



**REPUBLIC OF ALBANIA
MINISTRY OF FINANCE**

INSTRUCTION

No. 16, date 18.06.2014

ON TRANSFER PRICING

Pursuant to Article 102, point 4 of the Constitution of the Republic of Albania and Article 40 of the Law no. 8438, dated 28.12.1998 “On Income Tax”, amended, the Minister of Finance,

I N S T R U C T S:

1. General provisions

1.1. This Instruction creates the regulations and procedures for the administration and application of Article 2, paragraph 4 and Articles 36 – 36/6 of the Law No. 8438, dated 28.12.1998 “On Income Tax”, amended, hereinafter referred as the Law.

2. Relevance of the OECD Transfer Pricing Guidelines

2.1 These instructions are based on the principles in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (“OECD Transfer Pricing Guideline for Multinational Enterprises and Tax Administrations 2010”)

2.2 In case of differences or conflicts between Guidelines of OECD and Albanian Income Tax Law and Instructions, the Albanian Income Tax Law and Instructions will take precedence.

3. Controlled Transactions

3.1 The definition of controlled transaction in Article 2, paragraph 4, subparagraph (c) of the Law covers all types of transactions that may impact the taxable income of a taxpayer, including, but not limited to:

- Transactions involving tangible goods, like raw materials, finished goods, etc.;
- Services transactions;
- Transactions involving intangible property, like royalty, license, payment for use of patents, trademarks, know-how, etc., and any other intellectual properties;
- Financial transactions, including leases, interest, guarantee fees etc.;
- Capital transactions, including purchase or sale of shares or other investments, purchase or sale of long term tangible and intangible assets.

3.2 For the purposes of Article 2, paragraph 4, subparagraph (b(ii)), of the Law a person is considered to “effectively control the business decisions of the other person” if the first-mentioned person:

- a) holds, or can control, a 50% or more of the voting rights in the other person, which is a juridical person;
- b) can control the composition of the board of directors of the other person, which is a juridical person;
- c) has the right to share in 50% or more of the profits of the other person;
- d) the other person is a relative, or associated party of a relative; or
- e) based on evidenced facts and circumstances, controls over the business decisions of the other person.

3.3 For the purposes of this instruction, “relative” means; spouses, children or parents.

3.4 The burden of proof for demonstrating that a person “effectively controls the business decisions of the other person” falls on the tax administration.

3.5 The share capital owned by the associated party of a person shall be taken into account in determining whether that person indirectly owns 50 % or more of share capital in another juridical person.

Example: If Company A owns 60% the shares in Company B, and Company B owns 55% of the shares in Company C, then Company A will be considered to indirectly own 55% of the share capital in Company C.

3.6 The list of specified jurisdictions for the purposes of Article 2, paragraph 4, subparagraph (c/iv), of the Law, is given in Appendix 1 of this Instruction.

4. Market Principle

4.1 The market principle referred to in Article 36 is analogous to the “arm’s length principle” in Article 9(1) of the OECD Model Tax Convention on Income and on Capital (2010) and as referred to in the OECD Transfer Pricing Guidelines 2010 (OECD TPG 2010).

4.2 In accordance with Article 36, paragraph 2, of the Law application of the market principle should be based on a comparison of the conditions in controlled transactions with the conditions in comparable uncontrolled transactions.

5. Comparability

5.1 Comparability is assessed based on the standard of comparability elaborated in Article 36/1, paragraph 1 and the taking into account the five comparability factors specified in Article 36/1, paragraph 2, of the Law.

5.2 When analyzing the *characteristics of the property or services transferred*, relevant considerations may include, but are not limited to:

- a) in the case of goods; the physical characteristics, quality, reliability, availability of supply, etc.
- b) in the case of services; the nature and extent of the service, whether or not the service involves specific experience, technical know-how or the use of intangibles, etc.
- c) in the case of financing transactions; the amount of the principal, the period, guarantees, currency, solvency of the debtor, security, interest rate etc.
- d) in the case of intangible assets; 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, the anticipated benefits from the use of the property, etc.
- e) in the case of alienation of shares or other investments; the updated capital account of the issuer, the present value of the profits or projected cash flow, a stock market quotation at the time of the transfer, etc.

5.3 When analyzing *functions undertaken, assets employed and risks assumed*, relevant considerations may include, but are not limited to:

- a) functions such as; design, manufacturing, assembling, research and development, servicing, purchasing, distribution, marketing, advertising, transportation, financing, management, etc.
- b) assets such as; plant and equipment, the use of valuable intangibles, financial assets, etc., an taking into account the nature of the assets used, such as; the age, market value, location, property right protections available, etc.
- c) risks such as; market risks, 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, etc.

5.4 When analyzing *contractual terms*, besides provisions of the Civil Code on the interpretation of the contracts, articles 681-689, an examination should be undertaken to determine 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 case of the latter, further analysis is required to determine the true terms of the transaction. Where there is no written contract, the terms of a transaction may be evidenced / deduced by other correspondence /communications between the parties, their conduct and/or the economic principles that generally govern relationships between independent enterprises.

