ORDINANCE ON THE PROCEDURE AND MANNER OF APPLYING THE METHODS FOR DETERMINING MARKET PRICES

Chapter I
GENERAL PROVISIONS

Article 1. (1) This Ordinance shall regulate the procedure and manner of applying the methods for determining market prices.

(2) The methods for determining market prices include:

1. the comparable uncontrolled price method;
2. the resale price method;
3. the cost plus method;
4. the transactional net margin method;
5. the transactional profit split method.

(3) A taxpayer may use, under the conditions provided for in Article 14, paragraph 8, a method for determining market prices other than those referred to in paragraph 2.

Article 2. (1) The methods for determining market prices under Article 1, paragraph 2 and 3 shall be applied in accordance with the arm's length principle.

(2) The arm's length principle is met where the price of a transaction between related persons does not differ from the price that would have been agreed in a transaction under comparable conditions, carried out between independent persons under comparable circumstances.

(3) For the purposes of this Ordinance:

1. a transaction between related persons is referred to as a controlled transaction; and
2. a transaction between independent persons is referred to as an uncontrolled transaction.

Chapter II
APPLICATION OF THE ARM'S LENGTH PRINCIPLE

Section I
Transfer pricing analysis. Stages

Article 3. (1) Compliance with the arm's length principle shall be assessed on the basis of a transfer pricing analysis, which includes two consecutive stages:

1. an accurate delineation of the controlled transaction according to its economic substance (actual controlled transaction); and
2. a comparison of the conditions and economically relevant circumstances of the actual controlled transaction, as accurately delineated in the stage under item 1, with those of one or more comparable uncontrolled transactions (a comparability analysis).

(2) For the purposes of the comparability analysis referred to in paragraph 1, item 2, an uncontrolled transaction shall be comparable to the controlled transaction:

1. where there are no differences between the transactions being compared or between the parties to the transactions that could materially affect the conditions being evaluated by applying the selected method for determining market prices; or
2. where the effects of such differences can be eliminated by adjustments in accordance with Article 19.

Section II
Accurate delineation of the actual controlled transaction

Article 4. (1) The accurate delineation of the actual controlled transaction referred to in Article 3, paragraph 1, item 1 shall be carried out through an analysis that includes:

1. general overview of the activities of the related persons and of the group of enterprises as a whole (in the cases when the related persons are part of a group of enterprises), of the environment (regulatory, competitive, technological, etc.) in which these activities take place, as well as of the factors affecting the conduct and performance of the various actors in the relevant industry sector;

2. examination of the role of each of the related persons in the overall process of value creation and realization of economic benefits in order to identify their commercial and financial relations and the specific transactions through which these relations are realized;

3. identification of all the economically relevant characteristics of the controlled transaction (comparability factors), which include:

(a) the contractual terms;

(b) the functions performed by each of the parties to the transaction, taking into account:

(AA) assets used and risks assumed;

(BB) how the functions relate to the overall process of value creation and realization of economic benefits; and

(CC) the practices in the industry sector;

(c) the characteristics of property transferred or services provided;

(d) the economic conditions and circumstances under which the parties to the transaction carry out their business;

(e) the business strategies followed by the parties to the transaction.

(2) The economic relevance of the individual characteristics of the controlled transaction referred to in paragraph 1, item 3 shall be assessed on the basis of the facts and circumstances of the particular case according to the extent to which the characteristic would have been taken into account by independent persons in a comparable uncontrolled transaction.

(3) The economically relevant characteristics of the controlled transaction shall be assessed in the light of the options realistically available to each of the parties to the transaction.

Article 5. (1) The contractual terms referred to in Article 4, paragraph 1, item 3, letter "a" include:

1. any material terms of the controlled transaction agreed between the parties;

2. terms arising from other contractual relationships, including those of other entities related to the parties to the controlled transaction, to the extent that such relationships may affect the conditions of the controlled transaction.

(2) The analysis referred to in Article 3, paragraph 1, item 1 shall take into account the contractual terms of the controlled transaction established on the basis of the actual conduct of the related parties, in so far as:

1. there is no written evidence of the terms referred to in paragraph 1; or

2. the content of the available written evidence concerning one or more of the terms referred to in paragraph 1 is incomplete, unclear or contradictory; or

3. one or more of the terms referred to in paragraph 1, as expressed in the available written evidence, are inconsistent with the actual conduct of the related parties.

(3) The actual conduct of the related parties shall be identified through a functional analysis referred to in Articles 6 – 8, taking into account the other economically relevant characteristics of the controlled transaction.

Article 6 (1) When conducting a functional analysis, information shall be collected, systematized and evaluated about the economic relevance of the functions performed, taking into account the assets used and the risks assumed, by each of the parties to the controlled transaction. The economic relevance shall be assessed by reference to the extent to which the relevant functions can contribute to the creation of value and the realization of economic benefits by each party to the transaction.

(2) Functions shall be identified and evaluated on the basis of the following characteristics:

1. nature, complexity, frequency, scope and manner of performance of the function;
2. the organizational level at which the function is performed;
3. interdependencies between the individual functions of the related parties, as well as between these functions and the functions of the other parts of the group, where the parties to the controlled transaction are part of a group of enterprises;
4. resources used and capabilities provided (such as inherent skills or potential to carry out certain activities or achieve specific objectives) in relation to the function performed;
5. to what extent and how the function contributes to the management of economically significant risks;
6. to what extent and how the function contributes to maintaining or improving the competitive positions and achieving the business objectives of both the parties to the transaction and the group of enterprises to which the parties may belong.

(3) For the purposes of paragraph 2, account shall also be taken of the broader range of circumstances surrounding the controlled transaction being evaluated, relating to how the related persons conduct their business and respond to the factors referred to in Article 4, paragraph 1, item 1. Depending on the particular case, such circumstances could be:

1. position in the overall value chain of the group of enterprises or in the industry-level value chain;
2. business organization, including the degree of centralization, the degree of vertical integration and other circumstances concerning the characteristics and allocation of resources (including systems, processes, technology and personnel) and activities, as well as the functional and management relations existing between them;
3. range of manufactured and offered products;
4. willingness to assume economically significant risks;
5. business experience and management efficiency;
6. existing legal relationships with related and independent persons;
7. scale and scope of the business;
8. competitive advantages and disadvantages;
9. other characteristics of the business model applied;
10. other factors affecting the profitability of the business.

Article 7 For the purposes of the functional analysis, account shall be taken of the characteristics of the assets used such as method of acquisition, type, age, useful life, location, rights over the asset, market value, uniqueness, scarcity, transferability, reproducibility, performance, efficiency and other characteristics that may have a significant impact on:

1. the amount and structure of costs (type and relative value of each type of cost);
2. economically significant risks; and
3. the profit potential of the business.

Article 8 (1) For the purposes of the functional analysis, the economically significant risks in the controlled transaction shall be assessed and their allocation among the parties to the transaction shall be established.

(2) The allocation of the economically significant risks between the parties to the controlled transaction shall be established on the basis of the contractual terms pursuant to paragraphs 3 – 6 and Article 5.

(3) The assumption of an economically significant risk by a party to the controlled transaction, as reflected in the available written evidence, shall be deemed to be consistent with the actual conduct of the related parties where the party assuming the risk exercises control over the risk and has the financial capacity to assume the risk.

(4) The shared assumption of an economically significant risk by two or more parties to the controlled transaction, as reflected in the available written evidence, shall be deemed to be consistent with the actual conduct of the related parties where the parties jointly exercise control over the risk and each of them has the financial capacity to share the risk assumption.

(5) Where an economically significant risk is contractually assumed by a party which does not exercise control over that risk or does not have the financial capacity, it shall be deemed that the risk is assumed by the related person exercising control over the risk and having financial capacity to assume the risk. If multiple related persons exercise control and have the financial capacity to assume the risk, the risk shall be allocated to the person exercising the most control.

(6) The rule of paragraph 5 shall not apply where the allocation of economically significant risks among the parties to the controlled transaction, as reflected in the available written evidence, is consistent with the allocation of economically significant risks between independent parties in a comparable uncontrolled transaction and the independent parties perform comparable functions in managing the relevant risks.

