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TRANSFER PRICING IN SPAIN
AND
INTERNATIONAL RULINGS

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INPACT

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CHAPTER 1

TRANSFER PRICING IN SPAIN

1. Introduction

The international business world in recent years has been characterised by the development and spreading of groups of companies operating in countries with different tax regimes.
Therefore, tax authorities of the countries involved in this process were faced with new tax problems related to the presence in their territory of these important companies.
As part of this process of trade internationalisation, transfer pricing has taken on an increasingly important role, in relation to the trading of goods and services between companies residing in different countries and belonging to the same group or, in any case, with such close business ties that allows us to presume a single management.
In other words, transfer pricing, in its commonly understood sense, means the setting of prices for commercial transactions among companies belonging to the same multinational group. The price set could also be different from that which would be applied if the companies involved were independent of each other.

There is no doubt that such an approach can be justified on various economic grounds and lead to the implementation of various business policies such as, for example, lowering profits generated in countries with high political instability, circumventing antidumping regulations, penetration into new markets, limiting exchange rate risk, possibility of using regulations that guarantee banking secrecy, etc.
However, when purely tax-related reasons prevail and the group uses transfer pricing with the sole objective of minimising the tax burden, the practice takes on connotations which are clearly aimed at tax avoidance, since the purchase and sale of goods and services becomes dependant on the location of income in countries where the level tax is lower and, vice versa, the location of costs in those countries where tax is higher.
The objective of the regulation being examined, therefore, can be linked to the need to ensure that such transactions are conducted under the same terms as those applied between independent subjects, and therefore, at market prices, conflicting with any arbitrages in the conditions applied and the subsequent movement of taxable items from one tax jurisdiction to another.

Since the problem of transfer pricing involves the financial administrations of nearly all the main industrialised countries, the regulation governing its content inevitably derives from arrangements made at a supranational level.

For this very reason, international bodies, such as the OECD, have established some principles of conduct aimed at both the financial administrations and the companies involved. On the basis of these principles, it is possible to assess and, if necessary, re-tax income that has been reduced by applying tax avoidance mechanisms.

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1.1 The OECD approach

Within the OECD, the first document dealing with transfer prices dates back to 1979.

This document contained indications on the first basic criteria for determining the normal value of transactions undertaken between companies belonging to the same group, in order to provide suitable solutions to reduce conflicts between the various tax authorities and between these authorities and multinational enterprises. In keeping with the need to provide clear rules in an increasingly internationalised market, the document was reviewed and suitably integrated as early as 1984 ("Transfer Pricing and Multinational Enterprises, Three Taxation Issues").

A second revision followed in 1987 leading to the preparation in July 1995 of the new report entitled: "Transfer pricing guidelines for multinational enterprises and tax administrations".

Originally, the first part of the document consisted of five chapters.
Chapter I defined the arm's length (or free competition) principle as the essential tool in achieving congruous evaluations among the various administrations.
Chapter II deals with the so-called "traditional methods" to determine transfer prices (traditional transaction methods), i.e. price comparison, resale price and cost plus.
Chapter III illustrates the "other methods" of evaluation, other than those examined above, i.e. the profit split method and transactional net margin method.
Chapter IV examines the administrative and regulatory tools available to prevent and resolve transfer pricing disputes (between the financial administration and taxpayers and also between the tax authorities of the various countries).
In this sense, special reference is made to the so-called Secondary Adjustments and Advance Pricing Agreements and to the arbitration procedure.
Finally, chapter V deals with "documentation".
The following year, in 1996, the report was integrated with three additional chapters: chapter VI which sets out the arrangements for evaluating the transactions involving intangible goods, chapter VII dedicated to intra-group services and chapter VIII which analyses the procedure of the so-called cost sharing agreements.

The examination of the provisions contained in this document becomes particularly important for businesses which trade with foreign subsidiaries and/or associates, in consideration of the fact that the OECD Council advised Governments of contracting countries to ask their tax authorities, in establishing the transfer price for sale of goods and services among associated companies, to take into account the considerations and methods outlined in the report. The aim is to prevent tax authorities of the various countries to apply inaccurate (therefore weak) and diverging (therefore capable of generating double taxation on profits) operating methods.

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2. Spanish tax regulations

The arm's length principle of pricing is one of the key elements around which revolve the issue of transfer pricing, and, consequently the approaches and indications provided by the OECD.
This principle is expressly set out in the OECD's model for bilateral double taxation avoidance agreements. Article 9, paragraph 1, letter b) of this agreement states that when conditions are made or imposed between companies in their commercial or financial relations which "*differ from those which would be made between independent companies, then any profits which would, but for those conditions, have accrued to one of the companies, but, by reason of those conditions, have not so accrued, may be included in the profits of that company and taxed accordingly"*.

Spanish lawmakers introduced these principles into our tax legislation at paragraph 1, art. 16 (entitled Transactions between related parties) of Legislative Royal Decree 4/2004 of Corporate Tax Law, as amended by Law 36/2006 of November the 29th, which states that: *"Transactions made between individuals or related entities will be assessed according to their normal market value. It will be considered as normal market value the one that would be agreed by independent individuals or entities acting in circumstances of free competition".* From the Spanish legislation, it emerges that the arm's length principle is directly related to defining the "normal value" as it is expressly said in art. 16.

The Spanish legislative framework for transfer pricing is completed by Royal Decree 1793/2008 of 3rd of November of 2007.

Development of Spanish legislation on transfer pricing	
1978	As part of the tax reform, lawmakers introduced art. 16 in the Corporate Tax Law (Law 61/1978, of December 27th), according to which the price of transactions between companies belonging to the same group must be determined on the basis of the market value
1982	Article 39 of Royal Decree 2631/1982 of October 15th, referred to transfer pricing rules.
1995	A new corporate Law was issued (Law 43/1995 of December the 27th) and Art. 16 amended.
1997	In accordance to the new Law, the Royal Decree 537/1997 of April 14th was approved. Transfer pricing was regulated in Articles 15 to 28.

2.1 Application of the legislation

From paragraphs 1 and 2, article 16 of the Corporate Tax Law it is clear that, for the purposes of applying the transfer pricing legislation, tax lawmakers expressly identify:

1. An "objective" requirement, i.e. the transfer of goods or the rendering of services.
2. A "subjective" requirement, i.e. the presence of one or more Spanish or foreign subjects, or the stable organisation of the latter in Spain.

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3. A requirement relating to the nature of the existing relationship (one of control) between the parties of the transaction.

With reference to the latter, particular consideration must be given to the notion of "control" which, in the tax treatment of transfer pricing, is different from that envisaged by Spanish civil law.

2.2 Objective and subjective requirements

Spanish legislation on transfer pricing generally refers to all transactions undertaken involving subjects belonging to the same business group, or between shareholder-company or directors-company.

It may deal with the sale of goods (finished goods, raw materials, intangible goods, etc.) or the supply of general services (financial or strategic consultancy, staff secondments, management fees, concession of rights for using formulas and know how, supply of shared centralised services, head quarter expenses), or even in other kind of transactions like loan interest, salaries, Directors remunerations and so on. In other words, all the transactions made between related parties.

With reference to the subjective requirement, art. 16, paragraph 3 of the Corporate Tax Law outlines that Spanish transfer pricing regulations are applicable not only to commercial transactions which are carried out between a company residing in Spain and non-resident companies, but also between Spanish companies and their shareholders, directors and their relatives.

2.3 Related parties.

Under the Spanish lawmakers' point of view, parties are considered to be related in the following situations:

a) A company (entity) and its members
b) A company (entity) and its directors or administrators
c) A company (entity) and the spouses or persons linked to the members, directors or administrators by familiar relationship, in direct ascending, descending or collateral line, by consanguinity or affinity up to the third grade.
d) Two companies (entities) which, in accordance with the provisions of article 42 of the Commercial Code, meet the requirements to form part of a single group of companies.
e) A company (entity) and the members of another company, when both companies belong the same group of companies as defined in article 42 of the Commercial Code.
f) A company (entity) and the directors or administrators of another company, when both companies belong to the same group of companies as defined in article 42 of the Commercial Code.
g) A company (entity) and the spouses or persons linked by familiar relationship -in direct ascending, descending or collateral line, by consanguinity or affinity up to the third grade- of the members or of another company, when both companies belong to the same group of the companies as defined in article 42 of the Commercial Code.

h) Two company (entities) when one of them indirectly holds at least 25 per cent of the capital stock of the other.
i) Two company (entities) in which the same members or their spouses or persons linked by familiar relationship -in direct ascending, descending or collateral line, by consanguinity or affinity up to the third grade hold, directly or indirectly, at least 25 per cent of the capital stock.
j) A company (entity) resident in Spanish territory and its permanent establishments abroad.
k) A company (entity) resident abroad and its permanent establishments in Spain.
l) Two entities (companies) which form part of a group which is taxed under the cooperative society group regime.

When the relationship is defined in accordance with the member-company relationship, the interest held must be equal to or greater than 5 per cent, or than 1 per cent in the case of securities listed on an organized secondary market.