5.5 When analyzing *economic circumstances*, relevant considerations may include, but are not limited to; geographic location; the size of the markets; the extent of competition in the markets and the relative competitive positions of the buyers and sellers; the availability (risk thereof) of substitute goods and services; the levels of supply and demand in the market as a whole and in particular regions, consumer purchasing power, the nature and extent of government regulation of the market, costs of production (including costs of land, labor, and capital); transport costs; the level of the market (e.g. retail or wholesale); and, the date and time of transactions.

5.6 When analyzing *business strategies*, relevant considerations may include, but are not limited to strategies concerning market penetration, diversification, innovation, product development, risk aversion, political change, etc.

5.7 The following process (adapted from the 9 step process in the OECD TPG 2010), is recommended when assessing comparability. However following this process is not compulsory - is the outcome rather than the process that is of importance.

- 1) determination of years to be covered;
- 2) broad-based analysis of the taxpayer's circumstances;
- 3) understanding the controlled transaction(s) under examination, based in particular on a functional analysis, in order to help choose the tested party in accordance with this Instruction (where needed); select the most appropriate transfer pricing method to the circumstances of the case in accordance with this Instruction; select the financial indicator that will be tested (where needed); and, to identify the significant comparability factors that should be taken into account;
- 4) review of existing internal comparable uncontrolled transactions, if any;
- 5) determination of available sources of information on external comparable transactions where such external comparable transactions are needed taking into account their relative reliability;
- 6) the selection of the most appropriate transfer pricing method in accordance with this Instruction and, depending on the method, determination of the relevant financial indicator;
- 7) identification of potential comparable transactions: determining the key characteristics to be met by any uncontrolled transaction in order to be regarded as potentially comparable, based on the relevant factors identified in Step 3 and in accordance with the comparability factors specified in Article 36/1, paragraph 2;
- 8) determination of and making comparability adjustments where appropriate, taking into account paragraph 6 below;
- 9) interpretation and use of data collected, determination of conditions consistent with market principle.

6. Comparability Adjustments

6.1 For the purposes of Article 36/1, paragraph 1, subparagraph (b) of the Law, comparability adjustments should be considered only if they are expected to increase the reliability of the results, taking in to account considerations such as the:

- a) materiality of the difference for which the adjustment is being considered;
- b) quality of the data subject to adjustment;
- c) purpose of the adjustment; and
- d) reliability of the approach used to make the adjustment.

6.2 Comparability adjustments may include, but are not limited to, adjustments for:

- a) ensuring accounting consistency, i.e. adjustments designed to eliminate differences that may arise from differing accounting practices used with respect to the controlled transaction and the uncontrolled transaction
- b) differences in capital, functions, assets, risks;
- c) differences in contractual terms; and
- d) differences between geographic markets.

Example: During 2014, Company X sold 8million units of product G to associated party Company Y and 1million units of the same product to an independent party, Company A. The only significant difference between the transactions, taking into account the five comparability factors specified in Article 36/1, paragraph 1, subparagraph (b), is that Company Y is afforded a volume discount of 5%. Company A did not purchase a sufficient quantity unit of product to be afforded the volume discount. The volume discount provided to Company Y is consistent with industry practice and contractual terms reveal that the same discount would be made available to Company A if a similar quantity to that purchased by Company X was purchased. In such a case, a comparability adjustment needed to be applied to eliminate the effect of this difference.

7. Sources of Comparable Information

7.1 Comparable uncontrolled transactions may be:

- a. **Internal comparable uncontrolled transactions**, which are comparable uncontrolled transactions where one of the parties to the controlled transaction is also a party to the comparable uncontrolled transaction.
- b. **External comparable uncontrolled transactions**, which are comparable uncontrolled transactions where neither of the parties to the controlled transaction is a party to the comparable uncontrolled transaction.

7.2 An uncontrolled transaction may only be relied upon by the tax authority for the purposes of making an adjustment under Article 36, paragraph 3 of the Law, if the relevant details of the transaction do not comprise a tax secret and there are other information sources for such transaction.

7.3 In the absence of domestic comparable uncontrolled transactions the use of foreign comparable uncontrolled transactions will be accepted by the tax authority provided that the impact of geographic differences and other factors on the financial indicator being examined under the appropriate transfer pricing method are analyzed, and that, where appropriate, comparability adjustments are made.

7.4 In the absence of information concerning external comparable uncontrolled transactions, from the same fiscal year as the controlled transaction(s), being available at the time of preparing the transfer pricing documentation specified in the Article 36/5 of the Law, the taxpayer may rely on information concerning external comparable uncontrolled transactions from the most recent period for which such information is available, provided the standard of comparability in Article 36/1 of the Law is met.

8. Transfer Pricing Methods

Comparable uncontrolled price method

8.1. The financial indicator relevant for the application of the ***comparable uncontrolled price method*** as defined in Article 36/2, paragraph 1, subparagraph (a) of the Law, is the price. This price may be a specified amount of a particular currency, or a direct determinant thereof, such as an interest rate or royalty rate. The comparison of the price in the controlled transaction may be to the price in internal comparable uncontrolled transactions or external comparable uncontrolled transactions, depending on the availability of information and/or the existence of such transactions.