(7) Subject to the provisions of paragraphs 2 – 6, the arm's length principle shall be met where:

1. a related person that contributes to the control over an economically significant risk, without assuming that risk, receives appropriate compensation for the performance of that function, commensurate with its contribution, which may take the form of a sharing in the potential upside and downside associated with the risk;

2. a related person that does not contribute to the control of an economically significant risk does not bear the unforeseeable financial consequences of the materialization of that risk.

Article 9 (1) The characteristics of the property transferred or services provided that shall be taken into account in the accurate delineation of the actual controlled transaction are, for example:

1. in the case of tangible property:

(a) physical properties, quality and technical characteristics;

(b) functional characteristics;

(c) useful life;

(d) degree of product differentiation, including as a result of complementary goods, services and intangibles;

(e) market availability and marketing circumstances, including means and channels of sale;

(f) purpose, area and manner of use;

(g) other characteristics affecting the conditions of the transaction;

2. in the case of services:

(a) type (logistics services, consultancy services, training, advertising, etc.);

(b) scope, level, frequency and complexity of the provision of the services;

(c) degree of differentiation of services, including as a result of complementary goods, services and intangibles;

(d) market availability and marketing circumstances, including means and channels of sale;

(e) purpose, area and manner of use;

(f) other characteristics affecting the conditions of the transaction;

3. in the case of intangibles – the characteristics provided for in Article 50;

4. in the case of loans and debt financial instruments – the characteristics provided for in Article 54.

(2) When assessing the relevance of the individual characteristics under paragraph 1, the extent to which the given characteristic determines substitutability in the supply or demand (depending on the perspective of the specific market participant) of the relevant property or service shall be taken into account.

Article 10 The economic conditions and circumstances that shall be taken into account in the accurate delineation of the actual controlled transaction are, for example:

1. type of market on which the transaction takes place or in which the party concerned carries out its business (e.g. market for consumer goods or services, market for raw materials, market for investment goods, market for energy resources, credit market, insurance market, etc.);

2. geographical location of the market;

3. market level (wholesale or retail market);

4. scope and size (in terms of characteristics and number of active and potential market participants), profitability, expected growth and other characteristics of the state and development of the market;

5. market share of the product;

6. location specific factors affecting the costs of production or realization of the products;

7. competitive environment;

8. life cycle of the product, market or industry concerned;

9. economic cycle;

10. technological, natural, social and other factors causing fluctuations in the economic activity or the results thereof;

11. accessible technologies;

12. policies pursued by local and central government authorities, including the nature and extent of government regulation and intervention in the relevant market or industry;

13. inflation, fluctuations in exchange rates and interest rates, as well as other macroeconomic indicators;

14. time of execution of the relevant transactions, including in view of their duration;

15. other factors affecting the conditions of the transaction.

Article 11 (1) The effects of an adopted business strategy on the conditions of the controlled transaction shall be considered only when, based on the available evidence, it can be assumed that:

1. an independent person would have engaged in a comparable strategy in comparable circumstances for a comparable period of time;

2. the costs incurred to implement the business strategy are borne by the related person that would obtain the future economic benefits that result from the strategy;

3. there is a reasonable likelihood that the implementation of the strategy will result in economic benefits that reflect an appropriate return on the costs incurred to implement it;

4. the implementation of the strategy continues for a reasonable period of time in line with established commercial practices in the specific area of its application and the expected economic effects; and

5. the material conditions of the business strategy, including the allocation of relevant costs and expected economic benefits, have been agreed between the related persons before the strategy is implemented.

(2) For the purposes of paragraph 1, account shall be taken of facts and circumstances such as:

1. area of application of the relevant business strategy with regard to a specific product (product group), function, market, industry, etc.;

2. entities and organizational units affected by the strategy and their role in the development, approval and implementation of the strategy;

3. strategic objectives;

4. ways to achieve the strategic objectives, including adopted measures, as well as specific actions and resources to implement those measures;

5. key considerations and assumptions on how to achieve the relevant strategic objective;

6. reasons, manner and duration of the impact of each measure on the relevant prices or profit margins;

7. economically significant risks associated with the implementation of the strategy and their allocation among the relevant related persons.

Article 12 (1) For the purposes of the transfer pricing analysis, the economically relevant characteristics of the controlled transaction, as determined in accordance with Articles 4 – 11, shall be taken into account.

(2) Notwithstanding paragraph 1, a controlled transaction shall not be taken into account where, having regard to each party's perspectives and options realistically available at the time of entering into the transaction, it is not possible to determine a price of the transaction that would have been accepted by independent parties acting in a commercially rational manner in comparable circumstances.

(3) The assessment referred to in paragraph 2 concerning the commercial rationality of the controlled transaction shall be based on an in-depth analysis of all relevant facts and circumstances, including the circumstances referred to in Article 6, paragraph 3, without taking into account the tax effects of the transaction.

(4) In the cases referred to in paragraph 2, for the purposes of the transfer pricing analysis, the structure of the transaction actually adopted by the related persons shall be replaced by such a structure that:

1. comports as closely as possible with the facts of the actual transaction; and

2. achieves a commercially rational expected result that would have enabled the parties to come to a price acceptable to both of them at the time of entering into the transaction.

(5) Paragraph 2 shall not apply where reliable information on a comparable uncontrolled transaction is available.

Section III
Comparability analysis

Article 13 The comparability analysis referred to in Article 3, paragraph 1, item 2 shall be based on the comparability factors provided for in Article 4, paragraph 1, item 3, and depending on the facts and circumstances of the particular case, may include but is not limited to the following steps:

1. determination of the time scope of the analysis;

2. identification of the potential sources of information on comparable uncontrolled transactions;

3. selection of the most appropriate method for determining market prices and, depending on the method – the tested party and an appropriate financial indicator;

4. identification of potential comparable uncontrolled transactions;

5. applying adjustments under the conditions of Article 19 in order to increase the comparability between the transactions being compared;

6. interpretation of the results of the analysis and determination of the market price.

Article 14 (1) In the comparability analysis by applying a method for determining market prices, conditions of the controlled transaction, expressed through an appropriate financial indicator, shall be evaluated.

(2) The conditions of the controlled transaction referred to in paragraph 1 shall be evaluated on the basis of that of the method referred to in Article 1, paragraph 2, which, under the facts and circumstances of the particular case, leads to the most reliable determination of the price that would have been agreed in a comparable uncontrolled transaction.

(3) When selecting the most appropriate method for determining market prices, the following criteria shall be taken into account:

1. the respective specificities of each of the methods for determining market prices;

2. the appropriateness of the method for determining market prices in view of the economically relevant characteristics of the controlled transaction, in particular, the functions performed by each of the parties to the transaction, taking into account the assets used and the risks assumed;

3. the degree of comparability between the controlled and uncontrolled transactions, including with regard to the reliability of the adjustments under Article 19;

4. the reliability of the available information needed to apply the relevant method for determining market prices with regard to qualities such as objectivity, authenticity, timeliness, accuracy, completeness and relevance to the economically relevant characteristics of the transactions being compared.

(4) When considering the criteria under paragraph 3, account shall be taken of, where relevant, the reasonableness of the assumptions made in the analysis under Article 3, paragraph 1, item 2, as well as the sensitivity of the results of this analysis to deficiencies in the information used and the assumptions made.

(5) Where the comparable uncontrolled price method referred to in Article 1, paragraph 2, item 1 and another of the methods referred to in Article 1, paragraph 2, items 1 – 5 can be applied with equal reliability, the comparable uncontrolled price method shall be applied. Where a method referred to in Article 1, paragraph 2, items 1 – 3 (traditional transaction method) and a method referred to in Article 1, paragraph 2, items 4 and 5 (transactional profit method) can be applied with equal reliability, a traditional transaction method shall be applied.

(6) Where the resale price method, the cost plus method or the transactional net margin method is selected in accordance with the provisions of paragraphs 2 – 5 as the most appropriate method for determining market prices, the relevant method shall be used to evaluate the financial indicator of the party to the controlled transaction for which the most reliable information necessary for the application of the selected method is available (the tested party).

(7) Where the most appropriate method for determining market prices cannot be selected in accordance with paragraphs 2 – 5, it shall be acceptable to apply more than one method for determining market prices and/or to use more than one financial indicator in the application of the same method for determining market prices.

