement or controls any risks.
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]

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

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

(7) Upon signing the arrangement, the following information shall be determined and documented:
1) parties to the arrangement;
2) taxpayer's associated persons involved in the arrangement;
3) object of the arrangement;
4) duration of the arrangement;
5) shares of parties to the arrangement in the estimated results, and the assumptions and principles used for determining such shares;
6) allocation of rights, responsibilities and risks of parties to the arrangement and their associated persons;
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]
7) form and value of the contribution of a party to the arrangement and the principles used for determining such value, together with a description of the accounting rules followed upon evaluating the contribution;
8) a description of the procedure and consequences of joining, withdrawing from and ending the arrangement;
9) rules for balancing the contributions and for amending the conditions of the arrangement 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 arrangement to the market value.

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

(10) The cost contribution arrangement may also be extended to assets owned by a party to the arrangement before that.

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

(12) During the validity of the arrangement, the amendments made to the arrangement shall be documented and the initial estimates of the revenue from the arrangement shall be compared to the actual results. At 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 specified in § 1 of this Regulation:
1) to 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 non-cooperative jurisdiction for tax purposes;
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3) to a resident business association having 250 or more employees including associated persons, or having together with associated persons a turnover of 50 million euros or more in the financial year preceding the transaction, or having together with associated persons a balance sheet total of 43 million euros or more;
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]
4) to a non-resident being active in Estonia via a permanent establishment and having 250 or more employees including associated persons or having together with associated persons a turnover of 50 million euros or more in the financial year preceding the transaction, or having a consolidated balance sheet total of 43 million euros or more.

(2) Upon documenting the controlled transaction, the taxpayer shall present the up-to-date information available to the taxpayer at the time of conducting the transaction. Documentation must also set out later information if this discloses circumstances important for determining the market value of the transfer price.
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]

(3) The prepared documents must convince the tax authority that the taxpayer had a reason to believe that the transfer price conforms to the market value. The documents to be presented to the tax authority are divided as follows:
1) group information constituting the master file;
2) information about an Estonian resident legal person or a non-resident operating through a permanent establishment in Estonia and the transactions made by them, which forms the taxpayer's file;
3) country-by-country report as provided for in Chapter $2^2$ of the Tax Information Exchange Act, if the revenue of the enterprise and its associated persons in the financial year preceding the transaction was 750 million euros or more.
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(4) The comparison data necessary for determining the market value of transfer prices must be available to both the tax authority and the taxpayer.

(5) The master file may be prepared separately for each business area of the group and must contain the following information:
1) chart illustrating the group’s legal and ownership structure and geographical location of operating entities;
2) the group’s overall strategy and important drivers of business profit;
3) a description of the supply chain of the group’s five largest product or service offerings by turnover and a list of products and services whose turnover represents more than five percent of the group’s total turnover;
4) a list and description of important service arrangements between members of the group, other than research and development services, including a description of the capabilities of the principal locations providing important services and a description of transfer pricing policies for allocating services costs and determining prices to be paid for intra-group services;
5) a description of the main external markets for the products and services specified in clause 3;
6) a functional analysis describing the principal contributions to value creation by individual entities within the group;
7) a description of important business restructuring transactions, acquisitions and divestitures occurring in the structure of the group during the financial year;
8) a description of the strategy for the development, ownership and exploitation of intangible assets, including location of principal research and development facilities and location of research and development management;
9) a list of intangible assets or groups of intangible assets of the group that are important for transfer pricing purposes and of entities that legally own them or are entitled to receive income from those assets;
10) a list of important agreements among identified associated enterprises related to intangible assets, including cost contribution arrangements and licence agreements;
11) a description of the group’s transfer pricing policies related to research and development and intangible assets;
12) a description of any important transfers of interest in intangible assets among associated enterprises during the financial year concerned;
13) a description of how the group is financed, including important financing arrangements with unrelated lenders;
14) data on any members of the group that provide a central financing function for the group, including the jurisdiction under whose laws the entity is organised and the place of effective management of such entities;
15) a description of the group’s transfer pricing policy related to financing arrangements between associated persons;
16) the group’s annual report;
17) a list and description of the group’s existing cost contribution arrangements other than those specified in clause 10, advance pricing arrangements and other tax rulings with tax authorities relating to the allocation of income among countries.
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]

(6) The taxpayer’s file shall complement the master file and shall contain the following information:

1) a description of the management structure of the taxpayer, a chart of the structure of the group, and data on the individuals to whom local management reports and the countries in which such individuals maintain their principal offices;
2) a detailed description of the business and business strategy pursued by the taxpayer including an indication whether the taxpayer has been involved in or affected by business restructurings or intangible assets transfers in the present or immediately past financial year and an explanation of those aspects of such transactions affecting the taxpayer;
3) key competitors;
4) descriptions of the material controlled transactions (including transactions with goods and services, financial transactions and transactions involving intangible assets) and the context in which such transactions take place;
5) the amount of intra-group payments and receipts related to the transactions listed in clause 4 broken down by transaction party for each category of transactions;
6) an identification of each transaction party listed in clause 5;
7) copies of all agreements of material controlled transactions concluded by the taxpayer;
8) a detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each category of controlled transactions, including any changes compared to the previous financial year;
9) an indication of the most appropriate transfer pricing method with regard to the category of transaction and the reasons for selecting that method;
10) an indication of the level of the transaction party at which the comparability analysis has been carried out;
11) a summary of the most important assumptions made in applying the transfer pricing method;
12) an explanation of the reasons for performing a multi-year analysis;
13) a list and description of comparable transactions between non-associated persons and information on relevant financial indicators for non-associated persons relied on in the transfer pricing analysis, including the comparable search methodology and sources of information;
14) the methodology for the adjustments made during the comparability analysis;
15) the reasons for concluding that relevant transactions were priced on an arm’s length basis based on the selected transfer pricing method;
16) a summary of the financial information used in applying the transfer pricing methodology;
17) existing advance pricing arrangements and other tax rulings with foreign tax authorities relating to the material transactions specified in clause 4;
18) the taxpayer’s annual report;
19) information showing how the financial data used in applying the transfer pricing method are tied to the annual report;
20) summary schedules of relevant financial data for comparables used in the analysis and the sources from which that data was obtained.
[RT I, 23.12.2021, 4 – entry into force 01.01.2022]

(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 authority in the foreign language. The tax authority may request a translation of the documents into Estonian, 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 authority 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 authority 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 within the meaning of subsection 1.

(3) If the legal grounds for paying tax cease to exist, the tax authority 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 authority with a tax authority 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 authority 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 Authorities 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) [Omitted from this text.]