Example: Assume company X produces bottled water that it sells to an independent party (Company A) and an associated party (Company Y) and that the sales to both parties are; of bottled water that is of the same type, quality and branding; involve similar quantities; occur at about the same time, at the same stage in the production/distribution chain and under similar conditions; and, are into comparable markets. If no differences between the transactions that materially impact the price exist, or, where such differences do exist, the effect can be eliminated through reasonably accurate comparability adjustments, then consistency of the conditions in the controlled transaction may be determined by direct comparison of the price charged to the price charged in the transaction with the independent party.

Resale price method

8.2 The financial indicator relevant for the application of the ***resale price method***, as defined in Article 36/2, paragraph 1, subparagraph (b) of the Law, is the resale price margin. This margin is the gross profit (being the profit before subtraction of selling and other operating expenses) as a percentage of the revenue from the sale of the goods. The comparison of the resale price margin may be to the resale price margin(s) in internal comparable uncontrolled transactions or external comparable uncontrolled transactions, depending on the availability of information and/or the existence of such transactions.

Example: Company X, a resident of Country X, manufactures electronic products using technology that it has developed and sells these products to its associated party, Company Y, which is a resident of Country Y. Company Y distributes the product in the Country Y market to independent parties and does not undertake any significant value adding functions. A search for comparable independent distributors operating in Country Y identified 7 independent distributors with resale price margins ranging between 39% to 46%. A comparability analysis reveals that there are no significant differences that will materially impact the resale price margin. Therefore, assuming the resale price method is the most appropriate method, if Company Y earns a resale price margin between 39% and 46% then it may be concluded that the conditions of the controlled transaction(s) (i.e. the sale of products by Company X to Company Y) are consistent with the market principle.

Cost plus method

8.3. The financial indicator relevant for the application of the **cost plus method**, as defined in Article 36/2, paragraph 1, subparagraph (c) of the Law, is the cost plus markup. The cost plus markup is determined as the markup on direct and indirect costs, but not operating costs. When applying the cost plus method it is critical to apply a comparable cost plus markup to a comparable cost basis (i.e. including the same types of direct and indirect costs). The comparison of the cost plus markup may be to the cost plus markup in internal comparable uncontrolled transactions or external comparable uncontrolled transactions, depending on the availability of information and/or the existence of such transactions.

Example: Company X, a resident of Country X, manufactures clothing based on the specifications provided by its associated party, Company Y, which is a resident of Country Y. The designs used by Company X are provided by Company Y on the basis that Company Y can only use these designs to produce a specified number of units which are then purchased by Company Y provided quality standards are met. A search for comparable independent manufacturers operating in Country X identified 5 independent manufacturers with cost plus markups ranging from 20% to 25%. A comparability analysis reveals that there are no significant differences that will materially impact the cost plus markup. Therefore, assuming the cost plus method is the most appropriate method, if Company X applies a cost plus markup between 20% to 25% (to a comparable cost base) then it may be concluded that the conditions of the controlled transaction(s) (i.e. the sale of the clothing by Company X to Company Y) are consistent with the market principle.

Transactional net margin method

8.4 The financial indicator relevant for the application of the **transactional net margin method**, as defined in Article 36/2, paragraph 1, subparagraph (d) of the Law, is the net profit to an appropriate base. Financial indicators when applying the transactional net margin method may therefore include, but are not limited to:

- a) ratio of net profit (before interest and tax) to sales;
- b) ratio of net profit (before interest and tax) to total costs (including direct, indirect and operating costs);
- c) ratio of net profit before tax to shareholders' funds;
- d) ratio of net profit before interest and tax to assets.

Selection of the financial indicator should be consistent with the comparability analysis, including the functional analysis. For example, a net profit (before interest and tax) to sales financial indicator is commonly used where the controlled transaction is the purchase of tangible property by the tested party which is then sold to independent parties, and a net profit (before interest and tax) to total costs is commonly used where the controlled transaction is the provision of services by the tested party to an associated party. In determining the net profit, care should be taken to exclude any extraordinary income or expenses.

When applying the transaction net margin method it is critical to ensure that the financial indicator is

determined in a comparable manner for the controlled and comparable uncontrolled transactions. The comparison of the net margin to an appropriate base may be to net margins to appropriate bases in internal comparable uncontrolled transactions or external comparable uncontrolled transactions, depending on the availability of information and/or the existence of such transactions.

Example 1: Assume Company X, a resident of Country X, provides information technology services to its associated party, Company Y, a resident of Country Y. A search for comparable independent service providers operating in Country X identified 9 independent information technology service providers with markups on total costs (i.e. a ratio of net profit (before interest and tax) to total costs (direct, indirect and operating) ranging from 6% to 9%. A comparability analysis reveals that there are no significant differences that will materially impact the markup on total costs. Therefore, assuming the transactional net margin method, using a cost based financial indicator, is the most appropriate method, if Company X applies a markup on total costs between 6% to 9% to the costs associated to the provision of the information technology service to Company Y then it may be concluded that the conditions of the controlled transaction(s) (i.e. the service charge by company X to company Y) are consistent with the market principle.

