Unofficial translation of information note of the Ministry of Finance on data reporting on transactions between associated enterprises

(transfer pricing data reporting)

This is an unofficial translation of the Hungarian original version. In case of discrepancy between the text versions, the Hungarian version prevails.

1. The data reporting obligation

Pursuant to Section 18 (5) of Act LXXXI of 1996 on Corporate Tax and Dividend Tax (hereinafter: Corporate Tax Act), amended by Act XXIV of 2022 *on the foundations of the 2023 central budget of Hungary* "[c]ompanies, economic interest groupings, European companies (SE), cooperative societies, European cooperative societies (SCE) and non-resident entrepreneurs that are not considered small enterprises on the last day of the tax year (with the exception of public-benefit non-profit companies, and the taxpayers in which the State has majority control, whether directly or indirectly) shall document the arm's length price and the method (including the data and the type of events on which the method is based) they use for determining it in line with the instructions laid down in the ministerial decree issued on the basis of the authorization conferred in this Act and, furthermore, they shall provide data in the annual corporate tax return **relevant to setting the arm's length price** to the state tax and customs authority in accordance with the ministerial decree adopted by authorization of this Act."

The detailed content of the data reporting is regulated in Sections 8-8/A of the *Decree of the Minister of National Economy (NGM) 32/2017 (18 October) on the documentation obligation related to the establishment of arm's length price* (hereinafter: TPD Decree), established in PM Decree 27/2022 (28 December) on the amendment of the *Decree of the Minister of National Economy (NGM) 32/2017 (18 October) on the documentation obligation related to the establishment of arm's length price.*

2. Taxpayers subject to data reporting

Pursuant to Section 18 (5) of the Corporate Tax Act, a taxpayer is obliged to supply data if they meet the following conditions:

a) persons subject to corporate tax,

b) not considered as a small enterprise (or micro enterprise) on the last day of the tax year,

c) a company, an economic interest grouping, a European company (SE), a cooperative society, a European cooperative society (SCE) or a non-resident entrepreneur,

d) not a public benefit non-profit company and

e) not a taxpayer in which the State has majority control, whether directly or indirectly.

The taxpayers obliged to provide information are the same as the taxpayers obliged to document in connection with the determination of the arm's length price (transfer pricing documentation).

The members of corporate taxpayer group must, through the group representative, also provide information on related transactions of group members with associated enterprises other than members of the corporate taxpayer group.

The members of the corporate taxpayer group shall only be required to provide information on their transactions with each other in the exceptional cases provided for in Section 18(10) of the Corporate Tax Act.

3. The tax year of the data reporting

Pursuant to Section 29/A(104), containing a transitional provision related to the Section 18(5) of the Corporate Tax Act, the data shall be supplied for the first time in the tax return to be submitted after 31 December 2022.

In corporate tax returns for which the statutory deadline for filing the return falls on or before 31 December 2022, no data is required, not even if the taxpayer fulfils its tax return obligation late, beyond the statutory deadline, i.e. after 31 December 2022. Similarly, no information is required for self-audits of tax returns due before 31 December 2022 but conducted after 31 December 2022.

For corporate tax returns for which the statutory deadline for filing the return is after 31 December 2022 and the return is filed after 31 December 2022, data must be provided. However, if a corporate tax return for which the statutory deadline for filing is after 31 December 2022 but it was filed by 31 December 2022, no data are required, but if a self-audited return is filed after 31 December 2022 in relation to that return, data shall be required in the self-audited return.

The above is illustrated by the examples below:

The self-audit of a former return (e.g.: 2029) filed after 31 December 2022 is not subject to data reporting.

A 2129 return filed by 31 December 2022 by a taxpayer with a non-calendar financial year for a tax year starting in 2021 is also not subject to the data reporting obligation, even if the statutory deadline for filing the return is after 31 December 2022, however, if a self-audit is filed in relation to that return after 31 December 2022, data must be provided. However, information must also be provided in a 2129 corporate tax return due after 31 December 2022, filed after 31 December 2022.

No information is required for the 1929 return filed late after 31 December 2022.

4. Method of the data reporting

The data must be provided on the relevant forms of the annual corporate tax returns (ATP-01, ATP-KV).

NTCA (NAV) has introduced the following standard returns for the purpose of the corporate tax return:

a) ‘29 (declaration and data reporting 29-A on corporate tax, income tax of energy suppliers and innovation contributions for 20xx),
b) ‘29EUD (return on corporate tax for the business year commencing in 20xx, income tax of energy suppliers, innovation contribution, and on growth tax credit for pre-companies and taxpayers who select a financial year other than the calendar year and those who switch from HUF to foreign currency, from foreign currency to HUF, or from one foreign currency to another) and
c) ‘71 (return for taxpayers terminating their activities and ceasing with transformation and taxpayers who opt for small taxpayer’s tax in 20xx).

If any of the information provided in the return is later found to be incorrect, it must be corrected in a new return or, if necessary, a self-audit must be submitted. The data provided must be consistent with the data in the accounts and the local document, as appropriate. Consistency with the country-by-country report should also be sought. Differences may remain due to the conversion of different currency amounts at different exchange rates, for example for domestic taxpayers reporting on two sides of the same transaction, but this is not objectionable.

5. Transactions subject to data reporting

A taxpayer obliged to provide data must provide data on contracts in force with its associated enterprise or on the transaction defined in Section 18 (6) and (7) of the Corporate Tax Act, if any performance was made under the contract or other transaction in the tax year.

Sections 18(6) and (7) of the Corporate Tax Act provide as follows:

"(6) The founder (not including formation by transformation, merger, division), the taxpayer who receives capital or pays out any part of the capital, and members (shareholders) shall apply the provisions of paragraphs (1)-(5) in connection with the paying-up or increase of the subscribed capital, capital reserves by non-monetary contributions or if decreased through disinvestment, or when business shares acquired by the taxpayer for consideration are transferred to members uncompensated, or when retired, with any payment of share by means other than money in the event of dissolution without succession, and also where dividends are provided by means other than money, if the non-monetary contribution is paid or the share is received by an associated enterprise or a member (shareholder) who makes a non-monetary contribution to become an associated enterprise.

(7) The provisions of paragraphs (1)-(6) above shall also apply to transactions between a non-resident entrepreneur and their Hungarian permanent establishment, or between a taxpayer and their foreign permanent establishment."

The taxpayer, if having concluded a contract with its associated enterprise prior to their affiliation, shall be required to provide data as prescribed in this Decree if any essential condition of the contract is modified, or if a change occurs that is or would be enforced by independent parties when determining the price. [Section 8 (1) of the TPD Decree]

The transaction which is the subject of decision establishing arm's length price [advance pricing arrangement, APA] shall be fully reported even though no transfer pricing documentation needs to be prepared for such transaction if the requirements of Section 1(1)(b) of the TPD Decree are met. This is because the actual value of the transaction in each year and, where applicable, the actual profitability achieved in such cases is not known to the authority in the absence of data reporting. If, at the time of the data reporting, the procedure to establish the arm's length price is still pending, than the exemption from the obligation to prepare transfer pricing documentation, on the basis of the decision to establish the arm's length price, should not be indicated in box 01(c) of the ATP form, as the authority has not yet taken a decision. Furthermor, this exemption should only be indicated here if the decision was taken by the Hungarian authority.

6. Fully exempted transactions

The following transactions are fully exempted from the reporting obligation, as well as from the documentation obligation:

a) transactions of associated enterprises for which the value of the supplies under the contract does not exceed HUF 100 million at the arm's length price, net of VAT, in the tax year, with the proviso that the value of the supplies under the contracts that can be consolidated under the TPD Decree must be taken into account together when determining the threshold, regardless of the fact of consolidation,
b) stock exchange transactions provided for in the Act on the Capital Market;
c) any transaction performed using the official price specified in a certain amount or a specific price determined by legislation on an ad hoc basis.

By way of derogation from the above, the following transactions are not exempt from the data reporting (and documentation) obligation:

- by way of derogation from paragraph b), stock market transactions defined in the Act on the Capital Market, executed through insider dealing or price manipulation;
- by way of derogation from paragraph c) transactions executed using a price that has been unlawfully established. [Section 1(1) e)-g), Section 1 (5)-(6), Section 8 (2) of the TPD Decree.]

Therefore, there is no obligation to provide any information on transactions below HUF 100 million, stock exchange transactions and transactions at official prices, unless the latter two are not exempted according to Section 1(5) and (6) of the TPD Decree, nor is there any obligation to document them.

