APPENDIX A
Member States' specific legislation on Cost Contribution Arrangements

(as on 1st July 2011)

AUSTRIA

See Annex.

CYPRUS

S33 ITL 2002: Arms' Length Principles

English version

S33.(1) Where –

(a) a business in the Republic participates directly or indirectly in the management, control or capital of a business of another person; or

(b) the same persons participate directly or indirectly in the management, control or capital of two or more businesses

and in either case conditions are made or imposed between the two businesses in their commercial or financial relations which differ from those which would be made between independent businesses, then any profits which would, but for those conditions, have accrued to one of the businesses, but, by reason of those conditions, have not so accrued, may be included in the profits of that business and taxed accordingly.

(2) The provisions of sub-section(1) apply also in connection with any transactions between connected persons.

(3) For the purposes of this section:

(a) An individual is connected with another individual if the first individual is the spouse or relative of the second individual, or the spouse of a relative of the second individual, or relative of the husband or wife of the second individual;
(b) a person is connected with any person with whom he is in partnership, and with the husband or wife or relative of any individual with whom he is in partnership;
(c) a company is connected with another company –
(i) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or
(ii) if a group of two or more persons has control of each company, and the groups either consist of the same persons, or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected;
(d) a company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it;
(e) any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(4) In this section –

"control", in relation to a company, means the power of a person to secure –

(i) by means of the holding of shares or the possession of voting power in or with relation to that or any other company, or

(ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other company,

that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person, and, <<control>>, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one half of the income of the partnership;

(c) <<relative>> means spouse and individual up to the third degree of kindred whether married or unmarried.

ESTONIA

Seotud isikute vahel tehtud tehingute väärtuse määramise meetodid Rahandusministri 10. novembri 2006. a määrus nr 53

Estonian version

§ 17. Kulude jagamise kokkulepe

(1) Kulude jagamise kokkulepe (edaspidi kokkulepe) on seotud isikute vahel sõlmitud leping, millega jagatakse kokkuleppeosaliste vahel kulud ja riskid varade, teenuste või õiguste (edaspidi kokkuleppe ese) arendamisel, loomisel või omandamisel ning määratletakse poolte õigused kokkuleppe eseme suhtes.

(2) Kokkuleppeosalisel on õigus kasutada oma osa kokkuleppe esemes selle kasutamise eest teistele kokkuleppeosalistele tasu maksmata.

(3) Kokkuleppetingimuste analüüsimisel tuvastatakse, kas kõigil kokkuleppeosalistel on õigus kokkuleppe esemest tulu saada, määratakse kindlaks iga kokkuleppeosalise panus kokkuleppe esemesse ning tuvastatakse, kas kokkuleppe osalise panus on vastavuses tema osaga prognoositavast või teenitud tulust.

(4) Maksumaksjat ei käsitata kokkuleppeosalisena, kui ei ole mõistlikku põhjust eeldada, et ta kokkuleppe esemest tulu saab.

(5) Panuse vastavuse määramisel määratakse kindlaks kokkuleppe esemest saadav prognoositav tulu. Kui kokkuleppe tegelik tulu erineb oluliselt prognoositud tulust, võrreldakse kokkuleppe sõlmimisel tehtud prognoose prognoosidega, mida oleksid sarnaste tingimustega kokkuleppe sõlmimisel teinud mitteseotud isikud.

(6) Panuseid käsitatakse sarnaselt kuludega, mida maksumaksja oleks teinud lepingu puudumisel kokkuleppe eseme soetamiseks. Panust ei käsitata litsentsitasuna ega rendi- või üüritasuna kokkuleppe eseme kasutamise eest, välja arvatud juhul, kui panus annab panuse tegijale ainult õiguse kokkuleppe eset kasutada, ilma õiguseta kokkuleppe esemest tulu saada.