According to art. 42 of the Commercial Code, a group of companies exists when:
A company has or is able to have, directly or indirectly, the control of another company or some others. Particularly, control will be presumed when a company –called "dominant company"- is towards another company –called "Dependant Company"-, in some of the following situations:
1) The first company controls the majority of voting rights.
2) Has the power to appoint or dismiss the majority of the members of the board of directors.
3) Holds, as a result of agreements reached with third parties, a majority of the voting rights.
4) Has appointed with its votes the majority of the members of the board of directors who hold their post at the moment when the consolidated accounts have to be formulated and for the two financial years immediately preceding. In particular, this circumstance will be presumed when the majority of the members of the board of directors of the dependant company are members of the board of directors or senior managers of the dominant company or another dominated by it. This case will not be considered as a formation of a group if the company whose administrators have been appointed is linked to another in either of the cases provided for in the first two letters of this section.
For the purposes of this section, to the voting rights of the dominant entity we must add those it may hold through other dependant companies or through persons acting on their own behalf but working for the dominant entity or other dependant entities or those it may hold by agreement with any other person.

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CHAPTER 2

METHODS FOR DETERMINING TRANSFER PRICES

1. Methodological criteria for adjusting transfer prices

The verification criteria used by Spanish tax authorities to assess the congruity (normal value) of the considerations applied by parties in related parties' transactions (controlled transactions), are set out in the Article 16 of Corporate Tax Law

1. Traditional transaction based methods	**2. Profit based methods**
a) Arm's length method and price comparison b) Cost plus method c) Resale price method	d) Method of global profit split e) Method of transaction net margin

Before moving to a brief analysis of these criteria, it is worth underlining that all the criteria are in line with those indicated by the OECD.
The taxpayer must take into account the provisions of the Spanish regulation which are coincident with the provisions of the OECD.

2. Arm's length method and price comparison (CUP method)

This is the main criterion, indicated both by the OECD and the Spanish Tax Authorities, to check the congruity of the values in transactions undertaken by the parties.

"Arm's length price" is the price which would have been stipulated for similar transactions by independent companies. The comparable Uncontrolled Price method determines whether the amount charged in a controlled transaction gives rise to an arm's length result by reference to the amount charged in a comparable uncontrolled transaction.

This method can be based on a so-called "internal" comparison or "external" comparison.
In the first case, the price applied in the inter-company transaction is compared with similar transactions, again carried out between the same subject and independent third parties.
In the second case, however, the price applied in the inter-company transaction is compared with the prices applied by independent subjects who have undertaken similar transactions.

2.1 Internal and external comparisons

With internal comparison the prices stipulated in intra-group transactions must be very similarly to those established in transactions with independent operators.
Any differences can only be justified when special situations occur, or there are differences in the transactions which have an impact on the final price. For example, transport costs which may be charged to the seller in intra-group transactions, while transport costs in transactions with independent third parties are charged to the buyer.
It is clear that, apart from the special aspect mentioned previously, when adopting the internal price comparison criterion, operators will presumably not have to carry out particular analyses of comparability.

However, the case where the external price comparison is used is different. This requires goods that are absolutely identical to be identified, since, even small differences in the quality or characteristics of the goods can have a significant impact on the price.
The comparability analysis allows sample operations to be correctly identified.

2.2. Comparability analysis

The OECD model provides some indications which are necessary for correctly determining the normal value with the use of the external comparison method. There are indications regarding:

The reference market – According to the OECD model, reference market means the market in which to look for transactions that are comparable to those being checked. The choice of the reference market is particularly important for various reasons. The sale of identical products at different prices could, in fact, be justified by competitive demands connected to the different location of the receiving business, by specific regulations on prices made by the governing authorities of the country where the receiver of the goods resides, by differences between the national laws regarding marketing, by fluctuations in exchange rates, by local distribution costs, and so on.

Characteristics of property or services - Differences in the specific characteristics of property or services often account, at least in part, for differences in their value in the open market. Therefore, comparisons of these features may be useful in determining the comparability of controlled and uncontrolled transactions. In general, similarity in the characteristics of the property or services transferred will matter most when comparing prices of controlled and uncontrolled transactions and less when comparing profit margins. Characteristics that it may be important to consider include the following: in the case of transfers of tangible property, the physical features of the property, its quality and reliability, and the availability and volume of supply; in the case of the provision of services, the nature and extent of the services; and in the case of intangible property, the form of transaction (e.g. licensing or sale), the type of property (e.g. patent, trademark, or know-how), the duration and degree of protection, and the anticipated benefits from the use of the property.

Functional analysis - In dealings between two independent enterprises, compensation usually will reflect the functions that each enterprise performs (taking into account assets used and risks assumed). Therefore, in determining whether controlled and uncontrolled

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transactions or entities are comparable, comparison of the functions taken on by the parties is necessary. This comparison is based on a functional analysis, which seeks to identify and to compare the economically significant activities and responsibilities undertaken or to be undertaken by the independent and associated enterprises. For this purpose, particular attention should be paid to the structure and organisation of the group. It will also be relevant to determine in what juridical capacity the taxpayer performs its functions.

Functions and risks assumed - The functions that taxpayers and tax administrations might need to identify and compare include, e.g., design, manufacturing, assembling, research and development, servicing, purchasing, distribution, marketing, advertising, transportation, financing, and management. The principal functions performed by the party under examination should be identified. Adjustments should be made for any material differences from the functions undertaken by any independent enterprises with which that party is being compared. While one party may provide a large number of functions relative to that of the other party to the transaction, it is the economic significance of those functions in terms of their frequency, nature, and value to the respective parties to the transactions that is important.

It may also be relevant and useful in identifying and comparing the functions performed to consider the assets that are employed or to be employed. This analysis should consider the type of assets used, such as plant and equipment, the use of valuable intangibles, etc., and the nature of the assets used such as the age, market value, location, property right protections available, etc.

It may also be relevant and useful in comparing the functions performed to consider the risks assumed by the respective parties. In the open market, the assumption of increased risk will also be compensated by an increase in the expected return. Therefore, controlled and uncontrolled transactions and entities are not comparable if there are significant differences in the risks assumed for which appropriate adjustments cannot be made. Functional analysis is incomplete unless the material risks assumed by each party have been considered since the assumption or allocation of risks would influence the conditions of transactions between the associated enterprises. Theoretically, in the open market, the assumption of increased risk must also be compensated by an increase in the expected return, although the actual return may or may not increase depending on the degree to which the risks are actually realised.

The types of risks to consider include market risks, such as input cost and output price fluctuations; risks of loss associated with the investment in and use of property, plant, and equipment; risks of the success or failure of investment in research and development; financial risks such as those caused by currency exchange rate and interest rate variability; credit risks; and so forth.

Contractual terms - In arm's length dealings, the contractual terms of a transaction generally define explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the parties. As such, an analysis of contractual terms should be a part of the functional analysis discussed above. The terms of a transaction may also be found in correspondence/communications between the parties other than a written contract. Where no written terms exist, the contractual relationships of the parties must be deduced from their conduct and the economic principles that generally govern relationships between independent enterprises.

In dealings between independent enterprises, the divergence of interests between the parties ensures that they will ordinarily seek to hold each other to the terms of the contract, and that contractual term will be ignored or modified after the fact generally only if it is in the interests of both parties. The same divergence of interests may not exist in the case of associated enterprises, and it is therefore important to examine whether the conduct of the parties conforms to the terms of the contract or whether the parties' conduct indicates that the contractual terms have not been followed or are a sham. In such cases, further analysis is required to determine the true terms of the transaction.

In keeping with the indications provided by the OECD, application of this method is possible in cases where the different characteristics of the two transactions (the one being checked and the sample) can be quantified.

Finally, it should be stressed that the price comparison method is the criterion which must be considered first, since it is the method which more than any other allows for a reliable determination of the market value. The other criteria may be considered only when there is proof of the impossibility or unreliability of this method. If it is decided to proceed with alternative methods, then it would be useful to produce and conserve suitable documentation demonstrating the impossibility of adopting this method.

2.3 Use of an arm's length range.

In some cases it will be possible to apply the arm's length principle to arrive at a single figure (e.g. price or margin) that is the most reliable to establish whether the conditions of a transaction are arm's length. However, because transfer pricing is not an exact science, there will also be many occasions when the application of the most appropriate method or methods produces a range of figures all of which are relatively equally reliable. In these cases, differences in the figures that comprise the range may be caused by the fact that in general the application of the arm's length principle only produces an approximation of conditions that would have been established between independent enterprises. It is also possible that the different points in a range represent the fact that independent enterprises engaged in comparable transactions under comparable circumstances may not establish exactly the same price for the transaction. However, in some cases, not all comparable transactions examined will have a relatively equal degree of comparability. Therefore, the actual determination of the arm's length price necessarily requires exercising good judgment. Use of a range may be particularly appropriate where, as a last resort, the transactional net margin method is applied.
Spanish legislation on comparability analysis is set out in Article 16 of the RIS (Corporate Tax Regulation). Despite following the line of the OECD report, Spanish regulation is far sparser in details and confines itself to listing the circumstances that determine whether two or more operations are comparable for the purposes of comparing the circumstances of transactions between related parties with the circumstances between independent companies which might be comparable.

The list of circumstances Article 16 says must be taken into account are the following:

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a) The specific characteristics of the goods or services that are the object of the related operations.
b) The functions assumed by the parties in relation to the operations that are the object of analysis, identifying the risks assumed and, if necessary, weighting the assets used.
c) The terms of the contracts from which the operations may be derived, bearing in mind the liabilities, risks and benefits assumed by each contracting party.
d) The characteristics of the markets where the goods are delivered or the services supplied, or other economic factors that may affect the related operations.
e) Any other circumstances that may be relevant in each case, such as commercial strategies

In case the taxpayer has not taken into account some of the aforementioned circumstances, because in his opinion they are not reliable or trustworthy, he will have to mention the reasons why they are excluded from the analysis and provide documented evidences.

All internal or external facts to be considered and on which to base the comparison must be mentioned.