7. Partly exempted transactions

The following transactions do not need to be fully reported, only the data required under Section 8/A(2) and (3)(a) to (d) of the TPD Decree shall be supplied:

a) a contract concluded with a private individual, other than a private entrepreneur;
b) where the consideration payable for supplies of goods or services are recharged to the associated enterprise or enterprises in the same amount or value, provided that the supplier of the goods or services is not affiliated to the taxpayer, the foreign person or the party covering the costs ('recharged costs'),
c) transfer or receipt of funds without consideration.

In the cases listed above, there is no documentation obligation other than the data reporting obligation.

For the purposes of recharged costs, if the taxpayer, foreign person charges the consideration for services or goods supplied to two or more of its associated enterprises, the taxpayer shall be partly exempted from the data reporting obligation (and fully from the documentation obligation) if able to substantiate that the allocation method used complies with the arm's length price principle taking into account the facts and circumstances specific to the given transaction. In relation to recharged cost, it should be emphasised that only the recharged cost where costs are passed on from an unrelated party is partially exempted from reporting. There is no partial exemption for costs from related parties.

If a transaction has a characteristic that makes it fully exempt from reporting, but also has a characteristic that makes it only partially exempt or not exempt at all (e.g. a transaction subject to an arm's length price determination), then that transaction is not required to be reported at all, and is fully exempt. For example, if the value of the supply under a contract - consolidated what can be consolidated under 4. § (5) of the TPD decree - with a private individual other than a private enterpreneur does not exceed HUF 100 million, then no data is required.

With regard to the fully and partly exempted transactions it must be highlighted that the obligation to adjust the tax base due to transfer pricing [Section 18 (1) of the Corporate Tax Act], the obligation to notify the tax authority of an affiliated undertaking and the cessation of the affiliated undertaking status [Section 16 (4) b) of Government Decree 465/2017 (28 December) on the detailed rules of tax administration procedures], the transfer pricing documentation obligation and the data reporting obligation forming the subject of this Brief are several separate tax liabilities. Thus, for example, regardless of the fact that the taxpayer is not subject to the documentation obligation, the tax base adjustment obligation may still apply. The TPD Decree [and Section 18(5) of the Corporate Tax Act] only grants exemption from the obligation to document or to provide data, but never from the tax base adjustment that may be necessary in relation to the given transaction so the need for it must be examined for each related transaction and the adjustment must be made in accordance with the Corporate Tax Act.

8. Contents of the data reporting

8.1. Name of transaction

8.1.1. List of the names of transactions

The name of the transaction must be selected from the following list:

1. providing toll manufacturing services,
2. receiving toll manufacturing services,
3. providing contract manufacturing services,
4. receiving contract manufacturing services,
5. providing contract and/or limited risk manufacturing services with invoicing to an associated enterprise that is not considered an entrepreneur (principal) entity,
6. providing contract and/or limited risk manufacturing services with invoicing to an independent party,
7. providing distribution agency services,
8. receiving distribution agency services,
9. providing commissionaire distribution services,
10. receiving commissionaire distribution services,
11. providing limited risk distribution services,
12. receiving limited risk distribution services,
13. providing a service where the service provider bears limited risk in connection with the service and can thus be characterized as a routine entity in relation to the service,
14. receiving a service where the service provider bears limited risk in connection with the service and can thus be characterized as a routine entity in relation to the service,
15. providing a service where the service provider bears non-limited risk in connection with the service and can thus be characterized as an entrepreneur (principal) or co-entrepreneur entity in relation to the service,
16. receiving a service where the service provider bears non-limited risk in connection with the service and can thus be characterized as an entrepreneur (principal) or co-entrepreneur entity in relation to the service,
17. procuring (raw) material or goods in cases other than receiving manufacturing services, or providing distribution services transactions,
18. sale or creation of intangible assets,
19. purchase of intangible assets,
20. granting licence rights,
21. receiving licence rights,
22. granting franchise rights,
23. receiving franchise rights,
24. cost contribution agreement, civil law partnership agreement,
25. granting credit,
26. receiving credit,
27. granting a loan,
28. receiving a loan,
29. providing financial leasing,
30. receiving financial leasing,
31. providing guarantee or suretyship,
32. receiving guarantee or suretyship,
33. providing factoring services,
34. receiving factoring services,
35. cash-pool arrangement for placement of money,

36. cash-pool arrangement for borrowing money,
37. providing insurance services,
38. receiving insurance services,
39. providing reinsurance services,
40. receiving reinsurance services,
41. hedging transaction,
42. providing asset management, portfolio management services,
43. receiving asset management, portfolio management services,
44. providing fiduciary asset management services,
45. receiving fiduciary asset management services,
46. providing financial intermediation services,
47. receiving financial intermediation services,
48. providing other financial services,
49. receiving other financial services,
50. transfer of business lines or shares, other ad hoc transaction related to reorganisation,
51. occasional sale and purchase of assets unrelated to reorganisation,
52. non-monetary capital operation under Section 18 (6) of the Corporate Tax Act, or
53. other transaction.

Typically, a separate designation applies to the parties on each side of the transaction, so that the designation of the transaction to be provided here also indicates the role of the reporting taxpayer in the transaction, i.e. whether they themselves perform or use the typical activity, service, etc., that is the subject of the transaction.

Some of the names of the transactions are defined in (the revised) Section 3 of the NGM Decree 32/2017 (18 October).

8.1.2. The accurate delineation of the transactions

According to Chapter I, Part D of the OECD Transfer Pricing Guidelines (2022 edition), an examination of the economically relevant characteristics or comparability factors is necessary to determine the exact nature of the related party transaction (see in particular paragraph 1.35). Such characteristics and factors are the contractual terms, the characteristics of the goods transferred or services provided, the functions performed assets used and risks assumed by the parties, the economic circumstances and business strategies (OECD Transfer Pricing Guidelines, paragraph 1.36).

The data reporting can be compiled after a thorough and complete transfer pricing analysis, based on the data of the analysis explained in the transfer pricing documentation, which must be prepared by the time of filing the corporate tax return according to Section 18 (5) of the Corporate Tax Act.

Invoices and written contracts are important and necessary factors for the delineation of transactions, the economic substance and the identification of the parties, but they are not always sufficient in themselves.

8.1.3. Consolidation

It must be stressed that, as stated in the new Section 4(5a) of the TPD Decree, a purchase cannot be consolidated with the sale of products manufactured from the purchased materials, and the transaction affecting expenses cannot be consolidated with transactions primarily affecting income, as it would compromise comparability.

In practice, this means, for example, that the arm's length price of the consideration for the raw materials purchased for production must first be substantiated and then, in a separate transfer pricing documentation, this consideration can/should be used to justify the arm's length nature of the selling

price of the goods produced from the raw materials in the calculation of the profit level indicator examining a cost-based return under the transactional net margin method.

The above can be illustrated by the following example: A taxpayer manufactures goods ordered by its associated enterprise, the taxpayer procures the raw materials for those goods also from an associated enterprise in such a way that they are purchased and recorded in its books, i.e., this is not a toll manufacturing. In such cases, in practice, the sales of manufactured products and the purchase of raw materials are combined and the cost-based operating profitability of the whole activity is then determined by database study using the TNMM method (e.g: in the 5%-10% range). However, this procedure treats in the same way the case where the price of the raw material is HUF 150 billion and the price of the manufactured products is HUF 157.5 billion after applying a markup of 5%, and the case where the price of the raw material between the parties is below the arm's length price, e.g. only HUF 100 billion, and the manufactured products are sold for HUF 105 billion after applying a markup of 5%. These result in different amounts of profit and therefore different amounts of corporate tax base. It is therefore necessary to treat purchases and sales of manufactured goods separately, and first to justify the arm's length price of the materials purchased and then to use this to justify the price of the manufactured goods.

The arm's length price should be substantiated on a transaction-by-transaction (or by consolidated transaction) and not on an activity-by-activity level (e.g. manufacturing, distribution, service-providing activity). This is the case even if the applied profit level indicator can be calculated for the whole activity, since both income and expenditure data (the difference between the two is the result in the numerator) are needed for the profit level indicator.

It should be noted that if the parties provide for several transactions/contracts/services/activities in a single contractual document, the mere fact that they are included in one document does not make them a single transaction or several transactions that can be consolidated. A contract is not a document, but a consensus/arrangement between the parties from which rights and obligations arise. The contractual intention may be expressed not only in writing, but also orally or by implied conduct. (It is a different matter that in some cases the validity of a contract is conditional on it being in writing.)

With regard to consolidation, among the financial transactions it should be noted in the context of cash pooling that, although it is considered as one transaction, the money lending and borrowing parts of the cash pooling should be reported separately, given that the interest rates applied may differ.

Transactions "3. contract manufacturing", "5. contract or limited risk manufacturing with invoicing to an affiliated enterprise other than the contracting entity" and "6. contract or limited risk manufacturing with invoicing to an independent party" may still be consolidated if the other conditions for consolidation are met, even if the direction of invoicing is different.