(7) Kokkuleppe sõlmimisel määratakse kindlaks ja dokumenteeritakse:

1) kokkuleppes osalejad;
2) kokkuleppesse kaasatud maksumaksjaga seotud isikud;
3) kokkuleppe ese;
4) kokkuleppe kestvus;
5) kokkuleppeosaliste osa eeldatavas tulemis ning eeldused ja põhimõtted, millest lähtuti selle osa kindlaksmääramiseks;
6) kokkuleppeosaliste ja nendega seotud isikute vaheline õiguste ja kohustuste jaotus;
7) kokkuleppeosalise panuse vorm ja väärtus ning põhimõtted, millest lähtuti panuse suuruse määramisel koos panuse hindamisel kasutatavate raamatupidamisreeglite kirjeldusega;
8) kokkuleppega liitumise, kokkuleppest väljaastumise ning kokkuleppe lõpetamise menetluse ja tagajärgede kirjeldus;
9) reeglid panuste tasakaalustamiseks ja kokkuleppe tingimuste muutmiseks tulenevalt väliskeskkonna muutustest.

(8) Nõutavate dokumentide hulk ja detailsus peab vastama konkreetse tehingu asjaoludele ja tehingu hinnale ning need peavad olema piisavad tõendamaks kokkuleppe vastavust turuväärtusele.

(9) Panus vastab turuväärtusele, kui mitteseotud isikud oleksid sarnastel tingimustel sõlmitud kokkuleppesse teinud samaväärse panuse. Kui kokkuleppeosalise panus ei ole vastavuses teenitud või prognoositud tuluga, on maksuhalduril õigus panuse suurust vastavalt korrigeerida.

(10) Kulude jagamise kokkulepet on võimalik laiendada ka eelnevalt kokkuleppeosalise omandis olevale varale.

(11) Kui kokkulepet ei täideta, võib maksuhaldur jätta kokkuleppe arvestamata või lähtuda sellisest kokkuleppest, mille sarnastel tingimustel oleksid sõlminud mitteseotud isikud.

(12) Kokkuleppe täitmise ajal dokumenteeritakse kokkuleppes tehtud muudatused ning võrreldakse kokkuleppe tulususe osas tehtud esialgseid prognoose tegelike tulemustega. Majandusaasta lõpus dokumenteeritakse majandusaasta jooksul tehtud panuste vorm ja väärtus.

Source: **https://www.riigiteataja.ee/ert/act.jsp?id=12752116**

English version (unofficial translation)

§ 17. Expenses distribution agreement

(1) An expenses distribution agreement (hereinafter agreement) shall mean a contract signed between associated persons, regulating the distributing of the expenses and risks related to development, creation or acquisition of property, services or rights (hereinafter agreement object) between the agreement parties and stating the rights of the parties regarding the agreement object.

(2) An agreement party shall have the right to use the part of the agreement object belonging to the agreement party, without paying to other agreement parties for such use.

(3) Analysis of the agreement conditions shall identify whether all agreement parties are entitled to benefits from the agreement object, shall determine the contribution of each agreement party to the agreement object, and shall identify whether the contribution of the agreement party is in proportion to the share of the agreement party in the expected or earned revenue.

(4) The taxpayer shall not be considered an agreement party if there is no reasonable basis for an assumption that the taxpayer receives any benefit from the agreement object.

(5) The estimated revenue from the object shall be determined upon verifying the proportionality of the contribution. If the actual revenue of the agreement is significantly different from the estimated revenue, the estimates made upon signing the agreement shall be compared to the estimates which non-associated persons would have made upon signing an agreement under similar conditions.

(6) Contributions shall be accounted similarly to expenses that the taxpayer would have incurred for acquiring the agreement object without the contract. A contribution shall not be

accounted as a license fee or a rental or lease fee for use of the agreement object, except if the contribution grants the contributor only the right to use the agreement object, without the right to receive revenue from the agreement object.