(8) A taxpayer may use a method for determining market prices other than those referred to in Article 1, paragraph 2, where all of the following conditions are met:

1. none of the methods referred to in Article 1, paragraph 2 is appropriate or applicable under the facts and circumstances of the particular case;

2. the application of the other method leads to a more reliable determination of the price that would have been adopted in a comparable uncontrolled transaction than the application of any of the methods referred to in Article 1, paragraph 2;

3. the application of the other method is consistent with the pricing practices between independent persons established for the relevant industry sector or type of transactions;

4. the selection and application of the relevant other method:

(a) take into account the economically relevant characteristics of the controlled transaction being evaluated as identified and assessed on the basis of the rules of this Ordinance;

(b) comply with the provisions of Article 15;

(c) are based on reliable information and reasonable assumptions, which also take into account the impact of changes in the values of the underlying variables used on the outcome of the valuation;

(d) are documented in a way that allows for subsequent verification;

5. the analysis covers the perspectives of each of the related parties to the transaction, where the application of the other method is based on an assessment of the present value of the expected economic benefits arising from the controlled transaction.

(9) The application of a method for determining market prices may be supplemented or supported by the use of generally accepted valuation methods or techniques, where this would increase the reliability of the comparability analysis and the conditions under paragraph 8 are met, where applicable.

Article 15 (1) The methods for determining market prices shall be applied to each controlled transaction separately.

(2) Two or more controlled transactions that are closely economically related shall be aggregated and evaluated together if the application of such an approach leads to the determination of a more reliable arm's length result.

(3) For the purposes of paragraph 2, account shall be taken of:

1. the nature of the commercial and financial relationships between the related parties;

2. the significance of any additional effects of the simultaneous or sequential execution of the transactions (synergy effects);

3. the extent to which the aggregation of transactions and the application of one method for determining market prices to their aggregate is appropriate in view of the availability of reliable information on comparable uncontrolled transactions and the other criteria provided for in Article 14, paragraph 3;

4. the practical limitations in evaluating the controlled transactions separately, including in view of the impossibility of accurately estimating the result of each transaction on the basis of the available financial information;

5. the number and frequency of the controlled transactions, as well as the similarity of their economically relevant characteristics;

6. the accuracy with which the amount of the relevant adjustments can be calculated for the purposes of a double tax treaty or other similar international agreement, when, in accordance with the provisions of Article 21, paragraph 2 or 3, the results of the controlled transactions shall be adjusted.

(4) The approach provided for in paragraph 2 may be appropriate in cases such as:

1. simultaneous or consecutive supplies of products with identical or similar characteristics under identical or similar conditions (e.g. goods of the same product group);

2. transfer of interrelated intangibles (e.g. transfer of the right to manufacture a patented product together with the manufacturing know-how related to the same product);

3. transactions involving complementary products (e.g. transfer of intangible together with services, skilled personnel, key components or specialized equipment);

4. a series of interrelated controlled transactions involving different related parties.

(5) Where the controlled transaction consists of elements with different economically relevant characteristics, the respective elements shall be valued separately if such an approach leads to the determination of a more reliable arm's length result.

Article 16 (1) The methods for determining market prices shall be applied on the basis of information about comparable uncontrolled transactions carried out in the period in which the controlled transaction being evaluated takes place. Where such information is not available or the information available is not sufficiently reliable, information on comparable uncontrolled transactions carried out in another appropriate prior period shall be used.

(2) When determining the period under paragraph 1, second sentence, the following shall be taken into account:

1. the economically relevant characteristics of the transactions being compared, in particular, the duration of the transactions, the dynamics in the economic conditions and circumstances and their impact on the evaluated financial indicator;

2. the reliability of the information available, including with regard to the possibility of making adjustments under Article 19;

3. the specificities of the applied method for determining market prices;

4. the applicability of the provision of Article 15, paragraph 2.

(3) Where a controlled transaction or controlled transactions, assessed in accordance with Article 15, paragraph 2, are carried out over more than one tax period, the relevant financial indicator of such transactions may be assessed on the basis of information for several consecutive years, covering the period under assessment and periods prior to it, where:

1. there are conditions and circumstances that have a comparable effect on the results of the transactions being compared over a comparable period of time (e.g. the implementation of long-term business strategies or the execution of long-term contracts); or

2. such an approach leads to the mitigation of the effects of factors with short-term and incidental or uneven manifestation over time, or factors of a cyclical nature, which have material impact on the comparability of the transactions being compared that cannot be eliminated through adjustments under Art. 19.

(4) The rule under paragraph 3 shall be applied in a consistent manner over time, with the arithmetic average of the results of the controlled transaction for the selected number of years being compared with the arithmetic average of the results of one or more comparable uncontrolled transactions carried out over a comparable period of time.

(5) The revenue authority shall take into account the information available at the time of performing the transfer pricing analysis by the related persons, where such analysis is duly carried out and documented.

(6) Notwithstanding the provisions of the preceding paragraphs, for the purposes of the comparability analysis, information covering several consecutive years, including the period in which the controlled transaction took place, may be used to identify or understand:

1. the reasons for sustained losses or significant fluctuations in the results of the controlled transaction;

2. other specific factors that have affected the conditions of the controlled transaction;

3. significant differences between the economically relevant characteristics of the transactions being compared;

4. deficiencies in the information about uncontrolled transactions;

5. other circumstances that are essential for the reliable application of the selected method for determining market prices.

Article 17 (1) Unless otherwise provided for in this Ordinance, the application of a method for determining market prices shall not be based on information that:

1. despite reasonable efforts, could not have been known to any of the parties to the controlled transaction being evaluated or to persons related to them;

2. refers to facts and circumstances unforeseeable at the time the controlled transaction being evaluated takes place.

(2) Notwithstanding the provision of paragraph 1, information relating to periods after the controlled transaction being evaluated takes place may be used for:

1. identifying or understanding the conduct of the related persons, which is relevant for the accurate delineation of the actual controlled transaction;

2. assessment of comparability in terms of the life-cycle phase of the products involved in the transactions being compared.

Article 18 (1) The process of searching for and selecting a comparable uncontrolled transaction shall aim at identifying, on the basis of the available information, the uncontrolled transaction where, according to the specificities of the applied method for determining market prices, there is the highest degree of comparability with the economically relevant characteristics of the controlled transaction being evaluated.

(2) Where the process referred to in paragraph 1 is not sufficiently transparent, objective, consistent and verifiable, it might be appropriate to reject a selected uncontrolled transaction as not being comparable to the controlled transaction being evaluated.

(3) When assessing whether the conditions for rejecting a selected uncontrolled transaction referred to in paragraph 2, the following shall be taken into account:

1. availability of reliable information and considerations for selecting sources of information;

2. accessibility of the information used and how it was obtained;

3. reasonableness of the quantitative and qualitative criteria used to search for and select a comparable uncontrolled transaction;

4. manner of applying the quantitative and qualitative criteria used to search for and select a comparable uncontrolled transaction;

5. justification of the reasons for accepting or rejecting each of the uncontrolled transactions identified as potentially comparable, including taking into account adjustments made under Article 19.

(4) The process referred to in paragraph 1 shall be carried out in a way that does not require additional costs and/or efforts disproportionate to the tax effects of the controlled transaction being evaluated in view of:

1. the complexity of the controlled transaction;

2. the economic significance of the controlled transaction for the activities of the related parties and of the group of enterprises as a whole; and

3. the reliability of the information available.

Article 19 (1) Where differences are identified that could materially affect the conditions being evaluated by applying the selected method for determining market prices, adjustments shall be made if:

1. the effect of these differences can be identified and estimated with sufficient accuracy; and

2. the adjustments increase the reliability of the results of the comparability analysis.

(2) For the purposes of paragraph 1, depending on the facts and circumstances of the particular case, account shall be taken of the extent to which:

1. the differences due to which the adjustment is made arise from quantifiable factors;

2. the adjustment is based on reliable and accessible information about objective and verifiable facts and circumstances;

3. the complexity of the transactions being compared makes it possible to reliably estimate the effect of the relevant differences;

4. the adjustment is material both in terms of its relative and absolute amount and in terms of the sensitivity of the applied method for determining market prices to the economically relevant characteristics affected by the adjustment;

5. the differences in the accounting policies and practices of the parties involved in the transactions being compared (e.g. differences in the recognition, classification, measurement and derecognition of items with similar characteristics) or other factors (e.g. assumptions regarding the segmentation of available information) may affect the comparability of the data on the basis of which the value of the relevant financial indicator is calculated;

6. the adjustment is made using a reliable methodology based on established commercial practices, economic principles or statistical analysis;

7. the same adjustment is made in a consistent manner over time;

8. the adjustment is documented so its reasonableness and method of application can be verified.