For sales of products belonging to the same product group (e.g. different bakery products), the first step is to assess whether they are a single transaction, several transactions that can be consolidated or several transactions that can not be consolidated. If the comparable uncontrolled price method is used to support the arm's length price and a unit price is determined for each product separately, then in cases where this is a single transaction or a number of transactions that can be consolidated, no unit price data need to be provided, given that a unit price is only required if a single unit price is determined in a single transaction or a number of transactions that can be consolidated.

However, in the case of products belonging to the same product group, where separate profitability indicators are examined for each product, data on each profitability indicator must be provided by completing a separate ATP sheet. Thus, a transaction (or a set of consolidated transactions) may have several ATP sheets, so it is possible that a local document may have several ATP sheets associated with it, although the default case is rather that a transaction or a local document has one ATP sheet.

Invoiced transfer pricing adjustments should be taken into account together with the related transaction, even if the invoice does not mention a transfer pricing adjustment (e.g. management fee) but the substance is an adjustment.

8.1.4. Manufacturing and distribution models

The first 16 categories of the transaction names use concepts common in domestic and international transfer pricing practices.

The new paragraphs of Section 3 of the TPD Decree define the activities and the related characterisations of each transaction as follows:

For manufacturing:

Toll manufacturing: production (assembly) activities specified by the principal using material supplied by the principal, where the material and the finished product remains the property of the principal.

Contract manufacturing: the production of products with properties specified by the principal, in a quantity and quality specified by the principal, where ownership of the finished product is acquired by the manufacturer.

For distribution:

Distribution agency: facilitating the conclusion of contracts between the principal and third parties, mediating contracts, where the agent does not conclude a contract for the relevant goods in his own name, and does not acquire ownership rights thereof.

Commissionaire distribution: an agreement where goods are sold to third parties by the commissionaire under its own name but for the benefit of the principal, where the goods remain the property of the principal.

Limited risk distribution: the sale of the supplier's goods or services in the distributor's own name and for its own benefit in a manner specified in detail by the supplier.

Routine and entrepreneur (principal) characterisation:

Routine entity: an associated enterprise performing an economic activity as specified by the entrepreneur entity as considered relevant in terms of the functions performed, the assets used and the risks assumed.

Entrepreneur (principal) or co-entrepreneur entity: shall mean an associated enterprise that determines the material aspects of the economic activity and is able to control and financially bear the related risks.

The definitions relating to manufacturing and distribution activities are concise, focusing essentially on the activity and the functions, the risks assumed are rather a kind of consequence of those, so the definitions do not explicitly mention the risks.

The transaction names refer to transactions, not to (overall) activities. The production, delivery (sale) by the manufacturer of products manufactured for the principal to the principal, i.e. to the affiliated entity that can be characterised as an entrepreneur, is toll manufacturing or contract manufacturing. The fact that the manufactured products are not invoiced to the entrepreneur entity does not materially change this conclusion, as from a transfer pricing point of view there is still a transaction with the same substance as if the invoicing had been made to the entrepreneur entity. Other transactions related to this activity, such as the purchase of raw materials, the purchase of fixed assets, the sale of (redundant) fixed assets, the use of engineering services (e.g. for the setting up of a production line), are separate transactions and cannot be consolidated, even though they are necessary and related to the activity. A similar analogy applies to distribution.

The toll manufacturer does not acquire ownership of the main raw material(s) of the product to be manufactured, which are therefore not entered in their books, but are transferred to them by the principal. The toll manufacturer manufactures a product of the quality and in the quantities specified by the principal from the material thus received. Toll manufacturing can also be any part of the production process (including even partial assembly), without the need to be involved in the entire production process.

The contract manufacturer acquires ownership of the raw materials, which are then recorded in their books. The contract manufacturer may purchase all or part of the materials autonomously themselves, or it may purchase some or all of the materials under the instructions of the principal, or they may purchase the materials even from the principal. Although the contract manufacturer will normally invoice their associated enterprise acting as the principal, which can be characterised as an entrepreneur, it may also

happen that, based on the functions performed, the assets used and the risks assumed, a contract manufacturing takes place in the same way, but the manufacturer invoices to a different party. These - in theory - atypical but common cases are described in points 5 and 6 of the transaction list. In relation to those, the name of the transaction of the other party with the entrepreneur's characterisation is - as in the typical case - treceiving contract manufacturing services (point 4), even if that entity is not the customer in the invoice for the goods manufactured.

Enterprises that can be characterised as routine entities in relation to a given transaction act under the instructions and decisions of the entrepreneur entity, and they are unable to manage or control most of the associated risks or bear their consequences, which are borne by the entrepreneur entity.

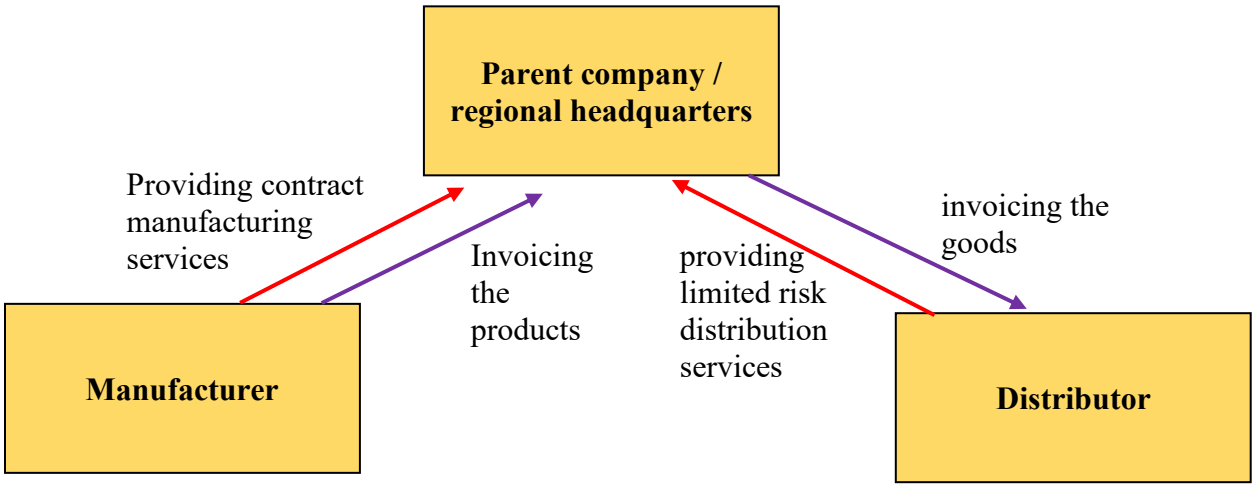
Routine (toll manufacturer, contract manufacturer, agent distributor, limited risk distributor, etc.) and entrepreneur characterisations are not classifications with mathematical precision. It is possible that two taxpayers with the same characterisation do not perform exactly the same functions or bear exactly the same risks, but based on a careful examination of the economically relevant circumstances and the five comparability factors under the OECD Transfer Pricing Guidelines, the taxpayer can typically be appropriately classified in one of the categories. The characterisations should be envisaged as a range.

The parties may also be co-entrepreneurs, in which case the profit split method may be applicable [for the profit split method, only the data under Section 8/A(1) to (3) of the TPD Decree need to be provided].

The following are illustrative examples for the data reporting issues that arise in the case of manufacturing, distribution and, with particular emphasis, commissionaire distribution activities, with particular reference to the transactions that can be identified between the parties and are subject to reporting.