(7) Upon signing the agreement, the following information shall be determined and documented:
1) agreement parties;
2) taxpayer's associated persons involved in the agreement;
3) agreement object;
4) agreement duration;
5) shares of agreement parties in the estimated results, and the assumptions and principles used for determining such shares;
6) distribution of rights and obligations of agreement parties and their associated persons;
7) form and value of the contribution of an agreement party and the principles used for determining such value, together with description of the accounting rules followed upon evaluating the contribution;
8) description of the procedure and consequences of joining, withdrawing from and ending the agreement;
9) rules for balancing the contributions and for amending the conditions of the agreement according to changes of the external environment.
(8) The amount and level of detail of the required documents must conform to the circumstances of the specific transaction and to the transaction price and must be sufficient to prove the conformity of the agreement to the market value.
(9) A contribution shall be considered to conform to the market value if non-associated persons would have made an equivalent contribution to an agreement signed under similar conditions. If the contribution of an agreement party does not conform to the earned or estimated revenue, the tax administrator shall have the right to correct the contribution amount accordingly.
(10) The expense distribution agreement may also be extended to property owned by an agreement party before that.
(11) If the agreement is not followed, then the tax administrator may refrain from taking into account the agreement or may take into account such an agreement which would have been signed by non-associated persons under similar conditions.
(12) During the validity of the agreement, the amendments made to the agreement shall be documented and the initial estimates of the revenue from the agreement shall be compared to the actual results. In the end of a financial year, the form and value of the contributions made during the financial year shall be documented.

GERMANY

§ 3 par. 2, § 4 no. 2 letter a and § 5 no. 2 of the decree-law on transfer pricing documentation of 13 November 2003 (Gewinnabgrenzungsaufzeichnungsverordnung)

German version

§ 3 Zeitnahe Erstellung von Aufzeichnungen bei außergewöhnlichen Geschäftsvorfällen

2) Als außergewöhnliche Geschäftsvorfälle sind insbesondere anzusehen der Abschluss und die Änderung langfristiger Verträge, die sich erheblich auf die Höhe der Einkünfte des Steuerpflichtigen aus seinen Geschäftsbeziehungen auswirken, Vermögensübertragungen im Zuge von Umstrukturierungsmaßnahmen, die Übertragung und Überlassung von Wirtschaftsgütern und Vorteilen im Zusammenhang mit wesentlichen Funktions- und Risikoänderungen im Unternehmen, Geschäftsvorfälle im Zusammenhang mit einer für die Verrechnungspreisbildung erheblichen Änderung der Geschäftsstrategie sowie der Abschluss von Umlageverträgen.

§ 4 Allgemein erforderliche Aufzeichnungen

2. Geschäftsbeziehungen zu nahe stehenden Personen:
a) Darstellung der Geschäftsbeziehungen mit nahe stehenden Personen, Übersicht über Art und Umfang dieser Geschäftsbeziehungen (zum Beispiel Wareneinkauf, Dienstleistung, Darlehensverhältnisse und andere Nutzungsüberlassungen, Umlagen) und Übersicht über die den Geschäftsbeziehungen zu Grunde liegenden Verträge und ihre Veränderung,

§ 5 Erforderliche Aufzeichnungen in besonderen Fällen

Soweit besondere Umstände der in Satz 2 genannten Art für die vom Steuerpflichtigen vereinbarten Geschäftsbeziehungen von Bedeutung sind oder er sich im Hinblick auf von ihm vereinbarte Geschäftsbedingungen zur Begründung der Fremdüblichkeit auf besondere Umstände beruft, sind Aufzeichnungen über diese Umstände nach Maßgabe der §§ 1 bis 3 zu erstellen. Dazu können nach den Verhältnissen des Einzelfalles folgende Aufzeichnungen gehören:

2. bei Umlagen die Verträge, gegebenenfalls in Verbindung mit Anhängen, Anlagen und Zusatzvereinbarungen, Unterlagen über die Anwendung des Aufteilungsschlüssels und über den erwarteten Nutzen für alle Beteiligten sowie mindestens Unterlagen über Art und Umfang der Rechnungskontrolle, über die Anpassung an veränderte Verhältnisse, über die Zugriffsberechtigung auf die Unterlagen des leistungserbringenden Unternehmens, über die Zuordnung von Nutzungsrechten;

Source: **http://www.gesetze-im-internet.de/gaufzv/BJNR229600003.html**.