(3) Transactions shall be deemed not sufficiently comparable within the meaning of Article 3, paragraph 2, where the differences as referred to in paragraph 1 require numerous or substantial adjustments affecting key comparability factors for the particular case.

Article 20 (1) Where two or more comparable uncontrolled transactions are identified as a result of the process referred to in Article 18, the figures of the relevant financial indicator of those transactions shall form an arm's length range.

(2) The arm's length range referred to in paragraph 1 shall consist only of the results of uncontrolled transactions for which sufficiently reliable information is available to assume with a high degree of confidence that the provisions of Article 3, paragraph 2 are fulfilled.

(3) Where, on the basis of the available information, uncontrolled transactions meeting the condition provided for in paragraph 2 cannot be identified, the arm's length range referred to in paragraph 1 shall exclude all results of uncontrolled transactions for which it can reasonably be assumed that, in comparison to the remaining uncontrolled transactions:

1. have a lower degree of comparability; or

2. there is not enough reliable information.

(4) In the event that after the application of paragraph 3, in the arm's length range remain uncontrolled transactions whose differences with the controlled transaction being evaluated cannot be identified or accurately estimated, taking into account the specificities of the method for determining market prices used and the impact of the differences on the value of the financial indicator being assessed, the arm's length range shall, where possible, be narrowed to increase the reliability of the analysis by applying the interquartile range method or other appropriate statistical method.

(5) For the purposes of paragraph 4, account shall be taken of the economically significant risks in the transaction being evaluated and the characteristics of the statistical distribution of the values in the range, such as their number, the shape of the distribution and the dispersion of the values.

(6) The interquartile range method is applied by narrowing the arm's length range between the first and third quartile of the results derived from the uncontrolled comparables.

Article 21 (1) Where the result of the controlled transaction falls within the arm's length range referred to in Article 20, paragraph 1, including after the application of Article 20, paragraph 4, the arm's length principle shall be deemed to have been complied with.

(2) Where the result of the controlled transaction falls outside the arm's length range referred to in Article 20, paragraph 1, including after the application of Article 20, paragraph 4, an adjustment shall be made of that result to a point in the range that reflects the facts and circumstances most consistent with the economically relevant characteristics of the controlled transaction. If such a point cannot be identified, the adjustment shall be made to:

1. the arithmetic average of the values in the range – in the cases referred to in Article 20, paragraph 2;

2. the median, when the interquartile range method referred to in Article 20, paragraph 6 has been applied;

3. another appropriate measure of central tendency – in other cases.

(3) In the cases referred to in Article 16, para. 4, an adjustment of the results of the controlled transaction shall be made where the arithmetic average of those results falls outside the arm's length range derived from the arithmetic averages of the results of comparable uncontrolled transactions, after the rules of Article 20 have been applied. The adjustment of the results of the controlled transaction for any year shall be made in accordance with the rules of paragraph 2 and shall be based on the values of the results of the comparable uncontrolled transactions for the relevant comparable year. An adjustment of the controlled transaction result for the relevant year shall not be made where such adjustment causes the arithmetic average of the controlled transaction results for the entire period of analysis to move away from the arm's length range of weighted arithmetic averages of the results of the comparable uncontrolled transactions.

Chapter III
METHODS FOR DETERMINING MARKET PRICES

Section I
Comparable uncontrolled price method

Article 22 (1) The comparable uncontrolled price method compares the price in the controlled transaction with the price in a comparable uncontrolled transaction.

(2) The reliability of the result of applying the comparable uncontrolled price method shall be assessed according to the degree of similarity between the transactions being compared with respect to:

1. the characteristics of the property transferred or services provided, the contractual terms, the economic conditions and circumstances under which the transactions are carried out, as well as the functions performed by each of the relevant parties, taking into account the assets used and the risks assumed;

2. other economically relevant characteristics which, under the facts and circumstances of the particular case, have a significant impact on the prices of the property transferred or services provided.

(3) The comparable uncontrolled price method may be applied on the basis of reference price data obtained from stock exchange transactions or published in statistical guides or other authoritative publications containing specialized price information, but only if all of the following conditions are met:

1. the data is widely and routinely used in the ordinary course of business in the relevant industry sector to negotiate prices in transactions with independent parties;

2. the data is used to determine a price in the controlled transaction in the same way as it is used to negotiate prices in transactions with independent parties;

3. with regard to the controlled transaction, adjustments have been made under Article 19 in order to eliminate the effects of differences in product quality and quantity, contractual terms, transport costs, market conditions, risks assumed and other factors that would have been taken into account in a transaction between independent parties;

4. the transaction parties or their affiliates cannot significantly influence the formation of reference prices;

5. the data is not affected by exceptional or unusual market conditions.

Section II
Resale price method

Article 23 (1) The resale price method compares the gross profit margins in the controlled and comparable uncontrolled transactions realized as a result of the resale of a product.

(2) Under this method, the market price of the controlled transaction is determined by reducing the price in the resale to an independent person of a product purchased in the controlled transaction by the gross profit of the tested party.

(3) The gross profit is calculated as the product of the resale price to the independent person and an arm's length gross profit margin.

(4) An arm's length gross profit margin is the ratio between:

1. the gross profit realized in a comparable uncontrolled transaction from the resale of a product purchased in an uncontrolled transaction; and

2. the resale price of the same product.

Article 24 (1) The reliability of the result of applying the resale price method shall be assessed according to the degree of similarity between:

1. the transactions being compared with respect to the functions (taking into account the assets used and the risks assumed) of the party carrying out the resale, the market on which the product is resold, the market share and competitive positions of the same party on that market;

2. the transactions being compared with respect to other economically relevant characteristics which, under the facts and circumstances of the particular case, have a significant impact on the gross profit margins;

3. the accounting policies and practices of the parties to the transactions being compared, which may affect the calculation of the respective gross profit margins.

(2) In order to establish and understand the facts and circumstances referred to in paragraph 1, account shall be taken of:

1. differences between the parties carrying out the resale in terms of the business models applied, business experience, management efficiency and other circumstances referred to in Article 6, paragraph 3, where such differences have a significant impact on the gross profit margins of the transactions being compared, but may not affect the price of the relevant product;

2. material differences in the characteristics of the products involved in the transactions being compared, which may result in the lack of sufficient functional similarity between the parties carrying out the resale;

3. differences in the amount and structure of costs, including operating expenses, which may result in the lack of sufficient functional similarity between the parties carrying out the resale, taking into account that the effect of such functional differences on the gross profit does not necessarily corresponds to the differences in the amount of the relevant operating expenses;

4. non-operating items normally not involved in the calculation of the gross profit margin, such as foreign exchange differences, losses and provisions for losses on bad receivables, accrued interest in relation to the financing of capital expenditures and operating expenses, where they are indicative of economically significant risks assumed.

(3) In view of the facts and circumstances referred to in paragraph 2, the reliability of the comparability analysis may be improved as follows:

1. if the costs reflect functional differences (taking into account the assets used and the risks assumed) which are not taken into account in the application of the resale price method, an adjustment to the gross profit margin shall be made under the conditions of Article 19;

2. if the costs reflect the performance of additional functions that differ from the functions accounted for in applying the resale price method (e.g. the provision of additional services), an additional arm's length remuneration for those functions shall be determined;

3. if the costs reflect differences in the efficiency of activities that do not affect gross profit margins (e.g. general and administrative activities), an adjustment under Article 19 may not be applied;

4. if the costs reflect other material differences, the effects of which cannot be eliminated by adjustments under Article 19, it may be assumed that the transactions being compared are not sufficiently comparable.

Article 25 The application of the resale price method may lead to the determination of the most reliable arm's length result:

1. in the case of the purchase and subsequent sale of a product where the person carrying out the resale does not add substantial value to the value of the product as a result of:

(a) a change in the characteristics of the product;

(b) the development, enhancement, maintenance, protection or exploitation of an intangible; or

(c) the assumption of economically significant risk;

2. where no significant period of time has elapsed between the purchase of the product and its subsequent sale;

3. based on information on an arm's length gross profit margin realized by the tested party in a comparable uncontrolled transaction (internal comparable transaction).