When related-party transactions made are tightly tied among them or have been made on a continuous basis, and for this reason their independent appraisal is not adequate, the referred comparative analysis will be made considering all those operations in global.

Two or more transactions are comparable when, between them, there are no relevant differences in the circumstances affecting the price of the good, service or the transaction's margin; or if differences do exist, they could be removed by doing the corrections needed.

Comparability analysis and information about comparable operations are the factors that, in each case, determine the choice of the most suitable assessment method.

Comparability analysis is the key point of the documents the taxpayer has to prepare and have at Tax Authority's disposal.

3. Cost plus method

With the cost plus method the appropriateness of the transfer price is assessed based on the overall cost or the full production cost plus a normal profit margin; thus the verification method in question is normally applied in cases where the analysis concerns inter-company transactions of production companies, specially when semi-finished goods are sold between related parties or when the controlled transaction is the provision of services.

Once again, the comparison can be made "internally" or "externally".

The crucial point in this type of approach is to determine the margin, which can be done in accordance with one of the following criteria:

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1. Comparison of the profit margin on the transaction with the profits made by the business with third parties for similar products and under similar conditions;
2. If the business did not sell any products to third parties, by using the margin made by independent subjects on similar sales in terms of the product and the conditions would be used;
3. If it is impossible to compare sales made by third parties, through comparisons of the functions undertaken by the manufacturer against those undertaken by third parties.

The comparability analysis is also fundamental in the application of this method.

In this sense, the similarity of the transactions must be assessed in reference to:
-The type of product;
-The functions carried out by the manufacturer;
-The geographical market;
-The impact on the price of particular functions, etc.

In fact, the objective continues being the complete comparability of the transactions.

Example: identification of the normal value for the transaction undertaken by a resident subject called Alfa.
Reference parameter: similar transaction undertaken by the subject Beta.
In order to consider the two transactions comparable, it is necessary to identify and isolate, for each company, any costs regarding just one of them, such as for example marketing costs and research and development expenses.
If, for example, company Alfa, unlike company Beta, did not include research and development costs in the full cost of production (since they were not incurred), it would be necessary to redefine the production cost incurred by company Alfa by subtracting the portion of costs attributable to research and development expenses. On the basis that the gross margin is 10% of total cost, the normal value of the transfer price would change considerably, as is shown in the following table.

	Alfa	**Beta**
Industrial cost	1,000	1,000
Research and development	0	300
Marketing costs	100	100
Administrative costs	150	150
Finance charges	50	50
Total	1,300	1,600
10% margin	**130**	**160**
Transfer price	**1,430**	**1,760**

4. Resale price method

This method is mostly used when it is impossible to apply the price comparison method, and, more particularly, in cases where the reseller/buyer only markets the goods purchased.
According to this method, the normal value is equal to the (*resale*) prices at which goods or services, which have been purchased by a subject belonging to the group (*the reseller*), are resold to an independent party. This price is reduced by a gross margin which also includes, in addition to the reseller's profit, costs incurred by the reseller for every sales activity undertaken.

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This criterion can be effectively used in cases where the reseller/buyer only markets the goods purchased. On the other hand, this criterion cannot be applied if the goods in question were transformed or incorporated into other goods before the resale.
The method in question is generally applied when a product is purchased by an associated business and subsequently resold to a third party: imagine, for example, the group company which markets the products.
Internal and external resale prices can also be identified for this method.

Below is a table briefly summarising the three traditional methods.

Comparable Uncontrolled Price Method	**Cost Plus Method**	**Resale Price Method**
The suitability of the transaction is assessed by comparing the intra-group sale price with the price which would have been set for similar transactions between independent companies (external comparison) or between a business of the group and an outside company (internal comparison)	The sale price is compared with the costs incurred by the supplier of the goods or services as part of an inter-group transaction, plus the gross margin of the supplier, charged in relation to the objective and subjective conditions of the transaction	The transfer price is compared to the price at which a good purchased by an associated company is resold to an independent business, less a gross profit margin, to cover directly attributable costs and a portion of general costs

5. Alternative methods

Situations may occur when the "basic" criteria set out above cannot be applied.
This may depend on various causes such as, for example, the lack of comparable circumstances or the impossibility of making a reliable comparison between the controlled transaction and another transaction carried out between third parties.
In order to meet the operators' need to define a suitable transfer price even in these cases, both the OECD and the Spanish Financial administration have provided for alternative criteria as illustrated below.

5.1 Alternative methods provided for by the OECD

Contrary to the first OECD report on transfer prices, the 1995 version completely legitimises the use of alternative methods in place of traditional ones, arguing that the arm's length price can be determined, in theory, not only by considering the individual transactions and related prices, but also by using the profits deriving from these transactions as a base.
In particular, according to the 1995 Report, there are at least two other acceptable methods:

- -The Profit Split Method;
- -The Transaction Net Margin Method.

These methods should be used in exceptional circumstances, where the complexity of the company's business causes practical difficulties in applying the aforementioned traditional methods (and in particular, the price comparison method).

The Profit Split Method is largely based on determining the overall profit realised in a transaction which is subject to control; once this value has been identified, it is split between all the associated companies, by applying a dividing criterion which can reflect as objectively as possible the profit split which would have been envisaged and applied by independent companies, in accordance with the arm's length principle.

In determining this profit split, it is necessary to take into consideration the contribution provided by each individual company for achieving the final objective on the basis of the functions carried out by each of them, the risks taken on, the assets used, and any other objective market parameter which is available and reliable.

The OECD Report then outlines two distinct criteria to assess the profit split: contribution analysis and residual analysis.

The criterion of contribution analysis is based on the split, between the associated companies, of the overall profit originating from intra-group transactions in relation to the value of the functions undertaken by each company, calculated on the basis of the respective market value, if it is impossible to measure it directly.

On the other hand, in the case of residual analysis, the total profit arising from the transactions in question is split into two separate stages.
In the first stage, each associated company is allocated a share of profits which is appropriate to ensure an adequate basic return for the type of transaction carried out and, usually, determined by using the market yields obtained in similar transactions by independent subjects as a benchmark.
In the second stage, any profit (or loss) remaining from the splitting in the first stage, is divided by analysing the facts or circumstances which are useful for understanding how the same residual amount would have been divided among independent subjects.

The "Transaction Net Margin Method", on the other hand, takes into consideration the net profit margin generate by the business in a transaction subject to verification, defined with reference to an appropriate base (costs, sales, etc.)

This criterion operates in a similar way to the classic methods of "cost plus" and "resale price", and follows their application parameters.
Basically, the net margin which the associated company gains from the transaction under review must ideally be determined with reference to the net margin which the business itself would produce in comparable and independent transactions.

6.1 Inter-company services

An aspect which becomes important in inter-company transactions is the chargeback of services by the parent company or by other companies in the group which are controlled by subsidiaries or associates located in Spain or not.

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These inter-company services can take various forms and cover various types of services, such as labour, financial services, management services, marketing and advertising services, general consultancy services, etc.
In reference to the possibility of deducting these costs for intra-group services, it should be noted that the indications provided by the Spanish Financial administration in this regard are specially cautious.

In general, the Spanish Financial administration has stated that in order to be deducted, the charge-backed costs must be congruent and must satisfy the principles set out in article 16.5 of the Corporate Tax Law, i.e.:
-Deduction of expenses for inter-company services will be conditional on the services supplied producing or being able to produce an advantage or utility for the receiver.
-When they are services supplied jointly to several related people or companies, and provided that it is not possible to individualize the service received or to quantify the decisive elements of the remuneration, it will be possible to distribute the total amount among the persons or entities benefiting according to split rules that respond to rational criteria.
-This criterion will be understood to have been achieved when, in addition to the nature of the service and the circumstances in which it is supplied, the method applied takes into account the benefits obtained or which can be obtained by the persons or entities receiving them.

6.2 Cost sharing agreements

Cost sharing agreements are agreements signed by groups of related parties which regulate the charge-back operations of costs for intra-group services.

These cost sharing agreements are covered in the OECD report in chapter VIII; whilst the reference is still article 16 of Corporate Tax Law for the Spanish legislation. According to this Law, expenses related can be deducted under certain conditions, i.e.:
-The operations must be done at market prices.
-The participant persons or entities that sign the agreement must have access to the property or other right that has similar economic consequences for the assets or rights that may be the object of acquisition, production or development as a result of the agreement.
-The contribution of each participant person or entity must take into account the uses or advantages each of them expects to obtain from the agreement according to rational criteria.
-The agreement must envisage a variation in its circumstances or the participant persons or entities and establish any compensatory settlements and adjustments that may be considered necessary.

- These kinds of agreements are those which normally have a very wide scope, and which are able to include various types of costs including:
    -The use (licence right) of patents, trademarks and other rights relating to intangible goods available within the Group;
    -The use of the results obtained from the research and developments inside the Group;
    -Technical assistance;
    -Administrative and accounting assistance;

-Marketing assistance.

These agreements may include various types of costs linked to some extent to services which the company provides in the interest of the entire Group. Imagine, for example, the case of costs relating to employees who are working on a software project which, once implemented, will be used by all the companies belonging to the Group.
Spanish legislation and the aforementioned OECD Report require the use of a written agreement made prior to the starting date of the joint activity.
Each party involved, should have full access to all the details of the activities which will be developed during the agreement, to the forecasts based on which the contributions are made and the expected profits are determined, as well as the expected and actual costs for the activities covered by the agreement.
These documents and information flows are useful for two reasons:

1. They represent an instrument to control and rationalise dealings within the Group;
2. They are valuable for controls made by the Financial administration.