THE NETHERLANDS

Decision of 21 August 2004, No. IFZ2004/680M

English version (unofficial translation)

"...4. Cost Contribution Arrangement (CCA)

Section 7 of the Transfer Pricing Decision has given cause for discussions on whether this section is in accordance with Chapter 8 of the OECD Guidelines (CCAs). In order to prevent the possibility of a lack of clarity and of misunderstandings, Section 7 of the Transfer Pricing Decision is hereby revoked. Instead, guidance should be sought with respect to CCAs in the arm's length principle as elaborated in the OECD Guidelines and in particular Chapter 8 of the OECD Guidelines. The arm's length principle entails that the consideration must be in relation to the functions performed (taking into account the risk borne and the assets used). This means that the amount of the consideration for participants in a CCA may not (in essence) be different from the consideration that the enterprises in question would receive if they were to cooperate in a non-CCA framework, with the exception of the possible synergetic advantages that they achieve through their CCA cooperation.

Chapter 8 of the OECD Guidelines prescribes that the proportionate share of each participant in the overall contributions to a CCA must be consistent with the proportionate share of the overall expected benefits. In practice, whether this is the case has to be determined on a case-by-case basis. In the Netherlands view, the arm's length principle entails that both the proportionate share of each participant in the overall contributions to a CCA and the proportionate share of that participant in the overall expected benefits are determined on the basis of the market value. Nevertheless, if it can be shown that the average proportionate added value of the individual contributions that the various participants make to the CCA is about the same, it is consistent with the arm's length principle to use the cost price of the contributions as starting point in determining whether each participant's share in the overall expected benefits is in accordance with each participant's share in the contributions. On this point, see example 16 below. If the interested parties choose to allocate the expected benefits on the basis of the cost price of the contribution, this will have to be substantiated, in order to show that the average proportionate added value of the participants' contributions is the same.

The final paragraph of section 7 of the Transfer Pricing Decision dealt with the situation in which some countries do not accept the charging of a profit mark-up, although they do accept the charging of remuneration for the capital used for those activities. Both methods can lead to the same result. Although section 7 of the Transfer Pricing Decision has been revoked, it is acceptable for Netherlands tax purposes to choose a method based on the acceptability for certain countries of the amounts charged, provided the result is in accordance with the OECD Guidelines.

Below a number of examples of CCAs with respect to R&D activities are given to illustrate the above premises[1].

[1] For simplicity's sake, no account is taken in the examples of the differences in timing of the contributions of each participant. In a business relationship, when determining the valuation, account would be taken of such differences, to the extent relevant for the value of the contribution. This means that in practice attention has to be paid to this aspect in the determination of an arm's length price where a CCA is agreed between associated parties.

Examples

1. The headquarters of group member A is located in continent A and the headquarters of group member B is located in continent B. Both are involved in the production and sale of group member products. Both have an R&D centre. The MNE group decides to do research on the development of a new product. The market outlook for the product is good, but major research has to be conducted before the product is ready to be produced and sold. The product has market potential in continent A and in continent B.

   Group members A and B agree to conclude a cost contribution arrangement on carrying out the necessary research. A provides research capacity and the initial development results and B provides knowledge, know how and researchers. A and B agree on a number of points in time at which group members A and B will make decisions together on the next phase of the project. The ratio of the market value of A's contribution to that of B is 1:1. The overall expected value of the product development is the same in continent A as in continent B. A and B agree that each of the participants will bear the costs of its own contribution. In addition, group member A will be both legal and economic owner of the product development with regard to continent A, and group member B will be legal and economic owner of the product development with regard to continent B. The strategic planning of the project and the management (including control and decision-making with regard to the project) will take place on the basis of equality.

   Conclusion: The cost contribution arrangement leads to an arm's length result. Both A and B can be considered to be participants in the CCA because in exchange for their contribution both participants receive an interest in the rights that are developed, an interest, moreover, that they can exploit (see sub-section 8.10 of the OECD Guidelines). Finally, the proportionate share of both participants in the contributions is equal to the proportionate share of the expected overall benefits (in other words, in the rights to be assigned to the participants).

2. Group member A is involved in the development, production and sales of consumer goods in continent A. Group member A has conducted the initial research on the feasibility of developing a new product. Its conclusion is that the product can probably be developed successfully. The market prospects for the product are good. The product is also very suitable for the markets in continents B and C. Group members B and C are involved in developing, producing and marketing similar products for markets in continent B and C.