8.1.4.1. Classic manufacturing and distribution model

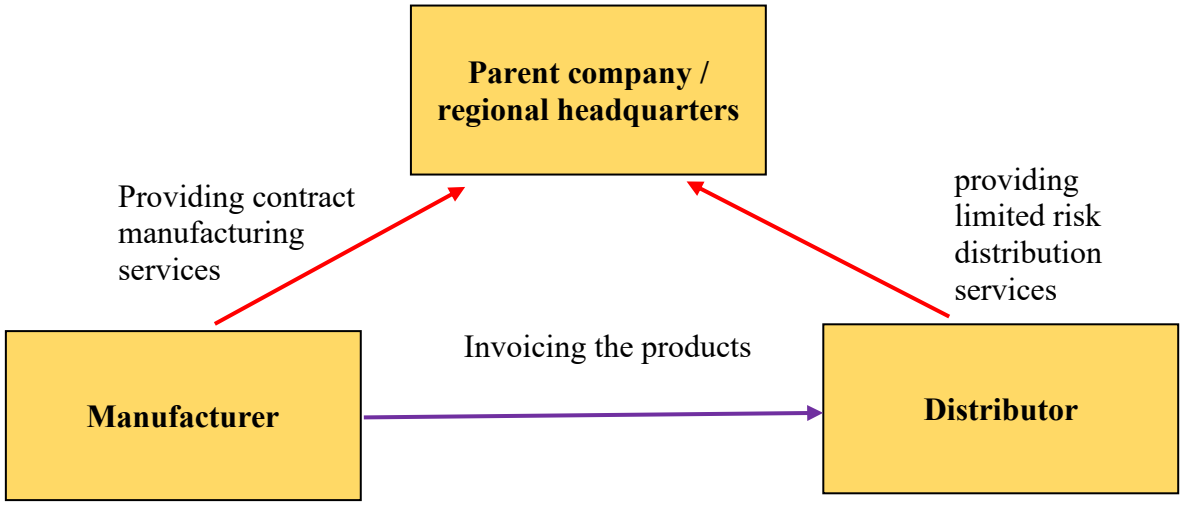
A case of the group's operations relevant in terms of transfer pricing is illustrated in the following figure:



In this case, the manufacturing entity produces the product of the quality and quantity exactly defined by the parent company (regional headquarters), based on the specifications and descriptions received, within the defined delivery time. The manufacturing entity invoices the consideration for the products to the parent company. The parent company then forwards them to the group's distributor entity (typically several distributor entities operating in different countries), which acquires ownership of the goods and then sells them to independent parties as specified by the parent company. In that respect the parent entity invoices the distributor for the goods. In this model, the manufacturing entity corresponds to the characterisation of the contract manufacturer not only in terms of content, based on the five economically relevant characteristics (in particular the functions performed, the assets used and the risks assumed), but also in terms of form, i.e. in terms of invoice movements. The distributor can be characterised as a limited risk distributor. The parent company is the entrepreneur entity in connection with both of them. Based on the list of transactions, the transaction of the manufacturer in the present case is '3. providing contract manufacturing services', that of the distributor is '11. providing limited risk distribution services', and that of the parent company is '4. receiving contract manufacturing services' and '12. receiving limited risk distribution services'. These transaction descriptions cover the production and delivery of manufactured products from the manufacturer to the parent company, and exclude other transactions closely or not closely related to the production, such as the purchase of materials, support services. The same can be said by analogy for distribution.

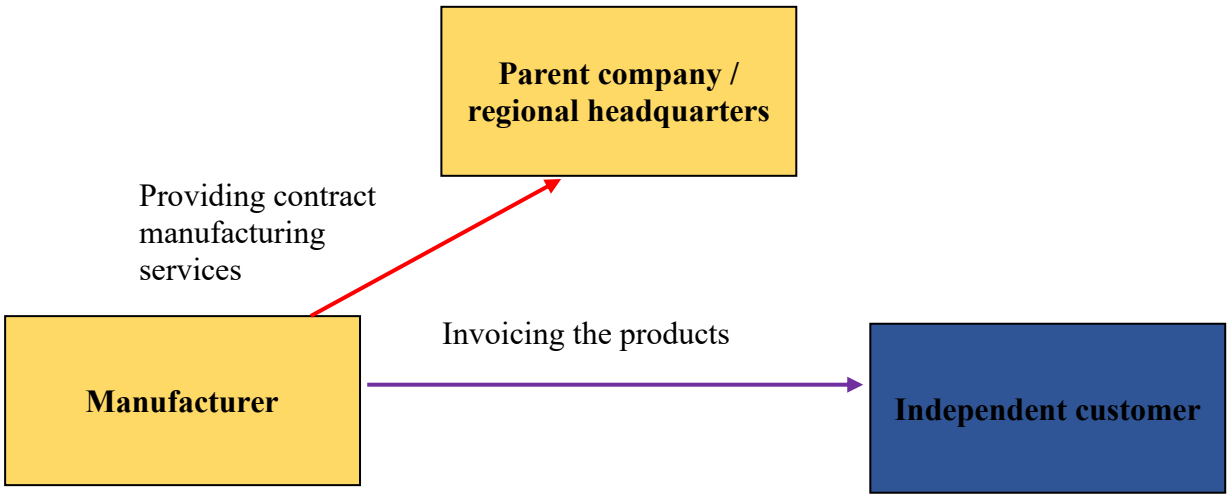
8.1.4.2. Direct invoicing to the affiliated distributor

In the following case, only the invoicing route changes:



In this case, the only difference compared to the previous case is that the manufacturing entity invoices the distributor directly. (The physical route of the products is not decisive here either.) All other factors remain the same (in particular the functions performed are the same as in the previous case). Thus, it is still the parent company that determines what, from what, how much, and when the manufacturer should produces, and what, how much, for how much, how and when the distributor should sell. The difference is that the manufacturer invoices the distributor directly. This case cannot differ from the one defined in the first case due to characterisation and profitability based on it. This case will be for the manufacturer transaction type '5. Contract or limited risk manufacturing by invoicing to an associated enterprise other than the entrepreneur entity'. For the other transactions, the classical model applies.

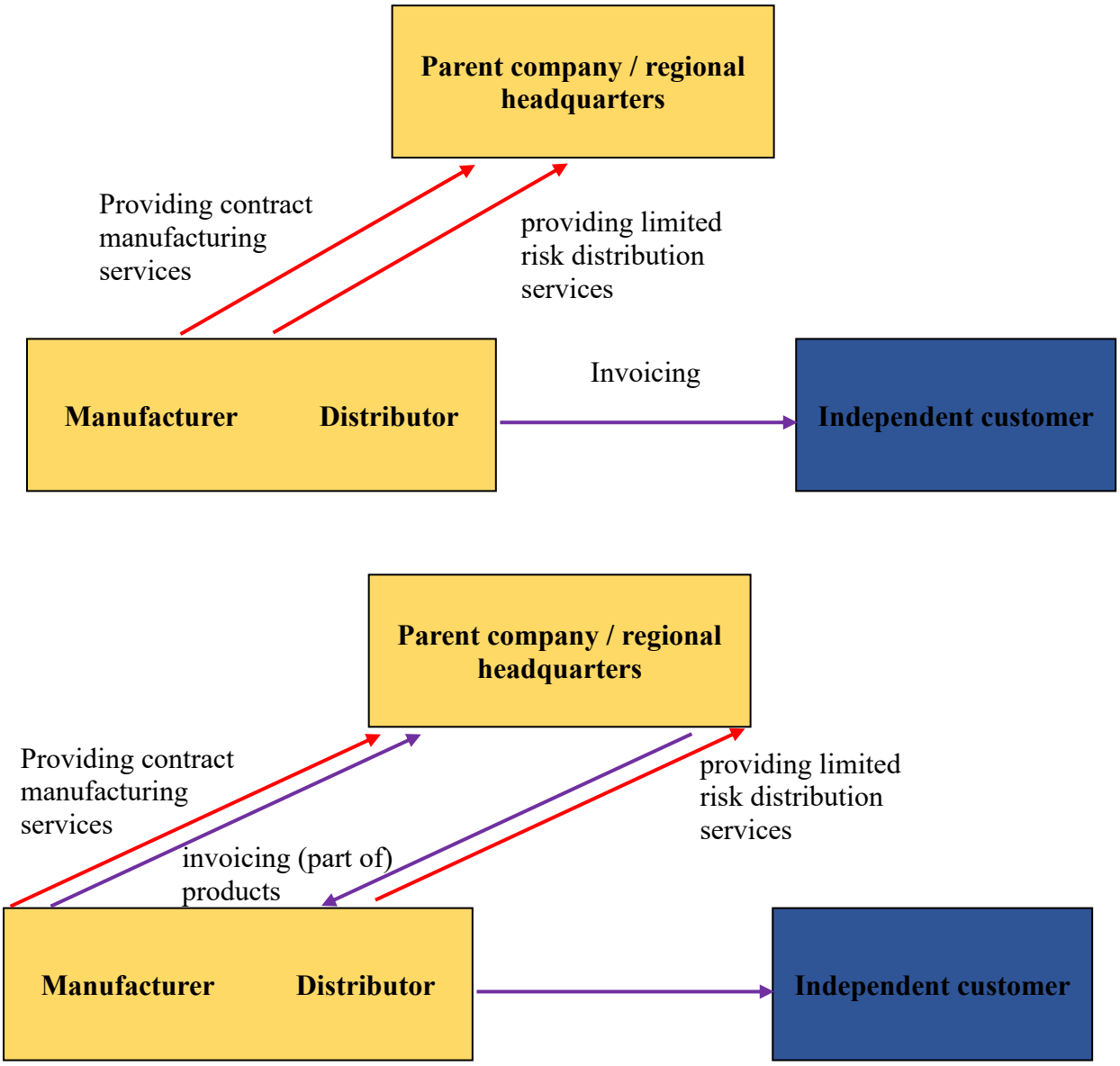
8.1.4.3. Direct invoicing to an independent customer



In this case, the manufacturing entity invoices directly to the independent customers of the group, but all other elements for the manufacturer are the same as in the previous two cases.