The principles previously shown with reference to the deductibility of costs for inter-company services remain valid, and therefore:

1. The services must be provided to benefit the subsidiary and not the parent company as shareholder;
2. The subsidiary for which the services are provided must actually benefit from them or at least have the prospect of benefiting from them;
3. The costs must be supported by adequate documentation and a written agreement.

According to article 17 of Royal Decree 1793/2008, it is necessary to prepare the following specific documentation:
1. Identification of the other participant persons or entities
-Name and surname or entity name
-Fiscal residence
-Tax Identity Number (VAT number)
-Detailed description of the operations carried out
-Nature
-Characteristics
-Amount
2. The sphere of the specific activities and projects covered by the agreements.
3. Term of the agreements.
4. Criteria for quantifying the split of the expected profits among the participants.
5. The way of calculating their respective contributions.
6. Specification of the participants' tasks and responsibilities.
7. Consequences of the participants joining or withdrawing.
8. Any other provision that envisages adapting the terms of the agreement to reflect a modification in the economic circumstances.

7. Documentation

The issue of the documentation to be shown during the verification of transfer prices is particularly delicate, since the production and preservation of documents aimed at proving the criteria applicable for determining the "normal value" could enable the taxpayer to resolve possible tax disputes quickly and cheaply.

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The OECD believes that, given the special nature of the various types of transfer price, it is not possible to identify a "set standard" for documentation, i.e. of an absolute value.
Nonetheless, Chapter V of the 1995 report, which is devoted to documentation, emphasises that: "taxpayers must... be aware of the fact that good accounting and voluntary production of documents makes it easier to examine and resolve any transfer pricing problems".
The taxpayer is, therefore, required to prepare all the information needed to show the efforts made towards respecting the arm's length principle. In addition, the documentation which is produced will also be useful for preparing the annual tax returns, enabling any auditing to be more streamlined and straightforward.
It also states that "in particular cases of transfer pricing, there may be useful information regarding each business involved in the transactions being examined, such as:

- A description of the activity;
- The structure of the organization;
- The ownership relationships within the multinational group;
- The level of sales and the operating results in the years preceding the transaction;
- The level of the transactions undertaken by the taxpayer with the foreign associated company, for example the level of sales of stock inventories, the supply of services, the rent of tangible goods, the use and transfer of intangible goods and interest on loans".
-

Paragraph 5.28 states that "taxpayers should make reasonable efforts at the time transfer pricing is established to determine whether the transfer pricing is appropriate for tax purposes in accordance with the arm's length principle. Tax administrations should have the right to obtain the documentation prepared or referred to in this process as a means of verifying compliance with the arm's length principle. However, the extensiveness of this process should be determined in accordance with the same prudent business management principles that would govern the process of evaluating a business decision of a similar level of complexity and importance. Moreover, the need for the documents should be balanced by the costs and administrative burdens, particularly where this process suggests the creation of documents that would not otherwise be prepared or referred to in the absence of tax considerations. Documentation requirements should not impose on taxpayers costs and burdens disproportionate to the circumstances. Taxpayers should nonetheless recognize that adequate record-keeping practices and voluntary production of documents facilitate examinations and the resolution of transfer pricing issues that arise"

Paragraph 5.29 also states that "tax administrations and taxpayers alike should commit themselves to a greater level of cooperation in addressing documentation issues, in order to avoid excessive documentation requirements while at the same time providing for adequate information to apply the arm's length principle reliably. Taxpayers should be forthcoming with relevant information in their possession, and tax administrations should recognize that they can avail themselves of exchange of information articles in certain cases so that less need be asked of the taxpayer in the context of an examination. The Committee on Fiscal Affairs intends to study the issue of documentation further to develop additional guidance that might be given to assist taxpayers and tax administrations in this area."

In Spanish legislation documentation requirements are set out in Article 16.2 of the Corporate Tax Law, which refers us to the Tax Regulations.

For their part, the Tax Regulations distinguish between two types of documentation: the kind corresponding to the group to which the taxpayer belongs and the kind relating to the taxpayer himself. These obligations are inspired both by the Code of Conduct on documentation related to transfer prices required to the associated companies in the European Union, (EU directive of 28 July 2006) which has been the result of the activities of the EU Joint Transfer Pricing Forum in the sphere of associated company tax in the European Union, as in Spanish Law itself.

The requirements for documentation obligations have been modulated according to two criteria: the characteristics of the business groups and the risk of economic damage for the Spanish tax administration, in such a way that for the smaller companies and individuals such obligations are simplified to the maximum, except in the case of special risk operations, in which case the documentation corresponding to the nature of the operations in question is required.

And so documentation obligations are simplified in the following cases:
-Transactions between small or medium sized companies (SME). For this purpose Small or Medium companies are considered to be those which, within a group of companies, have a turnover of less than 8 million euro a year. It should be emphasised that the idea of "group" in Article 108 of the Corporate Tax Law is broader than the one regulated by Article 42 of the Commercial Code.
-Transactions between individuals who pay tax in the special regime of evaluating results by signals, index and modules and the companies in which such individuals own 25% or more of the shares.
-Transfers of businesses, stocks or shares which are not quoted on the stock exchange when one of the parties is an SME.
-Transfers of real estate or intangibles when one of the parties is an SME.
-Transactions carried out between a company and related individuals.
-Payments received by professional shareholders of a Professional Company SME.
Each of the situations listed has a different level of requirement.

For other transactions between related companies, that is to say, the ones that are carried out between companies from the same national or international group and which cannot be considered as SMEs, the documentation required is divided into two broad groups: the "master file" and the "specific file".

The **"master file"** is the documentation related to the group of companies to which the taxpayer belongs and includes the following (Article 19 RIS):

a)-Description of the organisational, legal and operational structure of the group.
-Description of any major changes in that structure.

b)-Identification of the different entities of the group that carry out operations with the taxpayer.

c)-Description of those operations. Nature, amounts and flows.

d)-Description of the functions exercised and the risks assumed by the different entities of the group insofar as they affect the operations performed by the taxpayer.

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-Description of any changes in those functions and risks from the previous period.

e)-List of ownership of patents, trademarks and other intangible assets insofar as they affect the taxpayer.

-Amount of the considerations derived from the use of those intangibles.

f)-Description of group policy on transfer prices.

-Description of the method or methods adopted by the group, justifying their adaptation to the arm's length principle.

g)-List of the cost sharing agreements among entities of the group insofar as they affect the taxpayer.

-List of the supply of services contracts among entities of the group insofar as they affect the taxpayer.

h)-List of the advanced price agreements or friendly procedures held or under way concerning the entities of the group that may affect the taxpayer.

i)-The group report or, failing that, the equivalent annual report.

All that for the tax period in which the taxpayer has carried out related operations.

When documents prepared for a certain tax period are still valid for other later periods, it will not be necessary to prepare them again, notwithstanding the required amendments.

This documentation, referred to the whole group, could be prepared and kept by the dominant company, except for those non-residents in Spain, in which case a resident group company must be appointed so as to keep the documents. Notwithstanding the aforementioned, the taxpayer is obliged to provide the Tax Authorities with the documents referred to the group he belongs to, if he is required to do so.

Obviously, when the relationship between one or more companies is different from that defined as "group of companies" according to article 42 of the Commercial Code, documentation related to "master file" does not have to be prepared.

The **"specific file"** is the documentation relative to the taxpayer and includes the following (Article 20 RIS):

a) General data of the taxpayer and related persons or entities with which he performs operations.

-Name and surname or entity name

-Fiscal residence

-Tax Identity Number (VAT number)

-Detailed description of the operations carried out

-Nature

-Characteristics

-Amount

-In case of transactions made with individuals or entities in countries or territories considered as "Tax Havens" it must be detailed, as complementary information, the identity of people acting in the transaction on behalf of the individual or company. If they are companies, their administrators must be identified.

b) Comparability analysis

c) Chosen method of assessment.

-Explanation related to the selection of the chosen method.
-Description of the reasons that justify the election.
-Form of application
-Specification or the value or consequent range of values.

d) Split criteria for the expenses in concept of services supplied jointly in favour of related persons or entities.

- Identification of the corresponding split agreements.
- Cost sharing agreement (Article 17 RIS)

e) Any other important information the taxpayer may have had to determine the valuation of his related operations.

- Parallel company agreements signed with other shareholders.

All that relating to the tax period in which the taxpayer has performed related operations. When documents prepared for a certain tax period are still valid for other later periods, it will not be necessary to prepare them again, notwithstanding the required amendments.

All the referred documents must be at Tax Authorities' disposal since the end of the deadline to declare the Company Tax.

Documents related to "master file" and "specific file" will not be required for the following related-party transactions:
-Those made between entities belonging to a tax consolidation group, as it is regulated in Chapter VII of Title VII of Corporate Tax Law
-Those made by Unions of Economical Interest and Temporary Unions of Companies with their members, as they are defined in their specific regulation, if they are registered in the special registry of Financial Administration.

