Republic of Latvia

Cabinet

Regulation No. 802

Adopted 18 December 2018

**Transfer Pricing Documentation and Procedures for Concluding an Advance Agreement Between a Taxpayer and Tax Administration on Determination of the Armʼs Length Price (Value) for a Transaction or Type of Transactions**

*Issued pursuant to*

*Section 15.2, Paragraph ten and twelve and Section 16.1, Paragraph three of*

*the law On Taxes and Duties*

**I. General Provision**

1. This Regulation prescribes:

1.1. detailed content of the information to be included in the global and local transfer pricing documentation;

1.2. the information to be included in the simplified transfer pricing documentation;

1.3. the procedures by which the tax administration concludes an advance agreement with a taxpayer on the determination of the arm’s length price (value) for a particular transaction or type of transaction (hereinafter – the advance agreement);

1.4. the fee for concluding the advance agreement and the procedures for its collection.

**II. Information to be Included in the Transfer Pricing Documentation**

2. A taxpayer who, in accordance with laws and regulations governing the field of taxes, has an obligation to draw up and submit the global transfer pricing documentation to the tax administration (also upon its request) shall include the following information in the aforementioned documentation:

2.1. the organisational structure of the multinational enterprise group associated with the taxpayer (including the legal structure and structure of property rights of capital shares or stocks) and geographical location of the units of the group;

2.2. the description of the economic activity of the multinational enterprise group associated with the taxpayer, including the following information:

2.2.1. the main factors affecting the financial result (description);

2.2.2. a description of the supply chain for the five largest goods or services by turnover, and also any other goods or services if the supply of the relevant good or provision of the service amounts to at least five per cent of the turnover of the multinational enterprise group associated with the taxpayer (the information may be presented also in the form of a chart or diagram);

2.2.3. important service agreements (except for research and development service agreements) that have been mutually concluded between the members of the multinational enterprise group associated with the taxpayer (the list and short description). The description shall also include information on the capabilities of principal service provision locations, and also transfer pricing policy for the cost allocation and determination of the price (value) for intra-group services;

2.2.4. a description of main geographical markets for those goods and services of the multinational enterprise group associated with the taxpayer which are referred to in Sub-paragraph 2.2.2 of this Regulation;

2.2.5. a brief functional analysis of the operation of those individual units of the multinational enterprise group associated with the taxpayer which affect the financial result of the group. The analysis shall also provide a description of the main functions, assumed risks and important assets used;

2.2.6. information on important business restructuring transaction, acquisition and alienation of assets in the relevant reporting year;

2.3. intangibles of the multinational enterprise group associated with the taxpayer:

2.3.1. a general description of the strategy which is implemented by the multinational enterprise group associated with the taxpayer for the development, ownership and exploitation of intangibles, including the location of the principal research and development centres and their management;

2.3.2. a list including the intangibles or groups of intangibles that are important for determining the transfer prices of the multinational enterprise group associated with the taxpayer by indicating the units which legally own the relevant intangible or groups of intangibles;

2.3.3. a list of important agreements concluded between associated enterprises which apply to intangibles, including contracts on cost contribution arrangements, cost allocation arrangements, research agreements and licence agreements;

2.3.4. a description of the transfer pricing policy which the multinational enterprise group associated with the taxpayer implements in respect of research and development and intangibles;

2.3.5. a general description of the transfer of the rights to intangibles between associated enterprises in the relevant reporting year by indicating involved units of the multinational enterprise group associated with the taxpayer, countries and amount of compensation related to intangible property;

2.4. internal financial activity within the multinational enterprise group associated with the taxpayer:

2.4.1. a description of how the multinational enterprise group associated with the taxpayer is financed, including information on important financial transactions with unrelated lenders (creditors);

2.4.2. information on all units of the multinational enterprise group associated with the taxpayer which provide a central financing function for the group by indicating the country of registration and the place of effective management of each unit of such group;

2.4.3. a general description of the transfer pricing policy which the multinational enterprise group associated with the taxpayer implements in respect of financial relations between associated enterprises;

2.5. the financial statements and taxes of the multinational enterprise group associated with the taxpayer:

2.5.1. the consolidated financial statement of the relevant year or, if there is none, another consolidated documentation which is drawn up for regulatory, management, tax or other purposes;

2.5.2. valid unilateral advance pricing agreements and other cross-border rulings relating to the allocation of income among countries (a list and short description).