Example 2: Company X, a resident of Country X, manufactures stationary using technology and branding hat it has developed and sells these products to its associated party, Company Y, which is a resident of Country Y. Company Y distributes the stationary in the Country Y market to independent parties and does not undertake any significant value adding functions. A search for comparable independent distributors operating in Country Y identified 6 independent distributors with net profit (before interest and tax) to sales ratios ranging between 2% to 5%. A comparability analysis reveals that there are no significant differences that will materially impact the net profit (before interest and tax) to sales ratios. Therefore, assuming the transactional net margin method, using a sales based financial indicator, is the most appropriate method, if Company Y earns a net profit (before interest and tax) to sales ratio between 2% and 5% then it may be concluded that the conditions of the controlled transaction(s) (i.e. the sale of products by Company X to Company Y) are consistent with the market principle.

Profit split method

8.5 When applying the **profit split method**, as defined in Article 36/2, paragraph 1, subparagraph (e) of the Law, when it is possible to determine consistency with the market principle for some of the functions performed by the parties in connection with the controlled transaction(s) using one of the transfer pricing methods described in Article 36/2, paragraph 1, subparagraphs (a)-(d) of the Law, the transactional profit split method shall be applied based on the common residual profit (or loss) that results once such functions are so remunerated. In allocating the residual profit (or loss), the criteria use to achieve an allocation consistent with the market principle will depend on the facts and circumstances of the case, taking into account that the criteria (or allocation key) should be based on objective data (e.g. sales to independent parties or expenses paid to independent parties) and not data relating to controlled transactions (e.g. sales to associated parties), and should, to the extent possible, be supported by comparable data, internal data, or both.

8.6 Where it is not possible to determine a remuneration that is consistent with the market principle for some of the functions performed by the parties in connection with the controlled transaction, the profit split method may be applied based on a contribution analysis.

Other methods

8.7 In accordance with Article 36/2, paragraph 2 of the Law, a taxpayer may in specific circumstances (as specified in such paragraph) apply a transfer pricing method other than any of the approved methods, such as, for example a discounted cash flow or valuation techniques.

9. Selection of Transfer Pricing Method

9.1 For the purposes of Article 36/2, paragraph 1 of the Law, the most appropriate transfer pricing method shall be selected by taking into consideration the following criteria:

- a) The respective strengths and weaknesses of the approved transfer pricing methods;
- b) The appropriateness of an approved transfer pricing method in view of the nature of the controlled transaction, is determined in particular through an analysis of the functions undertaken by each enterprise in the regulated transaction (taking into account assets used and risks assumed);
- c) The availability of reliable information needed to apply the selected transfer pricing method and/or other methods; and
- d) The degree of comparability between the controlled and uncontrolled transactions, including the reliability of comparability adjustments, if any, that may be required to eliminate differences between them.

9.2 Pursuant to Article 36/2, paragraph 3 of the Law, a taxpayer is not required to determine consistency of the conditions of a controlled transaction with the market principle by application of more than one method. The requirement under Article 36/2 is that consistency with the market principle is to be determined by application of the most appropriate method. A taxpayer is entitled however to cross check or support the application of the most appropriate method by application of one or more additional transfer pricing method.

9.3 Where a taxpayer has applied one of the transfer pricing methods specified in Article 36/2, paragraph 1, pursuant to Article 36/2, paragraph 4 of the Law, the tax authority's examination of whether the conditions of the controlled transaction are consistent with the market principle shall be based on the transfer pricing method applied by the taxpayer, unless it is proven by the tax authority that the method applied by the taxpayer is not the most appropriate method.

10. Selection of Tested Party

10.1 When applying the cost plus method, resale price method or transactional net margin method, it is necessary to select a tested party. The tested party being the party to the controlled transaction for which the financial indicator is tested.

10.2 The selection of which should be consistent with the functional analysis of the controlled transaction(s). As a general rule, the tested party is the party to the controlled transaction to which

one of the transfer pricing methods in Article 36/2, paragraph 1 of the Law, can be applied in the most reliable manner and for which the most reliable comparable uncontrolled transactions can be identified, i.e. it will most often be the party that has the less complex functions with respect to the controlled transaction and does not contribute any valuable intangibles.

10.3 The use of a foreign tested party, for example a tested party that is not the Albanian Taxpayer, will be accepted by the tax authority provided that the following requirements are met:

- a) the transfer pricing method applied is an approved transfer pricing method that is the most appropriate transfer pricing method;
- b) the tested party has been selected in accordance with this paragraph ; and
- c) the taxpayer provides the tax authority with sufficient information regarding the tested party so as to allow for an assessment as to the conformity of the conditions of the controlled transaction with the market principle.

11. Specific transaction types

Service Transactions

11.1 A charge for a controlled transaction that is the provision or receipt of a service shall be considered consistent with the market principle where:

- a) It is charged for a service that is actually rendered,
- b) The service provides, or when rendered was expected to provide, the recipient with economic or commercial value to enhance its commercial position,
- c) It is charged for a service that an independent party in comparable circumstances would have been willing to pay for if performed for it by an independent party, or would have performed in-house for itself, and
- d) Its amount corresponds to that which would have been agreed between independent parties for comparable services in comparable circumstances.