8. Secondary adjustments.

OECD report explains the "secondary or correlative settlements" in paragraphs 4.67 a 4.77.
According to this report, corresponding adjustments are not the only adjustments that may be triggered by a primary transfer pricing adjustment. Primary transfer pricing adjustments and their corresponding adjustments change the allocation of taxable profits of an MNE group for tax purposes but they do not alter the fact that the excess profits represented by the adjustment are not consistent with the result that would have arisen if the controlled transactions had been undertaken on an arm's length basis. To make the actual allocation of profits consistent with the primary transfer pricing adjustment, some countries having proposed a transfer pricing adjustment will assert under their domestic legislation a constructive transaction (a secondary transaction), whereby the excess profits resulting from a primary adjustment are treated as having been transferred in some other form and taxed accordingly. Ordinarily, the secondary transactions will take the form of constructive dividends, constructive equity contributions, or constructive loans. For example, a country making a primary adjustment to the income of a subsidiary of a foreign parent may treat the excess profits in the hands of the foreign parent as having been transferred as a dividend, in which case withholding tax may apply. It may be that the subsidiary paid an excessive transfer price to the foreign parent as a means of avoiding that withholding tax. Thus, secondary adjustments attempt to account for the

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difference between the re-determined taxable profits and the originally booked profits. The subjecting to tax of a secondary transaction gives rise to a secondary transfer pricing adjustment (a secondary adjustment). Thus, secondary adjustments may serve to prevent tax avoidance. The exact form that a secondary transaction takes and of the consequent secondary adjustment will depend on the facts of the case and on the tax laws of the country that asserts the secondary adjustment.

The OECD report does not hide the fact that secondary adjustment may lead to double taxation unless the other country grants a tax credit for the additional tax which may come from the second adjustment, when this takes the form of presumed dividend, since any withholding at source may not be deductible, as the internal laws of the country may consider that the dividends have not been received. For that and many other reasons, the OECD report points out that most countries do not make secondary adjustments primarily because of the practical difficulties they pose and gives as an example that a theoretical distribution of dividends by one of the companies to the parent company, common through a whole share procedure, followed by presumed contributions from its own funds in the opposite direction may create a large number of hypothetical operations, and so the question arises as to whether other countries should draw tax consequences beyond those that are related with the operation for which the primary adjustment was made. The OECD report concludes that, given the difficulties it points out, it would be advisable for the tax administrations that consider it necessary to practise the secondary adjustment to bear in mind the double tax situations that may arise and take measures to reduce them to the minimum.

Spanish legislation, like the doctrine that emerges from the OECD report, enshrines the bilaterality of the primary or correlative adjustment, that is to say, if the Spanish tax administration adjusts the tax base for the tax on the profits of one of the related companies because it considers that the transaction has not been done at market price, it must make an adjustment in the opposite direction in the other companies that have intervened in the operation. Moreover, despite the recommendations of the OECD, Spanish legislation has introduced secondary adjustment into the Corporate Tax Law, stating that in the operations in which the agreed value is different from the normal market value, the difference between the two will receive, for the related persons or entities, the tax treatment that corresponds to the nature of the income expressed as a consequence of the existence of that difference.

Both the Corporate Tax Law and the RIS point out the consequences for each of the parties involved in the related operation of the difference between the transfer price and the normal market value. In particular, in the cases where the connection is defined according to the partner or shareholder-entity relation, the difference will receive the following treatment in general:

a) When the difference is in favour of the partner or shareholder, the part of the income corresponding to the percentage share in the entity will be considered a remuneration of share capital for the entity, and a share in the profits for the partner. The part of the income that does not correspond to the percentage share in the entity will be considered remuneration of share capital for the entity and, for the partner or shareholder, utility received from an entity for the condition of partner, shareholder or associate.

b) When the difference is in favour of the entity, the part of the income corresponding to the percentage share in the entity will be considered and investment by the partner or

shareholder to the entity's share capital and will increase the acquisition value of the partner or shareholder's share for tax purposes.
The part of the income that does not correspond to the percentage share in the entity will be considered income for the entity, and a gift for the partner or shareholder. When it is a matter of non-resident income tax payers with no permanent establishment, the income will be considered capital gain.

Notwithstanding the aforementioned, the RIS states that the classification of income described above – the one shown by the difference between the normal market value and the transfer price – can be different from the one provided for in the previous hypothesis when the taxpayer proves a different cause from the ones envisaged above.

Some examples will better illustrate the application of the secondary adjustment:

1.1 Let us suppose that parent company A sells certain products to its subsidiary company B, which buys them.
- Price of the related operation (controlled transaction) = 140, which means an income for company A (shareholder) and an expense for company B (subsidiary)
- Price of the unrelated operation –market value– (uncontrolled transaction) = 100

-Primary and bilateral adjustment: The tax administration values at 100 (as income and expense) and produces the following adjustments to the tax base of the profits tax:

- Adjustment to tax base of company A (shareholder) = -40
- Adjustment to tax base of company B (subsidiary) = +40

-In that way both companies, A and B, reach the same situation as if the operation had been carried out at 100 (market value).

-Secondary adjustment. Therefore, according to Spanish tax legislation, 40 (the difference between the agreed price and the market value) is not an expense for company B and must be considered concealed profit sharing.

-If A holds 100% of the capital of B there is a secondary adjustment to A (shareholder) as income for distribution of dividends. For the subsidiary company B it will be a remuneration of share capital and therefore will have no effect on the profit and loss account.

-The presumed payment of dividends will be subject to withholding tax in Spain, whether or not the company is resident, and will have the right to deduction for double taxation according to the provisions of the parent-subsidiary directive. If company A is not resident, it may happen that the tax administration of its country of residence does not recognise the origin of the deduction of the tax paid in Spain on presumed dividends, since there was no effective entry of money.

1.2 Let us now analyse the same situation but let us suppose in this case that A holds 10% of the capital of B.

-As in the previous case the Spanish tax administration will make the primary adjustment to both companies.

-As far as the secondary adjustment is concerned, we have to distinguish between:

- The 10% of 40 (which corresponds to A's shareholding in B) will be considered income from a dividend payment for A and remuneration of share capital for B.
- The remaining 90% of 40 will be considered a share in the profits of B which will not be dividends, and will therefore not have the right to the deduction for double taxation envisaged in the parent-subsidiary directive. For B it will be a remuneration of share capital .

2.1 Let us now analyse the reverse case, i.e. when the flow of funds is in favour of the entity.

Let us suppose that, as in the previous case, parent company A sells certain products to its subsidiary company B, which buys them.
- Price of the related operation (controlled transaction) = 70, which means an income for company A (shareholder) and an expense for company B (company with shareholdings)
- Price of the unrelated operation –market value– (uncontrolled transaction) = 100

- Primary and bilateral adjustment: The tax administration values at 100 (as income and expense) and produces the following adjustments to the tax base of the profits tax:
    - Adjustment to the tax base of company A (shareholder) = +30
    - Adjustment to the tax base of company B (subsidiary) = -30

- In that way both companies, A and B, reach the same situation as if the operation had been carried out at 100 (market value).

-If A holds 100% of the capital of B for A (shareholder) the difference to be reclassified of 30 will be an investment made into the share capital of B. For the subsidiary company B it will also be an increase of share capital and will therefore have no effect on the profit and loss account.

- For A its share percentage does not increase for commercial purposes, only the acquisition value of its share percentage increases for tax purposes.

1.2 Lastly, let us look at the same situation but let us suppose in this case that A holds 10% of the capital of B.

- As in the previous case the Spanish tax administration will make the primary adjustment to both companies.

- As far as the secondary adjustment is concerned, we have to distinguish between:

The 10% of 30 (which corresponds to A's shareholding in B) i.e. 3, for A will be considered an investment made into the share capital of B. For the subsidiary company B it will also be an increase of share capital and will therefore have no effect on the profit and loss account.

- The remaining 90% of 30, i.e. 27 will be considered as a gift for A and cannot be deducted as an expense. For B it will be considered an income and the tax base of the profits tax will increase by 27.

9. Examination practices. Procedure of checking the normal market value

Examination practices vary widely among OECD Member countries. Differences in procedures may be prompted by such factors as the system and the structure of the tax administration, the geographic size and population of the country, the level of domestic and international trade, and cultural and historical influences.
Transfer pricing cases can present special challenges to the normal audit or examination practices, both for the tax administration and for the taxpayer. Transfer pricing cases are fact-intensive and may involve difficult evaluations of comparability, markets, and financial or other industry information. Consequently, a number of tax administrations have examiners who specialize in transfer pricing, and transfer pricing examinations themselves may take longer than other examinations and follow separate procedures.
Because transfer pricing is not an exact science, it will not always be possible to determine the single correct arm's length price; rather, as Chapter 2.2 recognizes, the correct price may have to be estimated within a range of acceptable figures. Also, the choice of methodology for establishing arm's length transfer pricing will not often be unambiguously clear. Taxpayers may experience particular difficulties when the tax administration proposes to use a methodology, for example a transactional profit method that is not the same as that used by the taxpayer.
In a difficult transfer pricing case, because of the complexity of the facts to be evaluated, even the best-intentioned taxpayer can make an honest mistake. Moreover, even the best-intentioned tax examiner may draw the wrong conclusion from the facts. Tax administrations are encouraged to take this observation into account in conducting their transfer pricing examinations. This involves two implications. First, tax examiners are encouraged to be flexible in their approach and not demand from taxpayers in their transfer pricing a precision that is unrealistic under all the facts and circumstances. Second, tax examiners are encouraged to take into account the taxpayer's commercial judgment about the application of the arm's length principle, so that the transfer pricing

analysis is tied to business realities. Therefore, tax examiners should undertake to begin their analyses of transfer pricing from the perspective of the method that the taxpayer has chosen in setting its prices.

Spanish legislation in the specific area of examination of related operations and normal market value is limited to procedural matters designed to preserve the legitimate interest of other parties involved when the Spanish tax administration examines one of them as, naturally, since the adjustments the Administration may make are bilateral, such adjustments could affect the other companies that have intervened in the operation.