Thus, the manufacturer does not perform any marketing, customer acquisition or distribution activities, these are performed by another associated enterprise. This case is transaction type '6. providing contract and/or limited risk manufacturing services with invoicing to an independent party'. For the other transactions, the classical model applies.

8.1.4.4. Production and distribution in one legal entity



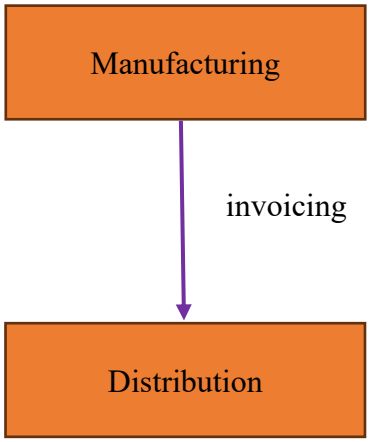
It is also possible that the limited risk manufacturing and the limited risk distribution are performed by the same taxpayer. This case may have different sub-cases. In one sub-case, the taxpayer distributes the manufactured goods themselves, performing the functions associated with the distribution, invoicing them directly to the independent customer. In the other sub-case, the taxpayer invoices the entrepreneur entity for the goods produced (or part of them) and the entrepreneur invoices the taxpayer for the goods distributed (or part of them that were not manufactured by the taxpayer) (typically, but not necessarily, the goods produced by the taxpayer are also distributed by another group member and the goods distributed by the taxpayer include goods produced by another group member). In such a case, after careful analysis, in

particular on the basis of the decision-making, management and other functions performed and the risks borne, it is possible that the taxpayer is in fact carrying out contract manufacturing and limited risk distribution for one of their associated enterprises, even if the invoicing of the goods does not show this. If the manufacturer does not invoice the entrepreneur entity, then the transaction type to be indicated them is '6. providing contract and/or limited risk manufacturing services with invoicing to an independent party', while the classic case applies to the other transactions.

The following example is similar to the second case above. Let us assume that there is an integrated group of companies where company A in country A is the parent company. The group has a manufacturing company B in country B. The group also has several distribution companies in countries C to I. The manufacturing company B sells the products manufactured from raw materials purchased from independent parties directly to the distributor associated enterprises, i.e. both the transportation and the invoicing of the products are done between them on the basis of a written contract. The manufacturing company produces directly on the basis of orders placed by distributors. The distributors pay royalties to the eligible parent company for the use of the intangible assets (patents, proprietary know-how, trademarks, etc.) associated with the products, the manufacturing company does not do so. The in-depth functional analysis shows that the parent company plans and decides on the group's strategy (what, where, when, for how much should be produced and sold, what fixed assets to use, etc.), manages the implementation of the strategy, plans and performs the R&D activities, determines the functioning of the group members. The parent company is able to manage and assume the risks associated with all these activities. Although there is no product movement or invoicing between the parties, the functional analysis shows that in fact the manufacturing company pursues its manufacturing activities under the instructions and on behalf of the parent company, so there is in fact a contractual manufacturing transaction between them. This will be of particular relevance if the manufacturer, characterised as a limited risk (contract manufacturer), does not reach the arm's length profitability range achieved bycomparable companies and thus the transfer prices have to be adjusted, i.e. the tax base of the manufacturing company must be increased.

8.1.4.5. Summary of the models

To summarise the above, if taxpayer A conducts manufacturing activities and taxpayer B conducts distribution activities, and there is invoice movement between the two, then several different cases are possible under the five economically relevant characteristics depending on the specific facts of the case:



1. if there is a third group member C which manages the activity as an entrepreneur entity, then taxpayer A's transaction is ’5. contract or limited risk manufacturing with invoicing to an associated enterprise other than an entrepreneur entity’ is for taxpayer C, taxpayer B’s transaction is ‘11. limited risk distribution’ to taxpayer C, and taxpayer C’s transactions are ‘4. use of contract manufacturing services’ and ‘12. use of limited risk distribution services’;
2. if there is no such third associated enterprise, then taxpayer A performing the manufacturing may be the entity that can be characterized as an entrepreneur that uses limited risk distribution service from taxpayer B (transaction 12 in the list), accordingly taxpayer B should enter transaction ‘11. performing limited risk distribution services’;
3. if there is no such third associated enterprise, it may also be that the distributor, taxpayer B, is the entity that can be characterised as an entrepreneur that uses contract manufacturing services from taxpayer A (transaction 4 in the list), and accordingly, taxpayer A must enter the transaction ‘3. providing contract manufacturing services’;
4. if both the taxpayer performing the manufacturing and the taxpayer performing the distribution can be characterised as entrepreneur entities (co-entrepreneurs), then items 1 to 12 of the list of transactions cannot be indicated, in which case the transaction of taxpayer A can be ‘53. other transaction’ and the transaction of taxpayer B can be ‘17. procuring (raw) material or goods in cases other than receiving manufacturing services, or providing distribution services transactions’.

All four of the above cases are supplies of goods under the VAT system, which shows that the concept of supply of goods is not sufficiently expressive here, since the transactions are completely different for transfer pricing purposes yet are referred to by the same name.

The above models and examples are not intended to describe all cases. The main objective is to illustrate, through a few more typical cases, the indispensability of an analysis beyond invoices and written contracts. Furthermore, this brief is not intended to provide guidance on the appropriateness of accounting or the content of the invoice.

8.1.4.6. Commissionaire distribution

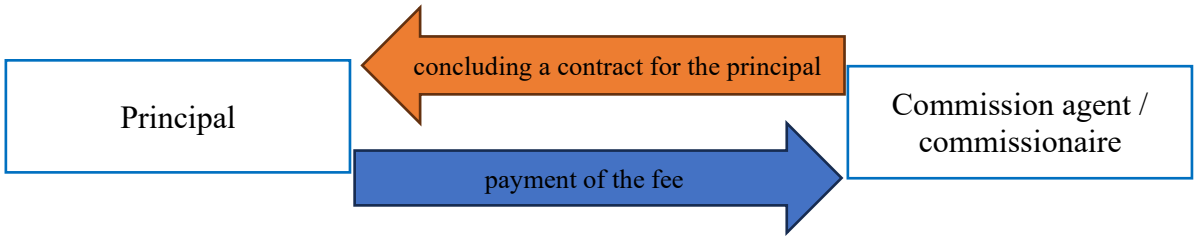
With respect to the fact that contracts are civil law instruments, it may be necessary to consider the rulesof civil law applicable to contracts when analysing them.

A good example of this is commissionaire distribution, whose accounting and VAT treatment differs from the civil law approach which describes its contents and which is closer to the transfer pricing approach in this respect.

Section 6:281 (1)-(2) of Act V of 2013 on the Civil Code (hereinafter: Civil Code) define the commission contract as follows:

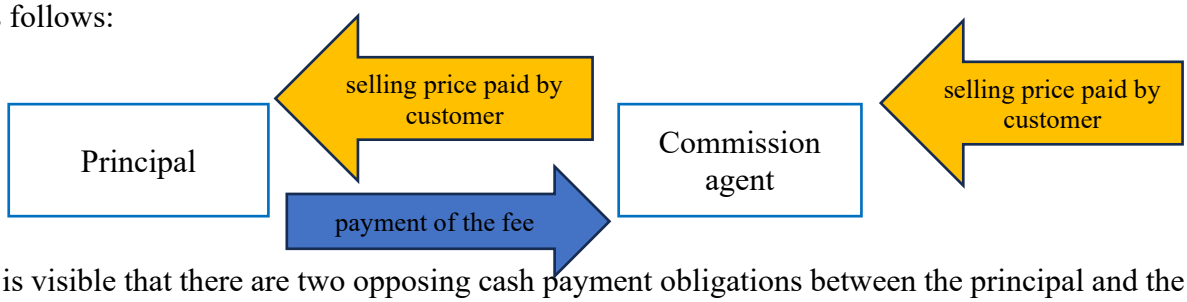
> “(1) Under a commission contract the commission agent shall conclude contracts of sale for movables for the benefit of the principal and on his own behalf, and the principal shall pay the fee.
>
> (2) The provisions of this Chapter shall apply accordingly to commission contracts under which the commission agent undertakes to conclude other contracts.”