11.2 Where it is possible to identify specific services provided by one party to the other, the determination of whether the service charge is consistent with the market principle shall be made for each specific service.

11.3 Where particular services are rendered by a party to various associated parties and not to any independent parties, and it is not possible to identify the specific services provided to each, the total service charge shall be allocated among the associated parties that benefit or expect to benefit from the services according to reasonable allocation criteria. For the purpose of this provision, allocation criteria shall be viewed as reasonable where they are based on a variable or variables that:

- a) Take into account the nature of the services, the circumstances under which they are provided and the benefits obtained or that were expected to be obtained by the parties for which the services are intended,
- b) Relate exclusively to uncontrolled, rather than controlled, transactions, and
- c) Are capable of being measured in a reasonably reliable manner.

Transactions Involving Intangibles

11.4 Application of the market principle to controlled transactions involving licenses, sales or other transfers of intangible property shall take into account both the perspective of the transferor of the property and the perspective of the transferee, including in particular the pricing at which a comparable independent parties would be willing to transfer the property and the value and usefulness of the intangible property to the transferee in its business.

11.5 In assessing comparability in accordance with Article 36/1 for a transaction involving the license, sale or other transfer of intangible property, consideration shall be given to any special factors relevant to the comparability of the controlled and uncontrolled transactions, including:

- a) The expected benefits from the intangible property,
- b) Any geographic limitations on the exercise of rights to the intangible property,
- c) The exclusive or non-exclusive character of the rights transferred, and
- d) Whether the transferee has the right to participate in further developments of the intangible property by the transferor.

12. Transfer pricing adjustment

12.1 An adjustment pursuant to Article 36, paragraph 3 of the Law, shall only be made by the tax authority with the written approval of the Director General of the General Directorate of Taxation (GDT).

12.2 Pursuant to Article 36, paragraph 3 of the Law, and Article 36/4 of the Law, where financial indicator derived from the controlled transaction(s) falls outside the market range, the tax authority may, make an adjustment to the taxable income of the taxpayer to equate the financial indicator with the median of the market range, unless the tax authority or the taxpayer proves that the circumstances of the case warrant adjustment to a different point in the market range.

12.3 The median of the market range is the 50th percentile of the results derived from the comparable uncontrolled transactions forming the market range. For this purpose, the 50th percentile is the lowest result such that at least 50 percent of the results are at or below the value of that result. However, if exactly 50 percent of the results are at or below a result, then the 50th percentile is equal to the arithmetic mean of that result and the next higher result derived from the comparable uncontrolled transactions.

Example 1

If the market range comprises of 7 results, the median will be the 4th result when those results are places in ascending order. If the results are for example, 2.8%, 2.9%, 2.9%, 3.0% 3.1%, 3.6% and 3.7%, the median will be 3.0%.

Example 2

If the market range comprises of 8 results, the median will be the average of the 4th and 5th results when those results are places in ascending order. If the results are for example, 5.8%, 5.9%, 5.9%,

6.0% 7.1%, 7.6%, 7.7% and 7.7%, the median will be 6.55% $((6.0\%+7.1\%)/2)$.

12.4 In order to prove that the circumstances of the case warrant adjustment to a point in the market range other than the median, the taxpayer or tax authority, depending on who is arguing for adjustment to a different point in the market range, bears the burden of proof prove why, based on the specific facts and circumstances of the case, adjustment to such other point will better reflect application of the market principle.

12.5 The tax authorities' examination of a controlled transaction should ordinarily be based on the transaction actually undertaken by the parties as it has been structured by them. In making adjustments under Article 36, paragraph 3 of the Law, the tax authority should not disregard the actual transaction undertaken or substitute other transactions, except in exceptional cases whereby:

- a) The economic substance of the controlled transaction differs from its form;
- b) The arrangements made in relation to the controlled transaction, viewed in their totality, differ from those which would have been adopted by independent parties behaving in a commercially rational manner and the actual structure practically impedes the tax authority from determining consistency of the market principle.

13. Corresponding adjustments

13.1 A request by a taxpayer for a corresponding adjustment in accordance with Article 36/6 must be made in writing to the General Tax Directorate and must include the information necessary for the tax authority to examine the consistency of the adjustment made by the tax administration of the other country with the market principle, including:

- a) The name, registered address and, where applicable, trading name(s) of the associated party and registration details;
- b) The year(s) in which the adjusted transactions took place;
- c) The amount of the requested corresponding adjustment and the amounts of the adjustment made by the tax administration of the tax treaty partner;
- d) Evidence of the tax residence of the associated party, for example a letter or a residency certificate provided by the tax administration of the tax treaty partner country;
- e) Evidence of the adjustment made by the tax administration of the tax treaty partner and the basis for the adjustment, for example a copy of the assessment and supporting analysis and details of any administrative appeals or litigation proceedings undertaken, where applicable;
- f) Details of comparability factors, the transfer pricing method applied, etc.
- g) Confirmation that the associated party will not, or is unable to, pursue any further recourse under the domestic law of the tax treaty partner that may result in the adjustment made by the tax administration of the tax treaty partner being reduced or reversed;
- h) Any other information that may be relevant for examining the consistency of the adjustment with the market principle.