Notwithstanding, the capacity to enforce their rights is limited to the taxpayers, individuals or companies, resident in Spain and the permanent establishments of non-resident taxpayers. In other words, non-residents are excluded from this procedure unless through some international treaty or agreement that provides for such a circumstance.

Article 16.9 of the Corporate Tax Law states that examination of the normal market value will be made by the tax administration for the taxpayer who is the object of it.

If the taxpayer appeals against that provisional settlement or instigates a contradictory expert appraisal, the other related persons or entities affected will be notified of such circumstance so that they can appear and submit allegations.

If the taxpayer does not appeal against that provisional settlement or instigate a contradictory expert appraisal, the other related persons or entities affected will be notified of the assessment so that those that wish may jointly appeal or instigate such an appraisal.

Making an appeal or instigating a contradictory expert appraisal will interrupt the time allowed for the tax administration to receive the settlements in question from the taxpayer. As a result, a new calculation of the time allowed will begin when the assessment made by the administration becomes firm.

Once the assessment contained in the settlement becomes firm it will be effective for the other related persons or entities and the tax administration will carry out the corresponding regularizations within the time allowed by the regulations.

For its part, the RIS develops the procedure to be followed in the course of examination of the normal market value by the tax administration.
1- For tax control, the provisions are as follows:

- If correction of the assessment is not the sole object of the regularization, the proposal for settlement will appear in a different document from the others.
- In the document the determination of the market value will be justified and the reasons for correction indicated.
- The settlement will be provisional.

2- In relation to the appeals the taxpayer may submit without requesting an examination of values:

- If the taxpayer submits an appeal or claim, the other related persons or entities will be notified of the settlement and the existence of the review procedure so that they can appear in the procedure.
- If the taxpayer does not submit an appeal or claim, the other related persons or entities affected will be notified of the provisional settlement so that those that wish may jointly submit an appeal or claim.
- If, due to a lack of agreement between related parties or entities, both review procedures would be simultaneously undertaken, the appeal or claim firstly presented will be admitted, and the second one will be rejected.

3- When the taxpayer submits an appeal with examination of the value of goods or rights: contradictory expert appraisal:

- If the taxpayer instigates a contradictory expert appraisal he and the other related persons or entities affected will be notified of the report issued by the administration expert so that they may appoint an expert by common agreement.
- If the taxpayer neither instigates a contradictory expert appraisal against the examination of the value of goods or rights, nor submits an appeal or claim, the other related persons or entities affected will be notified of the provisional settlement so that those that wish may jointly instigate the appraisal or submit an appeal or claim.
- If they instigate the appraisal, the related parties may submit an appeal or claim against the resulting value.
- If, due to a lack of agreement between related parties affected, the application for a contradictory expert appraisal and an appeal or claim would be simultaneously undertaken, contradictory expert appraisal will be sustained firstly and with suspensory effect, and will imply the rejection of appeals or claims that may have been presented simultaneously to this contradictory expert appraisal.

4- Firmness of the settlement. Regularization of the related parties.

- Tax period in which the regularization is practised: the regularization to be practised by the tax administration on the other related persons or entities according to the tested and final value of the settlement imposed on the taxpayer will be made by a settlement in the last tax period whose time limit for filing returns or making settlement has ended at the moment at which it becomes firm.
- If the tax has no tax period, settlement will be made when the settlement practised becomes firm.
- Time scope of the regularization: in this settlement all the effects for each and every tax period affected by the assessment correction will be taken into account.
- The taxpayers must apply the tested value in the returns for the tax periods following the one referred to by the regularization when the related operation has effects on them.

As we have said, this procedure is solely applicable to taxpayers – individuals or companies – that are resident in Spain and the permanent establishments of non-resident taxpayers. In other words, non-residents without a permanent establishment in Spain are expressly excluded. Those non-residents who can invoke an international treaty or agreement to avoid double taxation must use the friendly or arbitration procedure provided for in it to eliminate any possible double taxation through the assessment correction.

10. Penalties.

As we shall see, the OECD criterion for the imposition of penalties for non-compliance when applying the normal market value to transactions between related parties is completely different from the one applied by the Spanish tax administration. Whilst the former says that tax administrations must be very cautious in the application of penalties, assuming that the taxpayer is acting in good faith, the Spanish tax administration, as we shall see, has included specific penalties, extremely harsh in our opinion, if the taxpayer does not comply – from the point of view of the Administration – totally or partially with the obligation to have documentation prepared and available for the Administration, excessive and vague however one looks at it.

In opinion of OECD penalties are most often directed toward providing disincentives for non-compliance, where the compliance at issue may relate to procedural requirements such as providing necessary information or filing returns, or to the substantive determination of tax liability. Penalties are generally designed to make tax underpayments and other types of non-compliance more costly than compliance. The Committee on Fiscal Affairs has recognized that promoting compliance should be the primary objective of civil tax penalties. If a mutual agreement between two countries results in a withdrawal or reduction of an adjustment, it is important that there exist possibilities to cancel or mitigate a penalty imposed by the tax administrations.

Care should be taken in comparing different national penalty practices and policies with one another. First, any comparison needs to take into account that there may be different names used in the various countries for penalties that accomplish the same purposes. Second, the overall compliance measures of an OECD Member country should be taken into account. National tax compliance practices depend, as indicated above, on the overall tax system in the country, and they are designed on the basis of domestic need and balance, such as the choice between the use of taxation measures that remove or limit opportunities for non-compliance (e.g. imposing a duty on taxpayers to cooperate with the tax administration or reversing the burden of proof in situations where a taxpayer is found not to have acted in good faith) and the use of monetary deterrents (e.g. additional tax imposed as a consequence of underpayments of tax in addition to the amount of the underpayment). The nature of tax penalties may also be affected by the judicial system of a country. Most countries do not apply no-fault penalties; in some countries, for example, the imposition of a no-fault penalty would be against the underlying principles of their legal system.

Some civil penalties are directed towards procedural compliance, such as timely filing of returns and information reporting. The amount of such penalties is often small and based on a fixed amount that may be assessed for each day in which, e.g. the failure to file

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continues. The more significant civil penalties are those directed at the understatement of tax liability.

Civil monetary penalties for tax understatement are frequently triggered by one or more of the following: an understatement of tax liability exceeding a threshold amount, negligence of the taxpayer, or wilful intent to evade tax (and also fraud, although fraud can trigger much more serious criminal penalties). Many OECD Member countries impose civil monetary penalties for negligence or wilful intent, while only a few countries penalise "no-fault" understatements of tax liability

Improved compliance in the transfer pricing area is of some concern to OECD Member countries and the appropriate use of penalties may play a role in addressing this concern. However, owing to the nature of transfer pricing problems, care should be taken to ensure that the administration of a penalty system as applied in such cases is fair and not unduly onerous for taxpayers.

As we have already said, Spanish legislation is extremely rigorous concerning total or partial non-compliance with information obligations. Article 16.10 of the Corporate Tax Law lays down that not providing, or providing incompletely, inexactly or with false data, the obligatory documentation which the taxpayer must make available to the tax administration concerning related operations is a tax infringement.

It is also a tax infringement when the normal market value derived from the documentation is not the same as the one in the tax returns of the related persons or entities.

Such infringement is considered serious and penalties will be imposed according to the following rules:

1. When it is not in concerning for the tax administration to make assessment corrections for the operations subject to corporate taxes, personal income taxes or non-resident income taxes the penalty will consist of a fine of 1,500 euros for each datum and 15,000 euro for each set of data, omitted, inexact or false, concerning all the documentation obligations of either the group of companies or each entity in its condition as taxpayer.

2. When it is in concerning for the tax administration to make assessment corrections for the operations subject to corporate taxes, personal income taxes or non-resident income taxes the penalty will consist of a fine of 15 percent of the sum of the amounts resulting from the assessment corrections for each operation, with a minimum of double the penalty that would correspond to application of number 1 above. This specific penalty means that the generic penalties provided for under Spanish legislation cannot be applied.

The amount of such penalties can be reduced according to the generic penalties provided for under Spanish law. Moreover, that sum may be increased if the taxpayer offers resistance, obstruction, excuse or refusal of the actions of the tax administration on the same terms provided for under Spanish legislation for taxes of all kinds.

3. When it is in order for the tax administration to make assessment corrections for the operations subject to corporate taxes, personal income taxes or non-resident income taxes

when the non-compliance that constitutes the infringement has not occurred and that correction causes lack of income, undue procurement of tax refunds or improper determination or accreditation of items to be compensated in future tax returns, or when the net income has been incorrectly declared without there being lack of income or undue procurement of tax refunds when sums awaiting compensation, deduction or application have been compensated in an examination or investigation procedure, such conduct will not constitute infringement and consequently will not be penalised.

In other words, if the taxpayer has prepared all the obligatory documentation, but from the examination of the tax administration it emerges that the price applied is different from the market price, the administration will make the necessary adjustments, but no penalties of any kind may be applied.

For its part the RIS clarifies what must be considered "datum" or "set of data" for the purposes of the application of penalties.

10.1 Concept of datum. Datum will be considered to be the information relating to each of the persons, entities or amounts referred to in the following information obligations:

10.1.1- Information obligations concerning the **"master file"**.

b)-Identification of the different entities of the group that carry out operations with the taxpayer.

e)-List of ownership of patents, trademarks and other intangible assets insofar as they affect the taxpayer.

-Amount of the considerations derived from the use of those intangibles.

g)-List of the cost sharing agreements among entities of the group insofar as they affect the taxpayer.