   Group members A, B and C decide to conclude a cost contribution arrangement in order to carry out the research needed to develop the new product. In order to ensure that the development of the product is successful, the following is agreed:
   - *all parties will make an equal contribution*: setting up a research programme and making decisions during the phases identified in the research programme to be used to check the progress of the project (strategic project planning and management (including control and decision-making)).
   - *contribution by A*: Results of the initial research. Costs for the development: € 1 million. Market value of the research results: € 2 million.

- *contribution by B*: capacity for development activities (personnel and fixed assets). The estimated costs with respect to the development capacity are € 1.8 million. If such development capacity were to be hired from third parties on the basis of contract research, it would cost € 2 million (= market value).
- *contribution by C*: liquid resources in the amount of € 2 million for anticipated additional expenditure (purchase of materials from third parties and hiring of third parties).

The participants agree that each of the participants will bear the costs of its own contribution. The expected overall benefit from the product development in continent A, B and C is expected to be the same so that the value of the rights arising is expected to be the same for each of the continents. The group members agree that A, B and C will become legal and economic owners of the product development with regard to continents A, B and C, respectively.

Conclusion: the cost contribution arrangement leads to an arm's length result. A, B and C can all be considered to be participants in the CCA because in exchange for their contributions the participants receive an interest in the rights that are developed, rights, moreover, that they can exploit (see sub-section 8.10 of the OECD Guidelines). Finally, the proportionate share of the participants in the contributions is in accordance with the proportionate share in the expected overall benefit (in other words, the rights the participants are assigned).

3. Group member A, group member B and group member C are involved in the production and sales of similar consumer goods in continent A, continent B and continent C, respectively. Group member A has an R&D centre. Group members B and C employ a number of product specialists who are also knowledgeable about product development, but they do not have their own R&D centre. Group member A has done the initial research on the development of a new product. The market prospects for the product on continent B and C are good, but major research needs to be done before the product is ready to be produced and sold. The expected overall value of the product development is the same in continent B and in continent C. The product does not seem to be interesting in continent A.

   Group members A, B and C decide to conclude a cost contribution arrangement containing the following conditions:
   - Together, B and C set up a development programme with each contributing equally to the (further) development of the product. In addition, they make the same amount of capacity available with regard to the management of the project (strategic planning and management (including control and decision-making) of the project).
   - *Contribution by A:* Results of the initial research. Costs incurred for development: € 1 million. Market value of the results of the research: € 2 million.
   - *Contribution by A:* Development capacity (personnel and capital): The R&D department of A makes a plan for the project and submits it to B and C. The R&D department of A then starts work on the research. In doing so, the R&D department of A regularly reports to B and C on its progress. The costs that are expected to be incurred for this development capacity are € 1.8 million. Market value of the development capacity if the work were done for a client: € 2 million.

- *Contributions by B and C:* each makes a payment to A in the amount of € 2 million as the fee for A's contribution. In addition, each bears the burden of half of the additional expenditure paid to third parties (purchase of materials, hiring of third parties) in the amount of € 2 million.
- Each of the participants bears the costs of its own contribution.
- B and C are assigned legal and economic ownership of the product development for continent B and continent C, respectively.

Conclusion: A is not a participant in the cost-contribution arrangement because A itself does not benefit from the product development (see sub-section 8.10 of the OECD Guidelines). A actually sells the initial product development result to B and C in combination with the conducting of contract research activities for B and C. B and C may, however, be considered participants in the CCA because in exchange for their contribution (money and management) they are assigned an interest in the rights that are to be developed, rights that they, moreover, can independently exploit (see sub-section 8.10 of the OECD Guidelines). A makes development capacity and the initial product development available having a total market value of € 4 million and receives as consideration an amount of € 4 million in cash. A consideration like this one is at arm's length. The contribution of both participants in the CCA (B and C) and the expected benefit (the rights they are assigned) are balanced. Although for A the contract cannot be considered to be a CCA, the consideration under the contract can be considered as being at arm's length for all the participants.