13.2 The request must be made in conformity with provisions of the respective tax treaty for double tax relief, its procedures and the applicable time period being agreed between competent authorities for the application of tax treaty.

13.3 The Director General of the GDT will, within 3 months from the date of receiving a request that satisfies the requirements above, notify the taxpayer as to whether or not the requested corresponding adjustment under Article 36/6 of the Law will be granted in part or in full.

13.4 Where the Director General of the GDT in conformity with paragraph 13.3 has rejected a taxpayer's request for a corresponding adjustment in part or in full, reasons for this decision shall be provided to the taxpayer in writing at the time of the taxpayer being notified of the decision. Such reasons may include, but are not limited to:

- a) The request made did not satisfy the requirements of paragraph 13;
- b) The taxpayer has failed to provide tax authority with the information necessary for him to examine the consistency of the adjustment with the market principle;
- c) The tax authority, based on its assessment of the information made available to it, is of the view that the adjustment made by the tax administration of the other country is not consistent with the market principle, and provides an explanation to this effect.

13.5 A request by a taxpayer for a corresponding adjustment in accordance with Article 36/6 of the Law does not limit the rights of the taxpayer to seek relief from double taxation in accordance with the provisions of the applicable tax treaty (i.e. through the mutual agreement procedure).

14. Controlled Transaction Notice

14.1 Pursuant to Article 36/5, paragraph 2 of the Law, taxpayers engaging in controlled transactions (including loan balances), which in aggregate, within the reporting period, exceed 50,000,000 Lekë, are required to complete and submit to the regional tax directorate they are registered with, an "Annual controlled transactions notice". When determining the aggregate transactions, income and expenses cannot be offset.

14.2 The form and content of the "Annual controlled transactions notice" is specified in Appendix 2 of this Instruction. It may be submitted in hard copy together with the balance sheet and the financial statements or in electronic ways, as required by the tax authority.

14.3 Due date for submission of "Annual controlled transactions notice" is the due date for submission of the "Profit tax declaration and payment form".

15. Transfer Pricing Documentation

15.1 Article 36/5 of the Law requires that taxpayers prepare and submit sufficient information and analysis to verify that the conditions in their controlled transactions are consistent with the market principle, thus placing the initial burden of proof for demonstrating that conditions in their controlled transactions are consistent with the market principle of the taxpayer. This burden will be considered discharged where the taxpayer has prepared transfer pricing documentation in accordance with this Instruction.

15.2 Where a taxpayer has prepared documentation in accordance with this instruction and submitted it to the tax authority within 30 days of a request being made, the taxpayer will be

entitled to relief from penalties in accordance with article 115/1, paragraph 3, of the Law No. 9920, date 19.05.2008 “On Tax Procedures in the Republic of Albania” amended. Preparation and submission of transfer pricing documentation will not however prevent the tax authority from making a transfer pricing adjustment under Article 36, paragraph 3 of the Law, where the tax authority can demonstrate that the conditions of the controlled transaction(s) are not consistent with the market principle.

15.3 Transfer pricing documentation must address the following:

- a) overview of the taxpayer’s business operations (history, recent evolution and general overview of the relevant markets of reference) and organizational chart (details of business units/departments and organizational structure);
- b) description of the corporate organizational structure of the group that the taxpayer is a member (including details of all group members, their legal form, and their shareholding percentages) and the group’s operational structure (including a general description of the role that each of the group members carries out with respect to the group’s activities, as relevant to the controlled transaction(s));
- c) description of the controlled transaction(s), including analysis of the comparability factors specified in Article 36/1(2) of the Law and details of applicable transfer pricing policy (where relevant);
- d) explanation of the selection of most appropriate transfer pricing method(s), and, where relevant, the financial indicator;
- e) comparability analysis, including; description of the process undertaken to identify comparable uncontrolled transactions; explanation of the basis for the rejection of any potential internal comparable uncontrolled transactions (where applicable); description of the comparable uncontrolled transactions; analysis of comparability of the controlled transaction(s) and the comparable uncontrolled transactions (taking into account Article 36/1 of the Law); and, details and explanation of any comparability adjustments made;
- f) explanation of any economic analysis and projections relied on;
- g) details of any advance pricing agreements or similar arrangements in other countries applicable to the controlled transactions;
- h) conclusion as to consistency of the conditions of the controlled transactions with the market principle, including details of any adjustment made to ensure compliance; and
- i) any other information that may have a material impact on the determination of the taxpayer’s compliance with the market principle with respect to the controlled transactions.

15.4 Transfer pricing documentation prepared based on the approach detailed in the Code of Conduct on transfer pricing documentation for associated enterprises in the European Union and the Annex thereof, approved by Resolution 2006/c176/01 of 27 June 2006 from the EU Council and government representatives of Member States, will be considered to satisfy the requirements of Article 36/5 of the Law, provided the “master file” and “country specific documentation” for Albania (addressing all items of information described in the above-mentioned Code of Conduct) is prepared and submitted to the tax authority within 30 days of request.