Article 26. In cases where a related person acts as an intermediary in the sale of a product to an independent person, where it does not acquire ownership of the product and does not assume other economically significant risks in relation to the same product, the gross profit margin in the controlled transaction may be calculated, in applying the resale price method, as the ratio of the remuneration the related person receives for acting as an intermediary to the amount of revenues from the sale to the independent person.

Section III
Cost plus method

Article 27 (1) The cost plus method compares the cost plus mark-up rates realized in the controlled and comparable uncontrolled transactions.

(2) Under this method, the market price of the controlled transaction is determined as the sum of:

1. the cost of the product involved in the transaction; and

2. the cost plus mark-up, calculated as the product of the cost under item 1 and an arm's length cost plus mark-up rate.

(3) An arm's length cost plus mark-up rate is the ratio between:

1. the difference between the sale price and the cost of a product sold in a comparable uncontrolled transaction; and

2. the cost of the product under item 1.

(4) For the purposes of paragraph 2, the cost may include elements of costs that are passed on without mark-up to the purchaser in the controlled transaction.

(5) The type and amount of the costs referred to in paragraph 4, which are involved in the formation of the market price, shall be assessed according to the extent to which an independent person in comparable circumstances would agree not to earn a mark-up on costs it incurs.

Article 28 (1) The reliability of the result of applying the cost plus method shall be assessed according to:

1. the degree of similarity between the transactions being compared with respect to the functions (taking into account the assets used and the risks assumed) of the relevant party;

2. the degree of similarity between the transactions being compared with respect to economic conditions and circumstances such as prices of the factors of production, production technologies used, the existence of a competitive advantage related to the costs of production, productivity and production capacity utilization, which have a direct impact on the cost of products involved in the transactions being compared;

3. the degree of similarity between the transactions being compared with respect to other economically relevant characteristics which, under the facts and circumstances of the particular case, have a material impact on the cost plus mark-up rates;

4. the extent to which the cost plus mark-ups and product cost in the transactions being compared are calculated on the basis of comparable financial data in a manner that is similar and consistent over time.

(2) In order to establish and understand the facts and circumstances referred to in paragraph 1, account shall be taken of:

1. differences between the relevant parties to transactions being compared in terms of business models applied, business experience, management efficiency and other circumstances referred to in Article 6, paragraph 3, where such differences have a material impact on the cost plus mark-up rates in the transactions being compared, but may not affect the price of the relevant product;

2. material differences in the characteristics of the products involved in the transactions being compared, which may result in the lack of sufficient functional similarity between the suppliers;

3. differences in the amount and structure of costs, including operating expenses, which may result in the lack of sufficient functional similarity between the parties to transactions being compared, taking into account that the effect of such functional differences on the cost plus mark-ups does not necessarily corresponds to the difference in the amount of the relevant operating expenses;

4. non-operating items normally not involved in the calculation of the cost plus mark-up rate, such as foreign exchange differences, losses and provisions for losses on bad receivables, accrued interest in relation to the financing of capital expenditures and operating expenses, where they are indicative of economically significant risks assumed.

(3) In view of the facts and circumstances referred to in paragraph 2, the reliability of the comparability analysis may be improved as follows:

1. if the costs reflect functional differences (taking into account the assets used and the risks assumed) which are not taken into account in the application of the cost plus method, an adjustment to the cost plus mark-up rate shall be made under the conditions of Article 19;

2. if the costs reflect the performance of additional functions that differ from the functions accounted for in applying the cost plus method (e.g. the provision of additional services), an additional arm's length remuneration for those functions shall be determined;

3. if the costs reflect differences in the efficiency of activities that do not affect the cost plus mark-up rates (e.g. general and administrative activities), an adjustment under Article 19 may not be made;

4. if the costs reflect other material differences, the effects of which cannot be eliminated by adjustments under Article 19, it may be assumed that the transactions being compared are not sufficiently comparable.

Article 29 For the purposes of Article 28, paragraph 1, item 4, the following factors shall additionally be taken into account:

1. the consistency of accounting policies and practices of the parties to the transactions being compared, which may affect the calculation of the cost and the cost plus mark-up being compared, including with respect to the indirect costs allocation mechanisms;

2. the extent to which the cost may be affected by the conditions of the controlled transaction being evaluated or another controlled transaction;

3.the extent to which the allocation of costs between the related parties in relation to the controlled transaction being evaluated corresponds to the functions performed by the parties to the transaction, taking into account the assets used and the risks assumed;

4. the relative value of the costs referred to in Article 27, paragraph 4 to the price in the controlled transaction, in case similar costs in the uncontrolled transactions cannot be identified or reliably estimated.

Article 30 The application of the cost plus method may lead to the determination of the most reliable arm's length result:

1. in the case of the production and subsequent sale of a good or in the case of the provision of a service, where the supplier does not add substantial value to the value of the good or service as a result of:

(a) the development, enhancement, maintenance, protection or exploitation of an intangible; or

(b) the assumption of economically significant risk;

2. based on information on an arm's length mark-up realized by the tested party in a comparable uncontrolled transaction (internal comparable transaction).

Section IV
Transactional net margin method

Article 31 The transactional net margin method compares the net profit margin in the controlled transaction, calculated as the ratio of net profit to an appropriate base (e.g. sales, costs or assets), with an arm's length net profit margin obtained on the same base in a comparable uncontrolled transaction.

Article 32 (1) The net profit referred to in Article 31 shall be the operating profit determined on the basis of the revenues and costs of the relevant parties attributable to the transactions being compared.

(2) For the purposes of paragraph 1, when calculating the net profit:

1. revenues and costs attributable to transactions and activities that are not (directly or indirectly) related to the transactions being compared shall be identified and excluded;

2. an economically reasonable mechanism shall be applied to allocate the relevant common items that cannot be attributed directly to a specific transaction or activity of the relevant parties to the transactions being compared.

Article 33 (1) When selecting an appropriate base for calculating the net profit margin, the following criteria shall be taken into account:

1 established practices for assessing profitability for the relevant industry sector or type of transactions;

2. the appropriateness of the base for determining a reliable arm's length result in view of the nature of the controlled transaction, in particular, the functions (taking into account the assets used and the risks assumed) of the tested party;

3. the degree of comparability between the controlled and uncontrolled transactions, including with regard to the reliability of the adjustments under Article 19;

4. the reliability of the available information needed to apply the transactional net margin method on the basis of the relevant base;

5. the reasonableness of the assumptions made in the calculation of the relevant base;

6. sensitivity of the results of the application of the transactional net margin method on the basis of the relevant base to deficiencies in the information used and the assumptions made.

(2) In addition to the criteria provided for in paragraph 1, the selected base shall meet all of the following conditions:

1. the value of the base is not affected by the conditions of the controlled transaction being evaluated;

2. the value of the base is not affected by the conditions of another controlled transaction where the arm's length principle is not respected;

3. the values of the bases in the transactions being compared are calculated in a manner that is similar and consistent over time;

4. where sales, costs or assets are used as a base, the values of the base and the net profit are calculated on the basis of comparable financial data in a manner that is similar and consistent over time.

Article 34 (1) The reliability of the result of applying the transactional net margin method shall be assessed according to:

1. the degree of similarity between the transactions being compared with respect to the functions (taking into account the assets used and the risks assumed) of the relevant parties;

2. the degree of similarity between the transactions being compared with respect to the economic conditions and circumstances under which the relevant parties to these transactions carry out their business;

3. the degree of similarity between the transactions being compared with respect to other economically relevant characteristics which, under the facts and circumstances of the particular case, have a significant impact on the net profit margins;

4. the extent to which the net profit margins in the transactions being compared are calculated on the basis of comparable financial data in a manner that is similar and consistent over time.

(2) In order to establish and understand the facts and circumstances referred to in paragraph 1, account shall be taken of:

1. circumstances giving rise to material differences in the profitability of the markets in which the relevant parties to the transactions being compared carry out their business activities related to these transactions, including the stage of the life cycle of the product concerned, factors characterizing the state and development of the market, the competitive environment and other factors affecting the conduct and performance of the various market actors;

2. circumstances giving rise to material differences between the parties to the transactions being compared, including characteristics of the assets used, business experience and management efficiency, the scale and scope of the business, competitive advantages and disadvantages, other characteristics of the business model applied, to the extent that they materially affect the net profit margins in the transactions being compared;

3. other circumstances indicating that the tested party makes unique and valuable contributions to the overall process of value creation and realization of economic benefits of which the controlled transaction is a part.