The typical activities of the parties, the services they provide to each other in the civil law sense, are illustrated in the following figure:

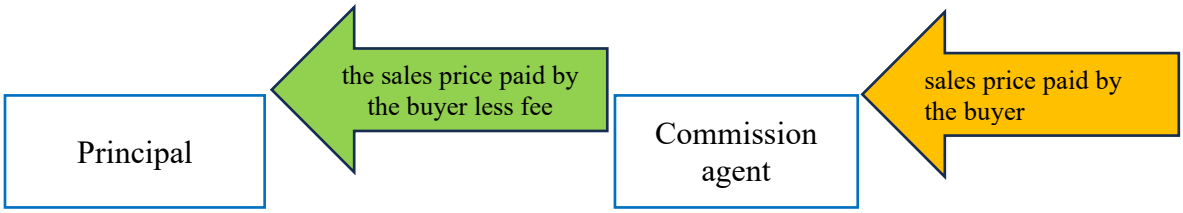


It should be emphasised that the commission agent provides a service to the principal by acting in concluding contract(s) for the benefit of the principal. The commission agent is acting in their own name but for the benefit of the principal, i.e. the commission agent is pursuing the principal's economic objectives in the contract concluded with the third party.

In view of the fact that the commission agent contracts with third parties in their own name, the income from this contract will also appear at the commission agent, although it is ultimately due to the principal. The cash flows related to the contract can thus be theoretically recognised as follows:



It is visible that there are two opposing cash payment obligations between the principal and the commission agent. In practice, the commission fee can be included in the higher selling price collected, even in the provisions of the commission contract itself. It is therefore even possible that the contractual document does not specifically mention the commission. So there is only one cash flow between the parties and the commission agent pays only the difference between the two to the consignor:



It should be emphasised that this practice of applying offsetting does not mean that the principal has no obligation to pay a fee, but that in practice this is ultimately paid by the buyer of the commission agent.

This is the case even if the above deduction is not clear from an examination of the accounting records, as it is not an accounting issue. If we were to assume only that if there is a cash flow in one direction, there can only be a service (sale of goods) in the other direction, we might not have a complete view of the transactions.

It is worth mentioning that the VAT treats the commission agent arrangement as two supplies of goods: one between the principal and the commission agent and another between the commission agent and their partner. The different areas of law may treat the same instrument differently, which undoubtedly complicates the analysis, but since different areas of law

regulate with different purposes and different approaches, such divergence cannot be eliminated.

It also follows from the above that in the exceptional case where, for some reason, the selling price collected does not cover the commission, i.e. it cannot be fully deducted from the amount collected, the principal should pay it to the commission agent.

The distribution contract is also similar to the commission contract in the characteristics highlighted above, and the following rules of the Civil Code are relevant:

"Section 6:372 *[Distribution contract]*

Under a distribution contract, the supplier shall sell certain specific movables (for the purposes of this Chapter: "products") to the distributor, and the distributor shall buy the product from the supplier and to sell it on its own behalf and for its own benefit.

[...]

Section 6:374 [Instructions and inspection]

(1) The supplier shall have the right to instruct with regard to the appropriate distribution of the product.

[…]

Section 6:375 [Application mutatis mutandis in respect of services]

The provisions of this Chapter shall apply accordingly with regard to providing services."

The essential element of a distribution contract is the distributor's obligation to sell. Here again, it must be seen that the distributor (also) provides a service to the supplier by distributing the goods according to the supplier's instructions, while at the same time purchasing the goods for consideration and thus acquiring ownership of them.

It should be noted that (atypical) distribution is not only for goods but also for services, as is stated in Section 6:375 of the Civil Code.

It should therefore be emphasised that the routine entities in the examples also provide services to the entrepreneur entities, for which they are by definition entitled to consideration, even if they may deduct it from the revenue they receive from third parties in the normal course of business.

In effect, a routine entity always provides a service to the entrepreneur entity by performing the activity that the entrepreneur entity entrusts (instructs) it to perform.

8.1.5. Some other transactions

If each group member produces and sells entirely independently, as an entrepreneur, at its own risk in the markets they cover, then transactions 1-12 do not arise and there is no production or distribution in arelated relationship. For this reason, there is no licensed manufacturer, full risk manufacturer and full risk distributor in the list of transactions, these characterisations cannot be linked to a single related transaction in the same way as, inter alia, toll manufacturing, contract manufacturing and limited risk distribution. The list of transactions for limited risk manufacturing and distribution includes the characterisation together with its characteristic transaction, other related transactions related to the activity (e.g. management services, IT services, purchase of materials for manufacturing) are to be treated as separate transactions.

If the contract manufacturer purchases materials (or 'semi-finished goods') from an associated enterprise, depending on the economically relevant characteristics, the transaction may be '17.

procuring (raw) material or goods in cases other than receiving manufacturing services, or providing distribution services transactions' and '53. other transaction' for the other party. The contract manufacturer itself may also use an additional contract manufacturer. Similarly, an otherwise contract manufacturer may also use toll manufacturing from its associated enterprise. Manufacture is defined as any necessary part of the production process, which may be a single stage of production (e.g. welding of certain parts only).

In principle, the purchase and sale of a fixed asset may be a '51. occasional sale and purchase of assets unrelated to reorganisation' transaction for both parties, depending on all the circumstances of the case. The purchase and sale of shares and other equity may be classified as '50. transfer of business lines or shares, other ad hoc transaction related to reorganisation'. The purchase or sale of other securities and the lending or borrowing of securities may be classified as other transactions.

The definition of transactions (contracts) may also be guided by Book 6, Part Three, Specific contracts of the Civil Code. E.g. the concept of civil law partnership agreement is determined in Section 6:498 of the Civil Code.

Cost recharging as a transaction is not included in the list, as in such cases it is also a transaction that can be classified in another category, at most its pricing can be simplified, and the partially exempt cost recharging can be separately marked on the data reporting form. In the case of cost recharging, the service under points 13-14, or possibly the transaction "Ad hoc sale of assets not related to reorganisation 51" may be appropriate. If the costs are charged on without a profit margin, the cost plus method may be indicated with a profitability of 0%.

Supply of goods as a transaction description is also not included in the list as it would not be clearly distinguishable from other transactions such as contract manufacturing, ad hoc sales of assets not related to restructuring.

When transferring or receiving funds without consideration, the first thing to check is that it is not part of another transaction. If it is, it should be reported as part of that other transaction. If it is a stand-alone transaction, it should be reported as '53. other transactions' without TEÁOR code. As the free transfer of funds and the free receipt of funds should be indicated in the exemptions, the transaction will be properly identified in the reporting framework.

The loan agreement is based on the provisions of the Civil Code. Pursuant to Article 6:382 (1) of the Credit Contract, the creditor is obliged to keep a credit line available and to conclude a loan agreement, a surety agreement, a guarantee agreement or any other agreement for the performance of other credit operations up to the amount of the credit line kept available, and the debtor is obliged to pay a fee. The loan agreement shall be concluded on the basis of the provisions of the Civil Code. According to § 6:383 of the loan agreement, the creditor is obliged to pay a specified amount of money, the debtor is obliged to repay the amount of money to the creditor at a later date according to the agreement and to pay interest. Article 6(1)(40) of Act CCXXXVII of 2013 on Credit Institutions and Financial Undertakings draws a similar distinction between a loan and a credit. The identity of the creditor (e.g. bank) is not relevant, what is important is that in the case of a credit contract, only the credit line is still being made available.

For back-to-back loans, loans received and loans given should be reported as separate transactions.

8.2. TEÁOR/NACE code

For transactions under points 1 to 16 and, if applicable, point 53, the most characteristic (relevant) code of the transaction according to the nomenclature of the Standard Sectoral Classification of Economic Activities (hereinafter referred to as 'TEÁOR') in force at the time should be provided [Section 8/A (3) a) of the TPD Decree].

If there is a TEÁOR code for the activity conducted in the context of the transaction, the transaction is described in the data reporting by the name according to the nomenclature and the TEÁOR code. Therefore, the most specific code for the transaction should be provided, which may be different from the TEÁOR code used in the database search for the determination of the arm's length profitability indicator. The phrase 'if applicable' indicates that the activity can be described by a TEÁOR code.

One TEÁOR code should be chosen as the most relevant for the transaction, if more than one code is used, first the potential consolidation should be checked and then the most relevant should be chosen this can be done by selecting the service with the highest value.. The purpose of specifying a TEÁOR code is only to give a broad delineation of the type of transaction, in such cases, the limited degree of precision of the selection will need to be duly taken into account by the tax administration as it is possible that for some support services, several TEÁOR codes may be considered with a similar weighting. For complex, mixed, back-office services, the codes "70.22 Business and other management consultancy services" and, especially for routine services, "82.11 Complex administrative services" may be applicable.

It is important that not the registered principal activity of the parties to the transaction should be provided, but a code related to that transaction, which may not necessarily be included in the registered activitiesof the parties concerned.