15.5 Taxpayers with a turnover of less than 50,000,000 Lekë will be considered to satisfy the transfer pricing documentation requirements even where, in the case of use of external comparable transactions, the set of external comparable uncontrolled transactions are updated only every third

reporting period, provided there have been no material changes to the controlled transactions, the external comparable uncontrolled transactions or the relevant economic circumstances.

15.6 Transfer pricing documentation may be submitted in Albanian or English language. However, where documents are submitted in English, the Tax Authority has the right to request translation of English documents into Albanian. This translation is at the expense of the Albanian taxpayer and must be provided within 30 days of request for translation.

15.7 Transfer pricing documentation may be submitted either in electronic or paper format.

15.8 A taxpayer is not considered to have satisfied the requirement of Article 36.6 of the Law if the transfer pricing documentation provided is incomplete, contains false or factually inaccurate information or omits pertinent facts or information.

This Instruction shall enter into force after being issued on the Official Gazette.

MINISTER OF FINANCE

Shkëlqim Cani

APPENDIX 1 / SHTOJCA 1
SPECIFIED JURISDICTIONS

The following list includes countries as specified in item 3.5 of this Instruction.

No	Name of the jurisdiction
1	Andorra
2	Antigua & Bermuda
3	Antigua
4	Aruba
5	Bahamas
6	Bahrain
7	Barbados
8	Belize
9	Bermuda
10	British Virgin Islands
11	Brunei
12	Christmas Island
13	Cook Islands
14	Costa Rica
15	Dominican Republic
16	Dominica
17	Falkland Islands
18	Fiji
19	Gibraltar
20	Grenada
21	Guadelupe
22	Guam
23	Guatemala
24	Guernsey
25	Guyana
26	Haiti
27	Hong Kong
28	Isle of Man
29	Jamaica
30	Jersey
31	Liberia
32	Liechtenstein
33	Macao
34	Madeira
35	Maldives
36	Mariana Island
37	Marshall Island
38	Martinique
39	Mauritius

40	Micronesia
41	Monaco
42	Montserrat
43	Nauru
44	Netherland Antilles
45	Niue
46	Normand Isles
47	Oman
48	Palau
49	Panama
50	Philippine
51	Samoa
52	San Marino
53	Seychelles
54	Solomon Islands
55	St. Lucia
56	St. Vincent and the Grenadines
57	St. Kitts and Nevis
58	Surinam
59	Tanzania
60	Tonga
61	Trinidad and Tobacco
62	Turks and Caicos Islands
63	Tuvalu
64	US Virgin Island
65	Vanuatu
66	Cayman islands

Pjesa e II-të. Informacion mbi transaksionet e kontrolluara.

Part II. Information on controlled transactions.

8. Ju lutem listoni transaksionet e kontrolluara të kryera gjatë vitit që sjellin të ardhura të tatueshme dhe shpenzime të zbritshme siç kërkohet në tabelën e mëposhtëme:
 (Transaksionet me të njëjtin kod transaksioni të kryera me të njëjtin person pasqyrohen në shumë totale por nuk kompensohen).
Please list controlled transactions conducted during the year which give rise to taxable (assessable) income and tax deductible expenses as required in below table:
(Transactions of the same transaction code with the same party are reflected in aggregate, but not offset).

NR	Të dhëna identifikuese të palëve të tjera <i>(Identification information on other parties)</i>			Kodi transaksionit / <i>Transaction Code</i>	Transaksioni në lekë, <i>Transaction in ALL</i>		Metoda e Transferimit* <i>Method of TP*</i>	Doc. i përgatitur TC <i>(TP. documentation prepared)</i>		
	Emri (Name)	Palë të lidhura <i>(Associated Parties)</i>			Rezidenca tatimore <i>(Tax Residence)</i>	Zbritje të lejueshme <i>(Allowable deductions)</i>		Të ardhura të vlerësueshme <i>(Assesable incomes)</i>	Po <i>(Yes)</i>	Jo <i>(No)</i>
		Po <i>(Yes)</i>	Jo <i>(No)</i>							
1										
2										
3										
4										
5										
6										
7										
8										
.....										
Totali/Total				XXXXXX			XXXXXX	XX	XX	

* Ne kollonen Metoda e Transferimit të Cmimit evidentoni metoden e përdorur të Transferimit të Çmimit nëpërmjet shkurtimeve të përcaktuara në fund të këtij Aneksi (CUP, RS, CP, TNMM, CPM dhe OM).

**In the column Method TP evidence the type of TP method used (CUP, RS, CP, TNMM, CPM and OM).*

9. Gjendja e huave me palët e lidhura
Associated party loan balances

Ju lutem evidentoni gjendjen e huave të marra ose të dhëna nga/me palët e lidhura si dhe nga/me me persona në juridiksionet specifike.