-List of the supply of services contracts among entities of the group insofar as they affect the taxpayer.

h)-List of the advanced price agreements or friendly procedures held or under way concerning the entities of the group that may affect the taxpayer.

10.1.2- Information obligations concerning the **"specific file"**.

a) General data of the taxpayer and related persons or entities with which he performs operations.

-Name and surname or entity name
-Fiscal residence
-Tax Identity Number (VAT number)
-Detailed description of the operations carried out
-Nature
-Characteristics
-Amount

We should recall that the penalty for each datum will be 1,500 or 3,000 euros, as described.

10.2 Concept of set of data. Set of data will be considered to be the information relating to the following information obligations:

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10.2.1- Information obligations concerning the **"master file"**.

a)-Description of the organisational, legal and operational structure of the group.

-Description of any major changes in that structure.

c)-Description of those operations. Nature, amounts and flows.

d)-Description of the functions exercised and the risks assumed by the different entities of the group insofar as they affect the operations performed by the taxpayer.

-Description of any changes in those functions and risks from the previous period.

f)-Description of group policy on transfer prices.

-Description of the method or methods adopted by the group, justifying their adaptation to the arm's length principle.

i)-The group report or, failing that, the equivalent annual report.

10.2.2- Information obligations concerning the **"specific file"**.

b) Comparability analysis

c) Chosen method of assessment.

- Form of application
- Specification of the value or value interval derived from it.
- Identification of the comparable values available to the taxpayer to assess his operations.

d) Split criteria for the services supplied jointly in favour of related persons or entities.

- Identification of the corresponding split agreements.
- Cost sharing agreement (Article 17 RIS)

e) Any other important information the taxpayer may have had to determine the valuation of his related operations.

- Parallel company agreements signed with other shareholders.

We should recall that the penalty for each set of data will be 15,000 or 30,000 euros, as described.

CHAPTER 3

INTERNATIONAL RULINGS

1. Foreword

The concept of international rulings come into Spanish law from the amendment of Corporate Tax Law issued in 1995. It mainly refers to the criteria and methods of determining the normal value of transfer prices.
The introduction of this procedure aimed at introducing a series of mechanisms for reducing disputes and, above all, establishing a cooperative climate between the taxpayer and the Financial administration in order to ensure greater certainty and transparency in tax relationships.
In this sense, international rulings allow the Spanish taxpayer to operate, for a specific period, on the basis of certain tax elements.
Despite the fact that rulings are not new in Spanish practice, the truth is that it was not being used by domestic and foreign taxpayers. The Article 16 of the Corporate Tax Law as amended by Law 36/2006 of November the 29th introduces important innovations. In international practice the mechanism is widely consolidated.
Before analysing the procedure as provided for by Spanish law, it is worth briefly summarising the main types of dispute prevention and resolution envisaged by other countries.

2. Various forms of dispute prevention and resolution

Special tools have been developed internationally to prevent the onset of disputes between countries and to install a cooperative climate between taxpayers and Financial administrations.
The aim is to avoid situations which can lead to double taxation on the same income item, above all in reference to establishing the normal value of goods as part of inter-company transactions.
The main tools aimed at preventing the onset of such disputes are:

1. The Mutual Agreement Procedure, as per art. 25 of the OECD agreement model which is included in all international double taxation agreements.
   This procedure is considered as an alternative or complementary to that contemplated in the EU Agreement no. 90/436 (European Arbitration Convention);
2. Simultaneous checks, which allow the spontaneous exchange of information as provided for by art. 26 of the OECD model;
3. The tax ruling;
4. Safe harbours, which allow the Financial administration to establish ranges which are considered acceptable;
5. APAs (Advance Price Agreements);
6. Arbitration, as envisaged by the double taxation agreements and by the European arbitration convention.

For the purposes of this paper, the importance of Advance Price Agreements should be pointed out since it is the most commonly used procedure in transactions subject to transfer pricing. In fact, the Spanish international ruling itself is nothing more than a unilateral APA.
For this reason, before an in-depth examination of the main aspects of the Spanish mechanism, we will briefly describe the general features of APAs.

3. APAs: analysis relating to the OECD TP Guidelines For Multinational Enterprises and Tax Administrations

As part of tax unification and standardisation, the OECD has placed special attention on the problems of cross-border transaction regulations in EU countries and on resolving disputes relating to determining transfer prices.
An initial initiative by the OECD is contained in "Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations" which was followed in 1999 by a specific Report entitled "Guidelines for APA".
Chapter IV of this report provides a preliminary definition of an APA: "An advance pricing arrangement is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (...) for the determination of the transfer pricing for those transactions over a fixed period of time".

It is immediately clear from an initial reading of the document that an APA is an advance agreement between the Financial administration and the taxpayer, at the voluntary initiative of the latter, relating to inter-company transactions, which gives rise to a different determination of prices for the trading of goods and services compared to those that would have been stipulated between independent companies.
These agreements have a limited duration ranging from three to five years; nonetheless, it is possible to change the contents of the agreement (should the circumstances on which it was made change) or to renew it.

At the base of every APA are the "critical assumptions", the economic and operating conditions expected at the time of the transaction.
Since the validity of the method proposed by the taxpayer is based on these assumptions, it is necessary that they are accurately set out, since any change in the economic environment can potentially compromise their validity, and therefore, render the proposed method unreliable.
By way of example, the basic assumptions could concern:

- The domestic and stipulated tax regime in force when the APA is completed;
- The tariffs, duties and other import restrictions;
- The total of exchange and interest rates;
- The financial and economic situation of the companies involved.

Obviously, the critical assumptions must be adapted to each specific taxpayer, to the sector in which it operates and to the transactions subjected to the procedure. In addition, it is essential to have a certain degree of elasticity and flexibility, but without compromising the respect of the arm's length principle.

4. Unilateral and bilateral APAs

According to the OECD TP Guidelines, there are two distinct types of APAs:

- The so-called unilateral APA which involves a single financial administration;
- The bi- or multi-lateral APA which involves administrations of various countries.

In this regard, the position of the OECD, reiterated also during the EU TP Joint Forum, is clearly aimed at promoting and favouring the development of bi- or multi-lateral APAs, also owing to the greater problems caused by unilateral APAs to the taxpayer and the Financial administration.
Consider a case where a Financial administration may disagree with the conclusions of an APA made by another Administration.

Perhaps the most problematic aspect of unilateral APAs is in fact represented by their inability to ensure an adequate level of certainty in tax relationships, admitting the possibility that there may be double taxation situations on the same income item.
On the other hand, most of these problems can be completely or partially resolved with bi- or multi-lateral APAs which, although do not completely eliminate legal and economic double taxation, can nonetheless considerably reduce it.

In this sense the adoption of bi- or multi-lateral APAs can be an important first step towards cooperation among Financial administrations, thus allowing the development of specific skills regarding specific cases or types of company. A sort of case history is created which guarantees a more efficient service to taxpayers should they find themselves in these circumstances or in the same type of APA.
To date, APAs have been codified in different ways in different countries which have incorporated them; therefore, it is difficult to identify an international standard.

5. From international practise to Spanish legislation. Advanced Price Agreements on transactions between individuals or related entities.

Following OECD guidelines, Spanish legislation offers the possibility of the taxpayers reaching agreements with the Spanish tax administration about the assessment of the operations carried out with related persons or entities beforehand. These advanced price agreements may have advantages for both the taxpayer and the administration, since the former have the legal certainty that the assessment of their operations will not be the object of modification in a later examination and the administration avoids the complexity of an examination of the market value of the related operations.

The procedure begins with a previous application the taxpayer makes to tax administration, joint with the basic data for them to be analyzed by the administration.
Once this application is analyzed, Tax Authorities will notify the possibility of reaching an agreement regarding the value, in which case the taxpayer will be entitled to present a proposal based in market normal value.

If the related operations affect several jurisdictions, the Spanish tax administration may sign agreements with the administrations of the different countries intervening in the operation for the purpose of jointly determining the normal market value of those operations.
The advanced price agreement will have effect for the operations done after the date on which it is approved and will be valid for the tax periods specified in the agreement itself, but it may not exceed the four tax periods following the date on which it is approved.

Moreover, it may be determined that it affects the operations of the current tax period, and the operations carried out in the previous tax period, provided the voluntary time limit for the presentation of the corresponding tax returns has not expired. That does not prevent new advance pricing proposals from being presented once the period of the agreement is over, and their processing will naturally be simpler, because the tax administration already has the precedents of the previous request.

In the event of significant variation in the economic circumstances existing at the time of approval of the agreement of the tax administration, it may be modified to adapt to the new economic circumstances.

These proposals may be understood to have been rejected by the tax administration once the period for resolution has expired.

The RIS develops the procedure to follow for the whole process of request and concession of the agreement.

5.1 Previous actions.

Related individuals or entities that would like Tax Authorities to determine the normal market value of the transactions made between them, will be entitled to present a previous application with the following contents:

-Identification of the individuals and entities that are going to make the transactions.

-Brief description of the transactions involved.

-Basic details of the proposal of value that is applied for.

Tax Administration will analyze the previous application and is entitled to require clarifications; then it will notify to involved parties if the valuation previous agreement is viable or not.

5.2 Commencement

Once the referred proceeding is over, related individuals or entities will be able to submit an application to determine the normal market value of the transactions planned between them but before making them. This application must be presented jointly with a proposal of valuation that must be based on the market value, a description of the method proposed and an analysis justifying that this method will respect free competition principles when putting it into practice.

The request must be signed by the persons or entities applying, who must accredit to the administration that the other related persons or entities that are to carry out the operations whose assessment is requested are aware of and accept the assessment request.