The subject of manufacturing, distribution and services should therefore be explained by the corresponding TEÁOR codes. Examples of this could be:

1. as a contract manufacturer for the production of chocolate, transaction 3, 5 or 6 and the '10.82 Manufacture of cocoa, chocolate and sugar confectionery' TEÁOR code;
2. for property rental, one of the services between 13 and 16, and the '68.20 Renting and operating of own or leased real estate' TEÁOR code
3. hiring out of machinery (without operator), one of the services 13 to 16, and, e.g., the '77.39 Renting of other machinery and equipment' TEÁOR code;
4. for road transport one of the services 13 to 16, and the '49.41 Freight transport by road' TEÁOR code;
5. for management services, one of the services 13 to 16, and, e.g., '70.22 Business and other management consultancy activities' TEÁOR code;
6. for the engineering design of industrial processes of a packaging material production plant one of the 13 to 16 services, and '71.12 Engineering activities and related technical consultancy' TEÁOR code;

can be reported.

8.3. Data of the other associated enterprises concerned by the transaction

The name, Hungarian tax number, or foreign tax number in the absence thereof, or registration number in the absence thereof, and the jurisdiction of tax residence of the other [counterparty] affiliated company or companies involved in the transaction shall also be reported by transaction [Section 8/A (3) b) of the TPD Decree].

If the associated enterprise has a domestic tax number, a foreign tax number or a registration number, the first one in the order laid down in the decree should be provided.

If the associated enterprise does not have a domestic tax number, but has a foreign national tax number and a foreign Community tax number, it is advisable to enter the foreign Community tax number, but it is not incorrect under the decree to enter the foreign national tax number.

If the foreign tax resident associated enterprise has both a domestic and a foreign tax number, but is taxable on income in respect of the transaction under the foreign tax number, the foreign tax number should be provided.

The tax residence of the foreign associated enterprise can be determined on the basis of the following. Firstly, the national (domestic) legislation applicable to that enterprise prevails. In Hungary, Section 2 paragraphs (2), (3), (6) to (8) of the Corporate Tax Act basically define the taxpayers with domestic tax residence. On the other hand, the relevant double taxation convention (typically in its Article 4) defines the concept of a resident person.

8.4. Value of the transaction

The net consideration - in Hungarian forints - actually settled between the parties to the transaction in the relevant year, broken down by related party, or the amount converted according to Section 1 (4) of the TPD Decree if denominated in a foreign currency shall be reported [Section 8/A (3) c) of the TPD Decree].

The consideration settled between the parties is the consideration for a transaction which is accuratelydelineated in terms of the contractual terms defined in writing, orally or by implied conduct, the characteristics of the goods, products or services, the functions performed, the assets used and the risks assumed by the parties, the economic circumstances and the business strategies, and which is not always the same as the amount stated in the invoice.

If the contract or limited risk manufacturing is performed by invoicing an independent party (transaction 6), the value of the transaction is not the amount invoiced to the independent party, but the amount due to the manufacturing taxpayer for this manufacturing activity. For example, if the amount invoiced to the independent party is 180, the total operating expenses of the production are 100, the markup applied in the arm's length range is 10%, and thus the amount passed on by the manufacturer to the group entrepreneur entity is 70, then the value (consideration) of this contract manufacturing transaction is 100*(1+0.1)=110. This is the case even if the title of the example amount of 70 passed on to the entrepreneur entity is indicated in the invoices as a royalty, compensation fee, management fee, customer acquisition fee or similar. The 70-unit amount in this case is not the consideration for any raw materials, services, know-how that may have been purchased from the contractor entity, but the entrepreneur's share of the revenue from the sale of the products from contract manufacturing to an independent party over the portion of the revenue due to the manufacturer for the contract manufacturing of the products, subject to a functional analysis. The parties shall account separately for the consideration for raw materials, services and know-how purchased from the entrepreneur entity.

The consideration for commissionaire distribution is the commission fee (see above). In practice, this may essentially be the difference between the sale of goods invoiced to independent customers and the purchase of goods invoiced by the related principal, if the former amount exceeds the latter.

In the case of limited risk distribution, although it may resemble in many respects commissionaire distribution, but still differs from it, the consideration is the amount invoiced by the related supplier to the distributor for the goods distributed.

In case of a loan, the consideration for the transaction is the interest (or other charges), the principal is not part of the consideration and the amount of the principal should not be shown here.

In the case of an assignment of a claim, the transaction value is the amount received by the assignor from the assignee (the new holder of the claim) for the assigned claim.

8.5. The amount of the corporate tax base adjustment

It is necessary to report the amount (+/-) of the adjustment of the corporate tax base in accordance with Section 18 of the Corporate Tax Act, relating to the performance of the transaction in the current tax year, broken down by related party [Section 8/A (3) d) of the TPD Decree].

With regard to the positive or negative amount of the corporate tax base adjustment under Section 18 of the Corporate Tax Act for each relevant tax year related to the performance of the relevant transaction in the relevant year, it should be emphasised that not only the amount of the corporate tax base adjustment applicable in the tax year concerned by the tax return but also the amount applicable in subsequent years must be reported. This may arise, e.g., if the consideration between the parties for a fixed asset acquired from an associated enterprise is 80, but the asset has an arm's length price of 100, and the asset is depreciated over 10 years (with no residual value), i.e. the transaction affects the tax base over 10 years, the amount to be shown as consideration between the parties is 80 and the amount to be shown under the heading of tax base adjustment is 20, even though only part of the two amounts will be included in the tax base in the year in question. The purpose of this is to ensure that the full arm's length consideration for the transaction, as perceived by the taxpayer, should thus be reflected in the year of data reporting.

The presentation of the tax base adjustment by related party cannot be omitted even if the taxpayer is assessing the profitability of a segment in which it has transactions with several associated enterprises and is determining the profitability level for its segment.

8.6. The arm's length price setting method

The name of the selected primary method for establishing the arm's length price, according to Section18 (2) of the Corporate Tax Act shall also be indicated. [Section 8/A (3) e) of the TPD Decree].

If more than one method has been used for the transaction in question, only the method that gives the most convincing and reliable result (primary method) should be reported. If more than one method is of similar probative value, the other method should be chosen. If more than one method was used in the context of one method (e.g. the comparable uncontrolled price method and the transactional net margin method in the context of the profit split method with residual profit sharing), only the method in the context of which the others have been used should be indicated (in the example, the profit split method should be indicated).

8.7. Additional information to be provided for methods examining the profit level indicator

If the selected arm's length price setting method is

i. the resale price method,
ii. the cost plus method or
iii. the transactional net margin method;

the following must be reported for the given transaction:

a) the name of the profit level indicator, which may be:

aa) return (EBIT) on operating revenue,

ab) return (EBIT) on total operating costs,

ac) return (EBIT) on sales,

ad) gross margin,

ae) Berry ratio,

af) return (EBIT) on assets, or

ag) other indicator;

b) the accounting standard used for the tested party, based on the following list:

ba) Hungarian accounting standards;

bb) International Financial Reporting Standards (IFRS);

bc) United States Generally Accepted Accounting Principles (US GAAP); or

bd) other accounting rules.

c) the arm's length value or range of the profit level indicator (only one of them can be provided); and
d) the profit level indicator actually achieved by the tested party on the transaction in the tax year calculated with the eventual tax base adjustment;

Section 3 (3) and (6) of the TPD Decree defines some profit level indicators:

Berry ratio: the ratio of gross profit to indirect cost of sales [to other operating expenses].

Gross margin: the ratio of gross profit to net sales;

The Act C of 2000 on Accounting (hereinafter: Accounting Act) contains the definitions used for the Berry ratio and the gross margin [see especially Section 82(3) and annex 3 of the Accounting Act].

The accounting standards for the other profit level indicators should also be taken into account. Operating revenue means revenue and yield nature items above the EBIT line. Operating costs/expenses are expenses above the EBIT line. EBIT is the result of operating activities. The denominator of the return (EBIT) on sales is the net sales. If the indicator is not calculated according to Hungarian accounting standards, the items with the corresponding content should be taken into account.

In all cases, of course, the revenue, costs/expenses and profit or loss data relating to the activity concerned should be included in the indicators. If a cost or expense (e.g. overheads) is also related to other activities, the cost or expense should be allocated to these activities in a

reasonable way. Enterprise-level data should only be taken into account if the taxpayer conducts only one activity.

The fact that a profit level indicator is included in the list does not mean that it is professionally appropriate, nor does the fact that it is not included in the list necessarily mean that it cannot be accepted.

However, given that the databases commonly used in transfer pricing practice to establish the profit level indicator provide reliable data on operating revenue (Turnover) and operating profit (Operating P/L (EBIT)), essentially for return (EBIT) on operating revenue and return (EBIT) on total operating costs will be available appropriate comparable data. Thus, the use of other indicators may be considered as higher risk.