3. A taxpayer who in accordance with laws and regulations governing the field of taxes has the obligation to draw up and submit the local transfer pricing documentation to the tax administration (also upon its request) shall include the following information in the aforementioned documentation:

3.1. information on the taxpayer and the multinational enterprise group associated therewith:

3.1.1. the organisational structure of the multinational enterprise group associated with the taxpayer (including the legal and ownership structure) and geographical location of the units of the group; The information referred to in this Sub-paragraph need not be indicated if the taxpayer has provided it in the global transfer pricing documentation;

3.1.2. a description of the organisational and legal structure of the taxpayer (including its management), and also information on natural persons to whom the management of the taxpayer provides reports by indicating also the countries where the principal offices of these natural persons are located;

3.1.3. the information explaining the mutual economic activity processes of the associated parties – the functions of the members of the group of associated parties, the risks related thereto and assets used, the role and liability of the parties involved in the transactions, information on the reorganisation of the taxpayer’s activities as a result of which functions, assets or risks of economic activity have been transferred to or from associated parties for a compensation corresponding to the arm’s length price (value). The information referred to in this Sub-paragraph need not be indicated if the taxpayer has provided it in the global transfer pricing documentation;

3.1.4. a detailed description of the economic activity of the taxpayer and its strategy by indicating whether the taxpayer has been involved in restructuring the economic activity or intangibles transfers in the relevant or previous reporting year, and also explanation of how the abovementioned transactions affected the taxpayer;

3.1.5. the main competitors;

3.2. the information on each important controlled transaction or transaction category in which a taxpayer is involved:

3.2.1. a general description of the controlled transaction or transaction category (for example, provision of production services, acquisition of goods, provision of services, loan contract, financial and performance guarantees, issue of the licences of intangibles) and circumstances under which such transactions took place;

3.2.2. the amount of payments made and received by the taxpayer for each controlled transaction or transaction category (including, for example, the payments made and received for goods or services, author’s fee, interest), categorising the information by the countries in which the foreign payers or beneficiaries are residents;

3.2.3. associated enterprises that are involved in each controlled transaction or transaction category, and also relations between them;

3.2.4. copies of the contracts of all important controlled transactions of the taxpayer;

3.2.5. detailed comparability and functional analysis of the taxpayer and relevant associated enterprises with respect to each documented controlled transaction or transaction category, including by indicating any changes compared to the previous year (insofar the information referred to in this norm on the functional analysis matches the information indicated in the global transfer pricing documentation, the reference to the global transfer pricing documentation is sufficient);

3.2.6. an indication of the method used for determining the arm’s length price (value) of the transaction for each transaction or transaction category, and also the justification for selecting the method;

3.2.7. an indication of the associated enterprise which is selected as the party to be tested (i.e. the enterprise the financial indicators of which are analysed (where applicable)), and also explanation of the reasons for its selection;

3.2.8. information on important (critical) assumptions forming grounds for the transfer pricing methodology that has been coordinated with the forecast for further activity of the taxpayer in conformity with the transaction or commercial or financial relations with an associated person;

3.2.9. the explanation of the reasons for the use of multi-year data (where applicable);

3.2.10. a list and description of internal or external comparable uncontrolled transactions, copies of contracts (if any are available) or the description of contractual conditions and information on the relevant financial indicators of independent companies enterprises relied on in the transfer pricing analysis, and the information justifying it (for example, screenshots with recording date, data downloaded from the database with the recorded download date), including the comparable search methodology by including the search criterion and reasons for data rejection, and also recording of the quantitative and qualitative searches carried out sequentially (for each stage) (for example, screenshots, data downloaded from a database) and the source of the aforementioned information;

3.2.11. a description of comparability adjustments performed, and an indication of whether the adjustments have been made to the results of the tested party, the comparable uncontrolled transaction, or both;

3.2.12. a detailed description of considerations justified by the method selected for the determination of the arm’s length price (value) (including mathematically) for the circumstance that the price (value) of the relevant transaction corresponds to the price which would be determined if the commercial or financial relations would be developed or established in accordance with the provisions which would be in effect between two independent parties;

3.2.13. a summary of such financial information which is used in applying the transfer pricing methodology;

3.2.14. copies of valid unilateral, bilateral and multilateral advance pricing agreements and other tax rulings (including a statement of own rights) if the aforementioned rulings have not been concluded or issued by the tax administration of Latvia and they apply to the controlled transactions referred to in this Paragraph;

3.3. the financial information:

3.3.1. the annual statement of the taxpayer for the relevant reporting year and auditor’s report if such has been drawn up;

3.3.2. information and tables which present the relation between the financial data used in applying the method for the determination of the arm’s length price (value) of the transaction with the financial statements;

3.3.3. the general information on the use of the relevant financial data to be compared, an also on the source of the aforementioned data.