(3) For the purposes of paragraph 1, item 4, the following factors shall be taken into account additionally:

1. material differences in accounting policies and practices of the parties to the transactions being compared, which may affect the calculation of the net profit margins;

2. material differences in the amount and structure of revenues, costs and assets;

3. material differences in the results of the relevant parties to the transactions being compared due to activities in which the effects on revenues may occur in a period of time other than the time of performance of these activities, such as the implementation of new technologies, the development of new products, processes or markets, etc.;

4. effects of low capacity utilization on the net profit margins of the parties to the transactions being compared;

5. factors referred to in Article 29, items 3 and 4, where they may have an impact on the net profit margin in the controlled transaction being evaluated.

Article 35 The application of the transactional net profit method may lead to the determination of the most reliable arm's length result when the tested party:

1. does not make unique and valuable contributions;

2. does not carry out many different transactions or activities which cannot be aggregated and evaluated together in accordance with the rules of Article 15, paragraph 2.

Section V
Transactional profit split method

Article 36 The transactional profit split method determines, on an economically valid basis, the split between related parties of the combined result (profit or loss) of the controlled transaction in a manner that would have been adopted by independent parties in a comparable uncontrolled transaction.

Article 37 (1) The transactional profit split method may be applied where in view of the nature of the controlled transaction, and in particular of the functions that each party to the transaction performs, taking into account the assets used and the risks assumed, at least one of the following conditions is met:

1. the related parties make unique and valuable contributions;

2. the related parties carry out highly integrated business operations;

3. the related parties share the assumption of an economically significant risk or separately assume closely related economically significant risks.

(2) When applying the transactional profit split method, information on the split between independent parties of the combined result of a comparable uncontrolled transaction shall be used, where such information is available and its use may lead to the determination of a more reliable arm's length result.

Article 38 (1) For the purposes of Article 36, the combined result shall be expressed by an appropriate measure of the profit or loss from the controlled transaction, which meets all of the following conditions:

1. it is consistent with the facts and circumstances referred to in Article 37, and in particular reflects the assumption of economically significant risks by the parties to the controlled transaction;

2. its value can be determined in a reliable manner;

3. it is used consistently over time, unless, due to a material change in the facts and circumstances of the particular case, the use of another measure of the profit or loss from the controlled transaction is necessary, which is duly justified and documented.

(2) The transactional profit split method shall be applied to the actual combined result only if the condition laid down in Article 37, paragraph 1, item 3 is met.

Article 39 The economically valid basis referred to in Article 36 shall consist of one or more allocation keys which meet all of the following conditions:

1. their value can be reliably determined on the basis of objective and verifiable data;

2. their value is not affected by the conditions of the controlled transaction being evaluated or another controlled transaction where the arm's length principle is not respected;

3. they are used consistently over time, unless, due to a material change in the facts and circumstances of the particular case, the use of other allocation keys is necessary, which is duly justified and documented.

Article 40 The transactional profit split method may be applied on the basis of either of the following two approaches: contribution analysis or residual profit analysis.

Article 41 (1) In the contribution analysis, the combined result of the controlled transaction shall be split between the related parties in a manner adopted by independent parties in a comparable uncontrolled transaction.

(2) Where, in the contribution analysis, reliable information about a comparable uncontrolled transaction is not available, the combined result of the controlled transaction shall be split between the related parties on a basis that reliably reflects the relative value of their contributions to that result.

(3) The relative value of the contributions of the related parties shall be determined on the basis of a functional analysis, taking into account all the circumstances referred to in Article 6, paragraph 3, relevant to the particular case.

(4) For the purposes of paragraph 3, additional use may be made of:

1. market data and analysis;

2. statistical information;

3. valuation methods and techniques referred to in Article 14, paragraph 9;

4. other reliable information.

Article 42 (1) A residual profit analysis shall be carried out where some of the contributions to the combined result of at least one of the related parties can be more reliably valued by applying another method for determining market prices.

(2) The residual profit analysis shall be carried out in two stages:

1. an arm's length remuneration shall be determined for the contributions to the combined result of each related party that can be more reliably valued by applying another method for determining market prices;

2. after deduction of the arm's length remuneration referred to in item 1, the combined result of the controlled transaction shall be calculated and split between the related parties on

the basis of a contribution analysis referred to in Article 41, without taking into account the contributions of the related parties which have already been valued.

Article 43 The reliability of the result of applying the transactional profit split method shall be assessed according to:

1. the degree of comparability between the controlled and comparable uncontrolled transactions in view of the sensitivity of the measure used referred to in Article 38, paragraph 1 to various factors that may affect the combined result;

2. the reliability of the information used and the reasonableness of the assumptions made in relation to the identification and attribution of the relevant revenues, costs and assets in the calculation of the combined result, as well as the possibilities for ex post verification of the information used and the assumptions made;

3. the degree of coherence and consistency in the collection and presentation, including in view of existing differences in accounting policies and practices, of the data on the basis of which the combined result and the split basis are calculated;

4. the reliability of the information used and the reasonableness of the assumptions made in relation to the determination of the relative value of each related entity's contributions to the combined result of the controlled transaction being evaluated.

Chapter IV
SPECIAL RULES FOR CERTAIN TYPES OF CONTROLLED TRANSACTIONS

Section I
Special rules for determining market prices of services

Article 44. (1) The conditions of a controlled service transaction shall comply with the arm's length principle only where all of the following conditions are met:

1. the service provides a reasonably expected or actual economic benefit to the recipient of the service;

2. the price of the service is consistent with the amount that, in comparable circumstances, an independent person would pay for a comparable service or would incur as costs for carrying out in-house for itself an activity providing a comparable economic benefit.

(2) The conditions referred to in paragraph 1 shall be deemed not to be met with respect to the controlled transaction or part thereof, when any of the following circumstances are present:

1. the relevant activity does not provide the recipient with economic or commercial value to enhance or maintain its business position; or

2. the benefit to the recipient is a consequence of passive association in a group of enterprises or constitutes another incidental benefit; or

3. the service duplicates another service or activity that is for the account of the recipient and the duplicative service does not provide an additional economic benefit to its recipient; or

4. the service serves or protects the interests of a person in its capacity as a holder of a direct or indirect ownership interest in the recipient or ensures compliance with legal, regulatory, reporting or other requirements not applicable to the recipient.

Article 45. In the case of an on-call service for the purposes of Article 44, paragraph 1 the following circumstances shall also be taken into account:

1. what are the provider's capabilities at the time of negotiating the conditions of the controlled transaction to actually provide the service;

2. what is the probability that the need to actually receive the service will arise in time;

3. to what extent does the on-call service provide additional economic benefit to the relevant related party compared to receiving the same service without an on-call condition, including in view of:

(a) the party's options realistically available to receive the service from an independent provider or to carry out an activity that meets the same need;

(b) any additional conditions regarding the actual receipt of the service.

Article 46. (1) For the purposes of Article 44, paragraph 1, item 2, the price shall be determined:

1. directly – where the service is provided to one related person or where the service is provided to two or more related persons and it can be reliably established what portion of the service each person receives; or

2. indirectly – where the service is provided to two or more related persons and:

(a) it cannot be established what portion of the service each person receives; or

(b) establishing the portion of the service that each person receives requires additional costs or efforts which are disproportionate to the economic benefits expected or received by the provider from providing the service.

(2) Indirect determination of the price referred to in Article 44, paragraph 1, item 2 shall not be permitted where the service in the controlled transaction is provided by the same provider in a comparable manner to one or more independent persons and such a provision is not of an incidental nature.

Article 47. (1) In the cases referred to in Article 46, paragraph 1, item 2, the price for a specific recipient of the service shall be determined by allocating the total price of the service on an appropriate basis among all related persons to whom the service provides a reasonably expected or actual economic benefit.

(2) The basis referred to in paragraph 1 shall consist of one or more allocation keys, which meet all of the following conditions:

1. they take into account the nature of the service and the circumstances in which the service is provided;

2. they ensure an allocation of the total price of the service that is consistent with the reasonably expected or actual economic benefits to each recipient of the service;

3. their value is not affected by the conditions of a controlled transaction;

4. their value can be reliably determined on the basis of objective and verifiable data;

5. their value is calculated in a consistent manner over time.