Please disclose total balance of amounts borrowed or loaned by/with associated parties and by/with specified jurisdictions:

Shumat e marra hua (*Amount Borrowed*)

Të dhëna identifikuese të personit jo rezident (Emri) <i>Identification information on non- resident associated parties (Name)</i>	Rezidenca tatimore (<i>Tax Residence</i>)	Pa interes (<i>Interest free</i>)		Balanci në fillim të periudhës raportuese në lekë <i>Opening balance at beginning of reporting period in ALL</i>	Balanci në mbyllje të periudhës raportuese në lekë <i>Closing balance at end of tax year in ALL</i>
		Po (<i>Yes</i>)	Jo (<i>No</i>)		

Shumat e dhëna hua (*Amounts loaned*)

Të dhëna identifikuese të personit jo rezident (Emri) <i>Identification information on non- resident associated parties (Name)</i>	Rezidenca tatimore (<i>Tax Residence</i>)	Pa interes (<i>Interest free</i>)		Balanci në fillim të periudhës raportuese në lekë <i>Opening balance at beginning of reporting period in ALL</i>	Balanci në mbyllje të periudhës raportuese në lekë <i>Closing balance at end of tax year in ALL</i>
		Po (<i>Yes</i>)	Jo (<i>No</i>)		

10. Ju lutem përshkruani ndryshime (nëse ka) në strukturën ligjore të grupit apo ndryshime të tjera në funksionet e ushtruara, asetet e përdorura dhe rreziqet e marra.

Please describe changes (if any) to the legal structures of the group or other changes regarding functions exercised, assets used or risks assumed.

11. Ju lutem, listoni transaksionet e kontrolluara që lidhen me blerjen ose tjetërsimin e aktiveve kapitale (të trupëzuara ose të pa trupëzuara) / *Please, list the controlled transactions related to acquisition or alienation of capital assets (tangible or intangible).*

Transaksionet kapitale / *Capital Transactions*

Të dhëna identifikuese të personit jo rezident (Emri)	Të lidhura (Associated)		Rezidenca tatimore (Tax Residence)	Të ardhura nga tjetërsimi (Proceeds from alienation)	Çmimi i blerjes (Purchase price)
	Po (Yes)	Jo (No)			
Identification information on non-resident associated parties (Name)					

12. A keni ofruar mallra apo shërbime tek palët e lidhura pa pagesë ose pa shpërblim?
(Did you provide any goods or services to associated parties for non monetary or no consideration)?

Po (Yes) Jo (No)

13. A keni marrë mallra apo shërbime nga palët e lidhura pa pagesë ose pa shpërblim?
(Did you receive any goods or services to associated parties for non monetary or no consideration)?

Po (Yes) Jo (No)

Pjesa e III: Të përgjithshme
(Part III) General

14. Kodet e transaksioneve / Transactions codes.

Lloji i transaksionit/ Type of transaction	Kodi i transaksionit/ Transaction Code
Aktive materiale / Tangible goods	A
Lëndë të para / Raw materials	A1
Mallra të përfunduara / Finished goods	A2
Pagesa të tjera për aktive materiale / Other payments for tangible goods	A3
Aktive jo-materiale / Intangible	B
Honorare/ Royalties	B1
Qera (të ndryshme nga honoraret) / Rent (Other than royalty)	B2
Pagesa të tjera për aktive jomateriale / Other payments for intangible	B3
Shërbimet / Services	C
Shërbime Menaxhimi / Management	C1

Shërbime Administrimi / <i>Administration</i>	C2
Shërbime Teknike / <i>Technical</i>	C3
Shërbime Marketingu/ <i>Marketing</i>	C4
Kërkim dhe zhvillim/ <i>Research and development</i>	C5
Trajnime / <i>Trainings</i>	C6
Komisione / <i>Commissions</i>	C7
Shërbime të tjera / <i>Other services</i>	C8
Shërbime financiare dhe sigurimi / <i>Financial and insurance</i>	D
Interesa / <i>Interest</i>	D1
Zbritjet / <i>Discounts</i>	D2
Siguracione / <i>Insurance</i>	D3
Pagesa garancie / <i>Guarantee fees</i>	D4
Të tjera shërbime financiare/ <i>Other financial services</i>	D5
Çdo e ardhur ose shpenzim tjetër / <i>Any other income or expense</i>	E
Alokim shpenzimesh / <i>Recharge of expenses</i>	E1

15. Shkurtime:

Abbreviations:

Metoda e çmimit të krahasueshëm të pakontrolluar (CUP) / *Comparable Uncontrolled Price (CUP) Method*

Metoda e Çmimit të Rishitjes (RP) / *Resale Price (RP) Method*

Metoda Kosto Plus (CP) / *Cost Plus (CP) Method*

Metoda e marzhit neto Transaksional (TNMM) / *Transactional Net Margin Method (TNMM)*

Metoda e ndarjes se fitimit (SPM) / *Profit split method (SPM)*

Metoda të tjera (OM) / *Other Methods (OM)*

16. Çertifikim mbi saktësinë

Certification on the accuracy

Unë vërtetoj se informacioni i dhënë në këtë deklaram dhe në çdo dokumentacion që i bashkëngjitet atij është i njohur nga ana ime, është përgatitur në mirëbesim, bazuar në informacionin dhe evidence më të mire të disponuar .

I certify that the information given in this form and in any documents attached is prepared in good faith, based on the best information and evidence possessed.

Emri dhe Mbiemri i Administratorit/Drejtorit _____
Name and surname of Administrator/Director

Nënshkrimi
Signature _____