4. When drawing up a simplified transfer pricing documentation on the low value-added services in the cases laid down in the laws and regulations governing the field of taxes, a taxpayer shall include the following information in the aforementioned documentation:

4.1. information on the transaction partner to whom low value-added services are provided or from whom they are received – the name, registration number, place of residence;

4.2. a description of the provided or received low value-added services;

4.3. explanation of why the services are to be considered to be low value-added services by taking into account the criteria laid down in laws and regulations governing the field of taxes;

4.4. justification of economic essence of low-added value services within the context of commercial activity of the multinational enterprise group;

4.5. description of the benefit obtained or expected in relation to each type of low added-value services;

4.6. the description of the selected cost distribution criterion and explanation of reasons why the aforementioned cost distribution criterion provides the best presentation of the benefit which is obtained by the provider or recipient of low added-value services;

4.7. the approval of mark-up application;

4.8. written contracts or agreements (also all amendments thereof) on the provision of low value-added services where the agreement of the commercial companies of the international group of companies is presented by taking into account the cost distribution criterion referred to in Sub-paragraph 4.6 of this Regulation. The written contracts and agreements referred to in this Paragraph may be drawn up also as a document in which all the commercial companies involved in the provision and receipt of low value-added services, the essence of the services, and also terms and conditions for the provision of services are provided;

4.9. the documentation and calculations where the determination of the cost aggregate of low value-added services is presented by precisely indicating all the cost categories and amounts according to the types of services, including costs for the services which have been provided only to one commercial company of the multinational enterprise group;

4.10. the calculations which present the application of cost distribution criteria.

**III. Conclusion of Advance Agreement**

5. A taxpayer shall, upon his or her own initiative or accepting the suggestion of the State Revenue Service, submit an application to the State Revenue Service for the advance agreement. The following information shall be indicated in the submission:

5.1. name, registration number and legal address of the taxpayer;

5.2. information on the associated person with which the transaction is being conducted or commenced, or with which the transaction has been conducted in the past – the name, registration number and legal address;

5.3. the transaction or type of transaction which will be subject to the advance agreement;

5.4. the method selected for the determination of the arm’s length price (value) of the transaction;

5.5. the time period to which the advance agreement will apply (by not exceeding five years from the day of its conclusion);

5.6. the reporting years that will be subject to the advance agreement if it will apply to previous reporting years;

5.7. legal explanation of the reasons for selecting the method for the determination of the arm’s length price (value) and submission of the application.

6. The documents which contain the information referred to in Paragraph 3 of this Regulation and the information on the fact that tax inspection is being carried out for the foreign associated enterprise or it is involved in contesting or appeal procedures in respect of a transaction with associated parties on the determination of the arm’s length price (value) (where appropriate), and also the description of these events shall be appended to the application referred to in Paragraph 5 of this Regulation.

7. The State Revenue Service shall evaluate the application of a taxpayer for advance agreement by verifying the information indicated in the application and documents appended thereto, and also, where necessary, by requesting additional information from the taxpayer, and take a decision within the time period and in accordance with the procedures laid down in the Administrative Procedure Law on the following:

7.1. to commence the procedure for concluding the advance agreement;

7.2. to refuse to commence the procedure for concluding the advance agreement.

8. The State Revenue Service shall take the decision to refuse to commence the procedure for concluding the advance agreement if a taxpayer:

8.1. fails to provide the information referred to in Paragraph 6 of this Regulation;

8.2. has provided false information in the application for advance agreement or documents appended thereto;

8.3. the transaction indicated in the application is directed to evasion of tax payment or other illegal obtaining of benefit.