The relevant accounting standard should also be indicated, as differences between them may lead to significant differences in the numerator and denominator of the profit level indicator, and therefore this is also an important comparability factor when establishing the arm's length price. The accounting standard to be provided here may be different from the accounting standard under which the tested party involved maintains its books and publishes its accounts.

The actual value of the tested indicator achieved by the tested party in the relevant transaction should also be indicated.

For the resale price method, the cost plus method and the transactional net margin method, a party to the transaction shall be selected, its financial data will be used to calculate the profit level indicator. This party is the tested party. The tested party may not necessarily be the taxpayer providing the data, it may be the other party to the transaction, even if it is a non-resident party. The choice of the tested party should be consistent with the functional analysis of the transaction. As a general rule, the tested party is the one to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparables can be found, i.e. it will most often be the one that performs the less complex functions and bears the less significant risks (see.: paragraph 3.18. of the OECD Transfer Pricing Guidelines). Thus, e.g., the tested party is the toll manufacturer, the contract manufacturer, the limited risk distributor, etc.

It should be emphasised that if a transfer pricing adjustment has been applied to the tax base for the transaction in the tax year in question, these indicators should be calculated taking it into account.

If an associated enterprise invoicing services directly to the taxpayer only re-invoices without a profit margin services of several other associated enterprises for which they had charged a profit margin, this should be reported as a service received with a profit margin.

8.8. Additional information to be provided for percentage royalty and commission (percentage) service fee

If the arm's length price setting method chosen is the comparable uncontrolled price method for the following transactions:

i. providing a service where the service provider bears limited risk in connection with the service and can thus be characterized as a routine entity in relation to the service (13.),

ii. receiving a service where the service provider bears limited risk in connection with the service and can thus be characterized as a routine entity in relation to the service (14),
iii. providing a service where the service provider bears non-limited risk in connection with the service and can thus be characterized as an entrepreneur or co-entrepreneur entity in relation to the service (15),
iv. receiving a service where the service provider bears non-limited risk in connection with the service and can thus be characterized as an entrepreneur or co-entrepreneur entity in relation to the service (16),
v. granting licence rights (20.),
vi. receiving licence rights (21.),
vii. granting franchise rights (22,) or
viii. receiving franchise rights (23),

then it should be indicated whether a percentage royalty or a commission (percentage) service charge was applied.

If a percentage royalty or commission (percentage) service fee has been applied, the following must be reported for the given transaction:

a) the basis for the percentage royalty or commission (percentage) service fee as listed below:

   aa) net sales,

   ab) gross sales,

   ac) EBIT, or

   ad) other basis; or

b) the accounting standard applied to the party whose financial data are taken into account for the basis of the royalty or service fee, as listed below:

   ba) Hungarian accounting standards;

   bb) International Financial Reporting Standards (IFRS);

   bc) United States Generally Accepted Accounting Principles (US GAAP); or

   bd) other accounting rules.

c) the arm's length value or range (only one may be given)of the percentage royalty or commission (percentage) service fee; and
d) the percentage rate of royalty or commission (percentage) service fee applied in the tax year, calculated by the eventual tax base adjustment.

The relevant accounting standard should be indicated, as differences between them in the percentage royalty and commission service fee bases may result in significant differences, and therefore this is also an important comparability factor in determining the arm's length price. The accounting standard to be provided here may be different from the accounting standard under which the party concerned keeps its books and publishes its accounts.

It should also be indicated what the percentage royalty or commission (percentage) service fee actually was in the taxpayer's particular transaction. It should be emphasised that if a transfer pricing adjustment has been applied to the taxable amount in the tax year in respect of the transaction in question, the actual amount of the percentage royalty or commission (percentage) service fee should be calculated by taking it into account.

8.9. Additional data to be provided for certain financial transactions

If the arm's length price setting method chosen is the comparable uncontrolled price method for the following transactions:

i. granting credit (25.),

ii. receiving credit (26.),

iii. granting a loan (27.),

iv. receiving a loan (28),

v. providing financial leasing (29),

vi. receiving financial leasing (30),

vii. providing guarantee or suretyship (31),

viii. receiving guarantee or suretyship (32),

ix. cash-pool arrangement for placement of money (35), or

x. cash-pool arrangement for borrowing money (36),

the following must be reported for the given transaction:

a) the name of the reference rate or the fact of the fixed rate of interest from the following list:

aa) Budapest Interbank Offered Rate (BUBOR),

ab) sterling overnight index average (SONIA),

ac) European Interbank Offered Rate (EURIBOR),

ad) Secured Overnight Financing Rate (SOFR),

ae) London Interbank Offered Rate (LIBOR),

af) Euro Short-Term Rate (ESTER),

ag) Swiss Average Rate Overnight (SARON),

ah) Tokyo Overnight Average Rate (TONAR),

ai) Tokyo Interbank Offered Rate (TIBOR),

aj) other reference interest rate, or

ak) fixed interest rate;

b) the arm's length value or range of the interest rate spread, or the all in interest rate in the case of fixed interest rate; or

c) the interest rate spread applied in the tax year - calculated by the tax base adjustment - or, in the case of fixed interest, the all in interest rate.

In relation to the actual interest margin or, in the case of a fixed rate, the total rate of interest applied to the transaction in question, it should be emphasised that if a transfer pricing adjustment was applied to the tax base in the tax year in relation to the transaction in question, the actual rate of the interest margin or, in the case of a fixed rate, the total rate of interest should be determined by taking account of it.

If both a fixed and variable interest rate are payable on a loan, they must be reported on a separate ATP form.

8.10. Additional data to be provided in case of establishing a unit price

If no percentage royalty, commission (percentage) service charge or interest was applied to the transaction and one unit price was determined as the arm's length price, the following is required:

a) the name of the unit (this is the only case, where there is no predefined list; e.g.: thousand Ft/tonne; thousand Ft/square metre),
b) the unit value or range of the price (only one of these may be indicated), in thousands of forints and
c) the unit value of the price applied in the tax year, calculated with the eventual tax base adjustment applied.

A unit price should only be given if only one unit price was used in the transaction. If more than one unit price has been applied in a single transaction or in consolidated transactions, lines 15 to 17 of the ATP sheet need not be completed.

Therefore, if a case other than those referred to in Section 8/A(4)(b) to (c) of the TPD Decree applies, information must be provided on the unit of the arm's length price (price range), including the description of the unit. An example of this could be the price per square metre of rented real property (e.g. office, warehouse), if the arm's length price of this unit is tested in the transfer pricing documentation.

With regard to the unit price actually applied in a given transaction, it should also be pointed out that if a transfer pricing adjustment has been applied to the tax base for the given transaction in the particular tax year, the actual value of the unit price should be determined by taking that into account.

9. Technical context between the data to be provided

Although neither the TPD Regulation nor the error messages related to the return form mention this, from a transfer pricing perspective, there are a number of necessary or typical connection within the data to be provided.

In particular, the name of the transaction, the TEÁOR code, the method chosen and the profitability indicator must be coherent.

For example, it is incorrect to enter a wholesale TEÁOR code for a manufacturing transaction and a manufacturing TEÁOR code for a services transaction. For other transactions, however, a manufacturing and a wholesale TEÁOR code may be used if they are not routinely performed.

For "other transactions", you cannot enter a TEÁOR code for which there is a particular transaction name. For example, it is incorrect to enter TEÁOR code "64.91 Financial leasing" for "other transactions", as there is a separate transaction name for this ("29. provision of financial leasing", "30. use of financial leasing"). For "other transactions", the justification for TEÁOR codes for services (e.g. "63.11 Data processing, web hosting services") should be strongly examined, as the TEÁOR code indicates a service for which there is a separate transaction type (under 13-16).

Some transactions may typically imply a specific method or some methods may not arise, for example, it is contradictory if a resale price method is specified for toll manufacturing or

contract manufacturing, and if the profit-share method is specified for routine activities (transaction types 1-14).

Methods and profitability indicators are also linked. The resale price method uses revenue-based gross indicators. For the cost plus method, cost-based (expense-based) gross indicators are calculated. For the transactional net margin method, there may be a net indicator based on either income or cost (expense-based) or other appropriate net indicators.

Operating profit on turnover, operating profit on operating expenses, operating profit on sales, Berry ratio and operating profit on assets are profitability indicators used in the context of the transactional net profit margin method.

For contract manufacturing in general, the transactional net profit margin method and operating profit on operating expenses may be the most appropriate approach. For commissionaire distribution and limited risk distribution, the application of the transactional net margin method and one of the revenue based operating profit indicators should be considered in the first instance. For routine services, the transactional net margin method and the operating profit on operating costs may also generally lead to an appropriate result. It is more difficult for the authorities to challenge their use than other approaches, given their widespread use in practice, but on the other hand this does not mean that they are necessarily the only acceptable approaches in all cases.