Article 48. Where reliable information on the source, type and value of the costs of providing the service is not available and the price of the service is determined on the basis of such costs, the revenue authority shall determine the market price using any reliable information at its disposal, taking into account the other rules of this Ordinance.

Section II

Special rules for determining market prices of transactions involving intangibles

Article 49. In the case of a controlled transaction in an intangible such as a sale, license or other form of transfer or grant of an intangible, including cost contribution arrangements and research and development contracts, the comparability analysis shall take into account the perspectives of each of the parties to the transaction, including:

1. the expected or actual economic benefits resulting from the exploitation of the intangible; and

2. the form, amount, timing and manner of receiving remuneration or other appropriate compensation for any related person who:

(a) actually performs or exercises control over functions of development, enhancement, maintenance, protection or exploitation of the intangible;

(b) assumes an economically significant risk in relation to the intangible; or

(c) provides funding or other assets for the performance of the functions referred to in letter "a" or the assumption of risks referred to in letter "b".

Article 50. In the comparability analysis, depending on the facts and circumstances of the particular case, the following economically relevant characteristics of the transactions in intangibles being compared shall also be taken into account:

1. type of intangible (e.g. patent, trademark or know-how);

2. subject matter of the transaction (e.g. transfer of ownership of an intangible or granting of rights);

3. scope and content of the relevant rights, including:

(a) duration and any arrangements for renegotiation or termination of the contract;

(b) exclusive or non-exclusive rights to the intangible, limitations in terms of geographical scope or manner of exploitation of the intangible;

(c) rights to sublicense the intangible;

(d) rights to receive subsequent updates, enhancements and modifications of the intangible;

(e) rights of the transferee to modify or participate in further development or enhancement of the intangible;

(f) whether the intangible is transferred alone or together with other products;

4. purpose, area and manner of exploitation of the intangible, including:

(a) industry sector or market in which the intangible is exploited;

(b) functional area of exploitation of the intangible (e.g. R&D, manufacturing, distribution, etc.);

(c) product or process involving the use of the intangible;

(d) objectives and main considerations for exploiting the intangible (e.g. cost reduction, improved product quality, improvement of market positions, etc.);

5. uniqueness of the intangible and the period for which it remains unique, including the degree and duration of protection;

6. useful life;

7. incurred and expected costs in connection with the development, enhancement, maintenance, protection and exploitation of the intangible, including the costs for activities ancillary or incidental to the exploitation of the intangible;

8. stage of development and other characteristics determining the need for further performance of important functions or assumption of economically significant risks in relation to the development, enhancement, maintenance, protection or exploitation of the intangible;

9. competitive advantages obtained through the intangible;

10. profit potential;

11. other characteristics affecting the conditions of the transaction.

Article 51. (1) In the case of a controlled transaction in an intangible where there is a high degree of uncertainty about the value of the intangible at the time of entering into the transaction, the compliance of the pricing terms agreed between the related parties with the arm's length principle shall be assessed in view of all relevant facts and circumstances,

including the reliability of the information used and the reasonableness of the assumptions made regarding economically significant risks and expected economic benefits, as well as the possibilities for ex post verification of the information used and the assumptions made.

(2) Where it is established that the pricing conditions agreed between the related parties do not provide adequate protection for the parties to the controlled transaction against risks posed by the high uncertainty in valuing the intangible, the conditions of the controlled transaction may also be assessed taking into account the effects of appropriate protective clauses as agreed or would have been agreed between independent parties in comparable circumstances.

(3) Depending on the facts and circumstances of the case, the protective clauses referred to in paragraph 3 may include:

1. shorter term of validity of the contractual terms;

2. a clause for renegotiation of the pricing terms;

3. a contingent payment clause that specifies the timing or quantum of a payment depending on the occurrence of a certain event or the achievement of a certain result (e.g. a variable royalty rate depending on different sales volumes).

Article 52. (1) Notwithstanding Article 17, information on the actual financial results of a controlled transaction involving a hard-to-value-intangible may be used to establish whether the pricing conditions of the controlled transaction comply with the conditions that would have been agreed in a comparable uncontrolled transaction, including:

1. to verify the reliability of the information used in determining the pricing conditions of the controlled transaction;

2. to examine the reasonableness of the assumptions made in determining the pricing conditions of the controlled transaction;

3. to identify or clarify reasonably foreseeable events and other risks that the related parties could or should have taken into account in determining the pricing conditions of the controlled transaction;

4. to establish whether independent persons would negotiate protective clauses under Article 51, paragraph 2 in comparable circumstances.

(2) Paragraph 1 shall not apply where at least one of the following conditions is met:

1. the following is provided:

(a) detailed information on the forecasts and data on the basis of which the pricing conditions of the controlled transaction have been determined, including the manner in which the relevant risks have been taken into account in the calculation of the price; and

(b) a reliable justification of the assumptions made for reasonably foreseeable events and other risks and the probability of their materialization; and

(c) reliable evidence that any significant difference between the financial forecasts and actual results is due to:

(AA) circumstances or events occurring after the determination of the pricing conditions of the controlled transaction that could not have been foreseen by the related parties at the time of entering into the transaction; or

(BB) the occurrence of foreseeable results, the probability of which was not significantly underestimated or overestimated at the time of entering into the transaction; or

2. any significant difference between the financial forecasts and the actual results referred to in letter “c” of item 1 does not lead to a deviation of more than 20% in the amount of the consideration in the controlled transaction; or

3. a period of 5 years has elapsed since the end of the year in which the intangible started to generate unrelated party revenues for the transferee and in which period any significant

difference referred to in letter “c” of item 1 is not greater than 20% compared to the relevant financial forecasts for the same period.

(3) For hard-to-value intangibles that are transferred and can have more than one use, the conditions referred to in paragraph 2, items 2 and 3 shall be considered separately for each new commercialization of the intangible.

Section III
Special rules for determining market prices of financial transactions

Article 53. (1) In the analysis under Article 3, paragraph 1, item 1, the economically relevant characteristics of a financial transaction between related parties, including its form and amount, shall be identified and evaluated taking into account the perspectives of each of the parties to the transaction.

(2) For the purposes of paragraph 1, the assessment of whether a controlled transaction giving rise to an interest-bearing liability for one party may be partially or wholly reclassified as another type of transaction shall be based on a thorough analysis of all relevant facts and circumstances that may include, but are not limited to:

1. investment options realistically available to the creditor in view of the economically significant risks assumed in the controlled transaction and the expected return on that transaction;

2. circumstances determining the need for the debtor to undertake the transaction;

3. options realistically available to the debtor to obtain the necessary financing, including using its own funds;

4. ability of the debtor to fulfil its obligations arising from the transaction, including with a view to:

(a) the amount and timing of the principal and interest liabilities and other transaction-related costs;

(b) the source of funds for settling the liabilities referred to in letter “a”;

(c) the economically significant risks associated with the asset or activity for which the funding is used and the expected return on that asset or activity;

5. origin of the funds used to finance the debtor;

6. presence or absence of a fixed date for repayment of the debtor’s financial obligations;

7. existing options, including for converting the debt into another financial instrument, for early repayment or extension of the repayment period of a financial obligation, for changing or cancelling principal or interest maturity dates;

8. the extent to which the conditions of the controlled transactions agreed between the related parties are complied with, subsequent changes to the initially agreed conditions, as well as considerations and circumstances related to these changes;

9. type and degree of protection of the creditor’s rights arising from the transaction, including in comparison with other independent creditors of the same debtor;

10. the extent to which the creditor’s rights arising from the transaction are actually exercised;

11. type and allocation of the economic benefits and economically significant risks in relation to a financial guarantee provided to the debtor by a related party;

12. the extent to which the creditor exercises control over the debtor’s operational or financial activities;

13. the extent to which the capital structure of the debtor is consistent with the capital structure according to the consolidated financial statements of the ultimate parent entity of the group of enterprises, where the debtor is part of such a group, as well as with the capital

structure of independent persons according to comparable economic activities under comparable conditions and circumstances;

14. policies and practices established within the group of enterprises regarding financial and investment activities, including with regard to existing relationships with independent creditors;

15. legal and regulatory requirements and restrictions.