9. If the State Revenue Service takes the decision to commence the procedure for concluding the advance agreement, the date for commencing the procedure and responsible official of the State Revenue Service shall be notified to a taxpayer.

10. Within the framework of the procedure for concluding the advance agreement, the State Revenue Service shall, where necessary, request additional information from a taxpayer or explanations in order to agree on the conditions for the advance agreement.

11. If the State Revenue Service agrees to conclude the advance agreement with a taxpayer, the following information shall be included therein:

11.1. name, registration number and address of the taxpayer;

11.2. facts, transactions and reporting years to which the advance agreement applies;

11.3. method (description) for the determination of the arm’s length price (value), the amount of objects to be compared and criteria for their selection, result expected by applying the selected method;

11.4. information that is important for the calculations of the method for the determination of the arm’s length price (value) (for example, cost mark-up, profit norm);

11.5. important assumptions that forms the ground for the method for the determination of the arm’s length price (value);

11.6. circumstances under which amendments to the advance agreement should be requested;

11.7. notice that the advance agreement loses its force if the related laws and regulations are amended;

11.8. conditions under which the advance agreement becomes invalid;

11.9. term of validity of the advance agreement (not exceeding five years from the day of concluding the advance agreement);

11.10. the reporting years to which the advance agreement applies if the advance agreement applies to previous reporting years;

11.11. tax consequences arising from the advance agreement, including the procedures by which the State Revenue Service supervises the fulfilment of the provisions of the advance agreement;

11.12. deadline by which the taxpayer shall perform the conditions of the advance agreement if the abovementioned advance agreement is concluded on transactions of the previous reporting years;

11.13. consequences which set it if the taxpayer fails to comply with the conditions of the advance agreement;

11.14. other conditions on which the parties mutually agree.

12. If the advance agreement is concluded on the conformity of the transaction price (value) with the arm’s length price (value) for the previous reporting years, the information referred to in Sub-paragraphs 11.5 and 11.6 of this Regulation shall not be included therein.

13. A taxpayer is entitled to submit amendments to the advance agreement.

14. When examining an application for amendments to the advance agreement, the State Revenue Service shall take a decision within the time period and in accordance with the procedures laid down in the Administrative Procedure Law on the following:

14.1. to commence the procedure for concluding the advance agreement;

14.2. to refuse to commence the procedure for concluding the advance agreement.

15. Amendments to the advance agreement shall be made if the State Revenue Service agrees with a taxpayer thereon.

16. If within a year after the commencement of the procedure for concluding advance agreement the State Revenue Service and taxpayer fail to agree on the conditions of the advance agreement and further performance of conclusion procedure is not useful, the State Revenue Service shall terminate the procedure for concluding the advance agreement.

17. The fee for concluding advance agreement shall be EUR 7114, and it shall be paid into the State budget in the budgetary programme account of the State Revenue Service in the Treasury.

18. A taxpayer shall pay the part of the fee for the advance agreement:

18.1. in the amount of 20 per cent before submitting the application referred to in Paragraph 5 of this Regulation;

18.2. in the amount of 80 per cent after notification of the decision referred to in Sub-paragraph 7.1 of this Regulation.

19. When making the payment for the advance agreement, the purpose of the payment must be indicated in the payment order – fee for the procedure for concluding the advance agreement.

20. Until the day of receipt of the part of the fee referred to in Sub-paragraph 18.1 or 18.2 of this Regulation, the State Revenue Service shall not examine the application referred to in Paragraph 5 of this Regulation or discontinue the procedure for concluding the advance agreement.

**IV. Closing Provisions**

21. Cabinet Regulation No. 16 of 3 January 2013, Procedures for Concluding an Advance Agreement Between a Taxpayer and Tax Administration on Determination of the Arm’s Length Price (Value) for a Transaction or Type of Transactions (Latvijas Vēstnesis, 2013, 7, No. 183), shall be repealed.

22. The advance agreement which have been concluded until the day of coming into force of this Regulation shall remain in effect until the fulfilment of the relevant agreement, and the regulation which was in force at the time of concluding the relevant advance agreement shall apply to its amending.

23. The application for concluding an advance agreement which has been submitted to the State Revenue Service until the day of coming into force of this Regulation shall be examined in conformity with the laws and regulations which were in force on the day of submitting the application.

Prime Minister Māris Kučinskis

Minister for Finance Dana Reizniece-Ozola