The application will be presented together with the documents referred to the "master file" and the "specific file", to the extent applicable to the proposal and will be adapted to the circumstances of the case.

Likewise, previous valuation agreements could be referred to sub-capitalization rates. In this case the following documents must be added to the proposal:

-Annual accounts of the entity.

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-Amount of borrowing in relation to tax capital, that taxpayer estimates he could have obtained from non-related individuals or entities in normal market conditions, and a justification of the same.
-Description of the group of companies the entity belongs to.
-Identification of non-resident entities related with those with which the entity has contracted borrowing or will do so in the future.
-Proposed borrowing rate and its justification, by highlighting economical circumstances that have to be considered as basic so as to apply it.
-Justification of reciprocal treatment.

5.3 Processing.
In the 30 days following the date on which the request for commencement has been entered in the register of the competent organ, it may require the applicant to correct any errors or complete the documentation. The applicant will have a period of 10 days to provide the documentation or correct the errors. Failure to deal with the requirement will mean that the file will be closed on the actions and the application will be taken as not presented.

The tax administration may agree with sufficient reason not to admit the application for processing in any of the following circumstances:
a) When the advanced price proposal presented clearly lacks any foundation for determining the normal market value.
b) When advanced price proposals which are substantially the same as the proposal presented have already been rejected.
c) When it is considered that there is no risk of double taxation which can be avoided through the advanced price proposal.
d) Any other circumstance that makes it possible to determine that the proposal to be presented will be rejected.

Once the period of 30 days has expired without the taxpayers having been notified of the rejection of the application, the process will be understood to have begun.

The tax administration will examine the proposal with the documentation presented.
For these purposes it may ask the taxpayers for as many data, reports, antecedents and justifications as may be related to the proposal, and any additional explanations or clarifications of it.

5.4 Termination and effects of the agreement.
The resolution that puts an end to the procedure may:
a) Approve the advanced price proposal presented by the taxpayer.
b) Approve, with the acceptance of the taxpayer, an advanced price proposal different from the one initially presented.
c) Reject the advanced price proposal presented by the taxpayer.

The advanced price agreement will be presented in a document that includes at least:
a) Place and date of execution.
b) Name and surname or trade name or complete denomination and tax identity number of the taxpayers referred to in the proposal.
c) The taxpayers' consent to the content of the agreement.

d) Description of the operations referred to in the proposal.
e) Essential elements of the assessment method and value interval which may be derived from it, and the economic circumstances that must be understood as basic for its application, pointing out the crucial assumptions.
f) Tax or settlement periods to which the agreement will be applicable and date of its coming into force.

The rejection of the advanced price proposal will include, together with the identification of the taxpayers, the reasons for why the tax administration has rejected the proposal.

The procedure must end within six months. If after that time the express resolution has not been given, the proposal may be understood to have been rejected.

The tax administration and the taxpayers must apply the results of the proposal approved. The tax administration will be able to check that the facts and operations described in the proposal approved correspond to the ones that have effectively taken place and that the approved proposal has been correctly applied.
When it emerges from the examination that the facts and operations described in the proposal approved do not correspond to reality, or that the proposal approved has not been correctly applied, the tax administration will regularize the tax situation of the taxpayers.

Abandonment by any of the taxpayers will determine the termination of the procedure.

5.5 Appeals.
There will be no appeal against the resolution that brings the procedure to an end or the presumed act of rejection, without prejudice to any appeals or claims that may be filed against the acts of settlement that may be decided.

5.6 Information about the application of the agreement for the assessment of the operations carried out with related persons or entities.
Together with the corresponding tax returns, the taxpayers will present a document relating to the application of the approved advanced price agreement, which must contain, among other things, the following information:
a) Operations carried out in the tax or settlement period referred to in the returns which the advanced price agreement has applied to.
b) Prices or values at which the previous operations have been done as a consequence of the application of the advanced price agreement.
c) Description, if any, of the significant variations in the economic circumstances which must be understood as basic for the application of the assessment method referred to in the advanced price agreement.
d) Operations carried out in the tax or settlement period similar to the ones to which the advanced price agreement refers, the prices at which they have been done and a description of the differences from the operations included in the sphere of the prior agreement.

Nevertheless, in the agreements signed with other tax administrations, the documentation that must be submitted by the taxpayer annually will be the one deriving from the agreement itself.

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5.7 Modification of the advanced price agreement.
In the event of significant variation in the economic circumstances existing at the time of approval of the advanced price agreement, it may be modified to adapt to the new economic circumstances. The modification procedure may be started either by the tax administration, or at the instigation of the taxpayers.

The request for modification must be signed by the persons or entities applying, who must accredit to the administration that the other related persons or entities who are going to carry out the operations whose assessment is requested are aware of and accept the request for modification, and must contain the following information:
a) Justification of the significant variation in the economic circumstances.
b) The modification which, in accordance with that variation, is appropriate.

Abandonment by any of the persons or entities affected will determine the termination of the modification procedure.

Once the documentation submitted has been examined and before a taxpayers' hearing, for which they will have a period of fifteen days, the tax administration will issue a reasoned resolution, which may:
a) Approve the modification presented by the taxpayers.
b) Approve, with the acceptance of the taxpayers, an advanced price proposal different from the one initially presented.
c) Reject the modification presented by the taxpayers, confirming or cancelling the advanced price agreement initially approved.

When the modification procedure has been started by the tax administration, the taxpayers will be notified of the content of the proposal and will have a period of one month from the date following notification of the proposal to:
a) Accept the modification.
b) Present an alternative modification, duly justified.
c) Reject the modification, setting out the reasons.

Once the documentation submitted has been examined, the tax administration will issue a reasoned resolution, which may:
a) Approve the modification if the taxpayers have accepted it.
b) Approve the alternative modification presented by the taxpayers.
c) Cancel the agreement by which the initial advanced price proposal was approved.
d) Declare the continuation of the application of the initial advanced price proposal.

In the event of an agreement being reached with another tax administration, the modification of the advanced price agreement will require prior modification of the agreement reached with that administration.

The procedure must end within six months. If after that time an express resolution has not been given, the proposal may be understood to have been rejected.

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There will be no appeal against the resolution that brings the modification procedure or the presumed act of rejection to an end, without prejudice to any appeals or claims that may be filed against the acts of settlement that may be decided.

Approval of the modification will have the effects provided for in cases of initial concession of the agreement, in relation to the operations carried out after the request for modification or, if appropriate, notification of the modification proposal.

The resolution which cancels the initial advanced price agreement will determine the termination of the effects provided for in the initial agreement, in relation to the operations carried out after the request for modification or, if appropriate, the notification of the modification proposal.

Rejection of the modification presented by the taxpayers will determine:
a) Confirmation of the effects provided for in the initial agreement, when the significant variation in the economic circumstances is not proved.
b) The termination of the effects provided for in the initial agreement concerning the operations carried out after the rejection, in the other cases.

5.8 Extension of the advanced price agreement*.*
The taxpayers may request the tax administration to extend the term of the advanced price agreement that has been approved. Such request must be presented six months before the end of that term and be accompanied by any documentation considered appropriate to justify that the circumstances set out in the original request have not changed.

The request for extension of the advanced price agreement must be signed by the persons or entities that signed the agreement whose extension is requested and must prove to the administration that the other related persons or entities who are going to carry out the operations are aware of and accept the request for extension.

The tax administration will have a period of six months to examine the corresponding documentation and notify the taxpayers of the extension of the term of the advanced price agreement or otherwise. For that purpose the administration may request any additional information and documentation and the cooperation of the taxpayer.

Once the time referred to in the previous section has expired without notification of the extension of the term of the advanced price agreement, the proposal may be understood to have been rejected.

There will be no appeal against the resolution that brings the modification procedure or the presumed act of rejection to an end, without prejudice to any appeals or claims that may be filed against the acts of settlement that may be decided.

6. Procedure for the agreement on related operations with other tax administrations.
The procedure for the conclusion of agreements with other tax administrations will be governed by the rules provided for unilateral APAs described above and by the following:

6.1. Commencement of the procedure.
Should the taxpayers request that the proposal presented be submitted for the consideration of other tax administrations in the country or territory where the related persons or entities reside, the Spanish tax administration will assess the appropriateness of commencing such procedure. Rejection of the commencement of the procedure must be reasoned and cannot be impugned.

When the tax administration in the course of a advanced pricing procedure considers it appropriate to submit the matter for the consideration of other tax administrations that might be affected, it will notify the related persons or entities. Acceptance by the taxpayer will be a prior requisite of notification to the other administration.

The taxpayer must present the request for commencement accompanied the documentation provided for in the article for unilateral APAs.

6.2. Processing.
In the course of the relations with other tax administrations, the related persons or entities will be obliged to supply as many data, reports, precedents and justifications as may be related to the advanced price proposal.

The taxpayers may participate in the actions designed to specify the agreement, when so agreed by the representatives of both tax administrations.

The tax administrations' proposal for agreement will be made known to the interested parties and their acceptance will be a prior requisite to the signing of the agreement between the Administrations involved.

Opposition to the proposal for agreement will determine the rejection of the advanced price proposal.

6.3. Resolution
In the event of acceptance of the advanced pricing proposal, the competent organ will sign the agreement with the other tax administrations, and a copy will be sent to the interested parties.

6.4. Request from another tax administration.
When another tax administration requests the Spanish tax administration to begin a procedure designed to sign an agreement for the assessment of operations carried out between related persons or entities, the rules mentioned above will be observed insofar as they are applicable.

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