Article 54. (1) In the case of debt financing, the comparability analysis, depending on the facts and circumstances of the particular case, shall also take into account the following economically relevant characteristics of the transactions being compared:

1. field of economic activity of the debtor;

2. geographical location of the debtor's business and of its main markets;

3. business experience and management efficiency of the debtor, the scale and scope of its business;

4. creditworthiness of the debtor;

5. time of conclusion of the transaction;

6. absolute and relative amount of the financing in relation to the debtor's assets;

7. purpose and manner of use of the financing by the debtor;

8. drawdown scheme of the financing;

9. scheme and deadlines for repayment of the financing obligations;

10. currency;

11. type of interest rate – floating or fixed;

12. liquidity of the debt financial instrument;

13. options in favour of the creditor or debtor;

14. characteristics of any collateral such as the type, value and liquidity of the collateral as well as the creditworthiness of the collateral provider;

15. benefits accruing to the debtor from a financial guarantee received, including in view of the effects of passive association in a group of enterprises, the creditworthiness of the guarantor and the probability of simultaneous default by the debtor and the guarantor with respect to the financing obligations;

16. other protective clauses in favour of the creditor, such as obligations of the debtor to maintain certain values of key financial indicators, obligations or restrictions related to the performance of certain actions by the debtor;

17. ranking of claims under the provided financing in the event of insolvency of the debtor;

18. prevailing interest rates in the relevant financial markets;

19. other factors that may have a significant impact on the comparability of the transactions being compared.

(2) The reliability of the assessment of the debtor's creditworthiness in the controlled transaction shall be assessed by taking into account:

1. the reliability and transparency of the methodology underlying the assessment;

2. the purpose of the assessment;

3. the independence and professional competence of the person who carried out the assessment;

4. the availability of written evidence reflecting the information used and the assumptions and considerations made in applying the relevant assessment methodology;

5. the extent to which the results of the assessment may be affected by the conditions of a controlled transaction;

6. the reasonableness of the assessment of the effects of passive association in a group of enterprises (implicit support) and other assumptions and considerations in applying the relevant assessment methodology;

7. the relative importance of the debtor to the group of enterprises as a whole and the linkages between it and the rest of the group, including in view of the future strategy of the group;

8. the likely consequences for other parts of the group in the event that the debtor experiences financial difficulties in the future;

9. similarity between the debtor and the group of enterprises as a whole in terms of key financial indicators that are usually taken into account when assessing creditworthiness.

(3) The creditworthiness of the ultimate parent entity of the group of enterprises, assessed on a consolidated basis, could be used for the purposes of paragraph 1, item 4, to price the controlled transaction when:

1. the debtor is part of such a group and there is no reliable assessment of its creditworthiness; and

2. the facts and circumstances under paragraph 2, items 7 and 8 indicate that the debtor is important to the group (e.g. the debtor has strong economic links with other parts of the group, the debtor is integral to the group's identity or important to its future strategy or there would be negative consequences for other parts of the group if the debtor is not supported financially); and

3. the debtor's indicators of creditworthiness do not differ significantly from those of the group.

(4) For the purposes of paragraph 2, an opinion provided by a credit institution in relation to a loan not actually granted shall not be considered to be a reliable assessment of the debtor's creditworthiness.

(5) For the purposes of paragraph 1, item 14, account shall also be taken of the debtor's ability to provide collateral in the light of facts and circumstances such as the type and value of the assets held, the existence of encumbrances or other restrictions on the exercise of rights over those assets.

Chapter V
CONTROL

Article 55. In the transfer pricing analysis carried out in the course of control proceedings, the revenue authority shall take into account the conclusions of the taxpayer regarding the compliance of the conditions of the controlled transaction being evaluated with the arm's length principle, only to the extent that these conclusions are presented in a timely manner and are substantiated in a manner and by means that fully reflect:

1. the economically relevant characteristics of the controlled transaction;

2. the considerations in determining the time scope of the comparability analysis;

3. the considerations for the application of Art. 15, paragraph 2 or paragraph 5, when applied;

4. the considerations for selecting the most appropriate method for determining market prices and, depending on the method – the tested party and the financial indicator;

5. the considerations for selecting one or more comparable uncontrolled transactions, including in view of the adjustments under Article 19;

6. the financial data used in the comparability analysis and their sources;

7. the main assumptions and conclusions when interpreting the results of the comparability analysis;

8. other information which, under the facts and circumstances of the particular case, is essential for the assessment of the reliability of the transfer pricing analysis carried out.

Article 56. In assessing the compliance of the conditions of the controlled transaction with the arm's length principle, the revenue authority may:

1. verify and clarify the facts and circumstances reflected in the evidence provided by the taxpayer;

2. collect and analyze additional information other than that provided by the taxpayer having regard to the provision of Article 17;

3. not to take into account facts and circumstances, information and evidence for which were at the disposal of the taxpayer, but were not provided, when the taxpayer was obliged to provide them.

ADDITIONAL PROVISIONS

§ 1. For the purposes of this Ordinance:

1. "Gross profit" means net sales revenue less cost of sales.

2. "Effects of passive association in a group of enterprises" means an incidental benefit arising solely by virtue of group affiliation.

3. "Control over risk" includes three elements: (i) the capability to make decisions to take on, lay off, or decline a risk-bearing opportunity, together with the actual performance of that decision-making function, (ii) the capability to make decisions on whether and how to respond to the risks associated with the opportunity, together with the actual performance of that decision-making function, and (iii) if risk mitigation measures are outsourced, the capability to determine the objectives of the outsourced activities, to decide to hire the provider of the risk mitigation functions, to assess whether the objectives are being adequately met and, where necessary, to decide to adapt or terminate the contract with the provider, together with the actual performance of such assessment and decision-making.

4. "Intangible" means intangible within the meaning of §1, item 47 of the additional provisions of the Tax and Social Security Procedure Code.

5. "Operating profit" means gross profit less operating expenses. Operating profit is most commonly presented as earnings before interest and taxes.

6. "Operating expenses" are expenses that are not included in the cost of sales and do not represent financial expenses, investment expenses, income tax expenses or expenses that are not related to the ordinary operations of the enterprise. Operating expenses most often include non-production expenses such as selling, general and administrative expenses.

7. "Arm's length result" means the outcome that would have been achieved if the conditions of the controlled transaction had complied with the arm's length principle.

8. "Product" includes goods, assets, energy, money, rights and any other property transferred or services provided.

9. "Transaction" means any establishment, implementation, reorganization or termination of commercial or financial relations between two or more persons, regardless of its legal form, validity or basis, as a result of which at least one of the persons receives a reasonably expected or actual economic benefit for which, in comparable circumstances, an independent person would be willing to pay remuneration or provide other appropriate compensation.

10. "Hard-to-value-intangible" means intangible, including rights, for which, at the time of its granting or transfer between related persons, (i) no reliable comparables exist, and (ii) at the time the transaction was entered into, the projections of future cash flows or income expected to be derived from the intangible, or the assumptions used in valuing the intangible

are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of its granting or transfer.

11. "Unique and valuable contributions" means contributions that (i) are not comparable to contributions made by uncontrolled parties in comparable circumstances, and (ii) represent a key source of actual or potential economic benefits in the business operations.

12. "Management of risk" includes three elements: (i) the capability to make decisions to take on, lay off, or decline a risk-bearing opportunity, together with the actual performance of that decision-making function, (ii) the capability to make decisions on whether and how to respond to the risks associated with the opportunity, together with the actual performance of that decision-making function, and (iii) the capability to mitigate risk, that is the capability to take measures that affect risk outcomes, together with the actual performance of such risk mitigation.

13. "Financial capacity to assume risk" means access to funding to take on the risk or to lay off the risk, to pay for the risk mitigation functions and to bear the consequences of the risk if the risk materializes.

§ 2. The rules of this Ordinance shall be interpreted and applied in accordance with the recommendations and guidance of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations of the Organization for Economic Co-operation and Development in their most recent edition.

FINAL PROVISIONS

§ 3. This Ordinance repels Ordinance No. H-9 from 2006 regarding the procedures and methods for determining market prices (published in the State Gazette, issue 70 from 2006).

§ 4. This Ordinance is issued pursuant to § 1, item 10 of the supplementary provisions of the Tax and Social Security Procedure Code.

§ 5. This Ordinance shall come into effect on January 1, 2026.