4. Group member A is involved in the development, production and sale of consumer goods.
Group member B employs 2 people who have an administrative and financial background. Group member A has done the initial research on the development of a new product. The market prospects are good in continent A and continent B, but extra research has to be done before the product is ready for production and sales. The expected overall value of the product development is the same for continents A and B. Group members A and B decide to conclude a cost contribution agreement under the following conditions:
   - *contribution by A:* initial development results and development capacity. Total costs involved: € 5 million. Total market value: € 10 million.
   - B pays A € 5 million and 50% of the costs if these exceed the estimated costs of € 5 million.
   - A and B become economic owners of the product development for continent A and continent B, respectively.
   - A becomes the legal owner.

   In addition to the terms under the contract, A is to manage the project (including control and decision-making).

   Conclusion: A's functions include the entire R&D activity (from making a decision as to which research will be done to the actual execution of the research itself). Moreover, A manages the R&D activity totally independently. The contractual terms provide that the risk connected to this R&D activity is 50% at the expense of B (B pays € 5 million and 50% of the costs if these exceed the estimated costs and it becomes economic owner of the rights developed). B does not, however, have the

necessary functional expertise to manage the risk that it bears in connection with the R&D activity. In actuality, the entire risk is managed by A, so that the whole risk thus has to be attributed to A.

The consideration A receives has to be in line with the functions A exercises and the risk involved in these functions. Because of the fee agreed under the contract with B, A – wrongly – is paid only for its development activities to the extent they do *not* involve management and the risk that management entails. The conditions in the contract between A and B are therefore not at arm's length.

5. Group member A and group member B are involved in the development, production and sale of similar consumer goods in continent A and continent B, respectively. A and B decide to develop a new product together. Their development departments are comparable, in other words the quality level (know how and experience) and the cost structure are comparable. The costs connected to the contributions during the entire development trajectory are in a ratio of 1:1. The expected benefit from the product development in continent A and continent B is also 1:1. A and B decide to enter into a cost contribution arrangement under the following conditions:
   - together, A and B set up a research programme with each contributing equally to the (further) development of the product. In addition, they make the same amount of capacity available with regard to the management of the project (strategic project planning and management (including control and decision-making)).
   - the participants each bear the costs of their own contribution.
   - A and B are assigned legal and economic ownership of the product development on continent A and continent B, respectively.

   Conclusion: A and B can be considered participants in the CCA because in exchange for their contribution they receive an interest in the rights developed, rights that they can, moreover, exploit (see sub-section 8.10 of the OECD Guidelines). The participants have further substantiated the fact that the average proportionate added value of the performance that they are contributing is comparable. In determining the proportion of each share in the expected overall benefit, A and B may use the cost price of these contributions as the point of departure.

   If the average proportionate value added of the performance contributed by A and B were not comparable, for example because A's and B's knowledge and experience are very different, the cost price of the contributions may not be used as the point of departure for the determination of the proportion of the expected overall benefit, but instead the market value of the contributions should be used.

The examples given above are based on an abstract description of actual situations. In practice, it will be difficult to determine the exact market value of the contributions of the participants in a CCA and to determine the exact market value of the benefits arising from the CCA. When looking at whether the proportion of the expected overall benefits from the CCA may be looked at in relation to the costs that are to be attributed to the participants instead of using the market value of these contributions, it will be difficult in practice to determine whether the contributions of both participants have a comparable proportionate added value. When assessing CCAs in particular, the Tax Administration should take into account the fact that transfer pricing is not an exact science. This does not, however, alter the fact the

taxpayers may be expected to substantiate their claim that in comparable circumstances independent parties would conclude a similar agreement.

Transitional measure
Bottlenecks with respect to the application of CCAs have become evident during the Tax Administrations' control of multinational enterprises. This has led to the decision to revoke section 7 of the Transfer Pricing Decision. The tax treatment of R&D is being reviewed during the discussions on the modernization of the corporate tax and it cannot be ruled out at this point that the outcome of these discussion may have repercussions for the use of CCAs. It is expected that the modernization of the corporate tax will be given form by 1 January 2007. As a result, a situation may arise in which an existing CCA will have to be adapted on the basis of the clarifications in this decision and that this may lead to an adaptation of the conditions and/or transfer pricing system applied by an MNE group. If the corporate tax is modernized, the conditions and/or transfer pricing system used by an MNE group might have to be adapted once again.

I therefore consider it to be fair that the tax treatment of CCAs that existed on 30 March 2001 and which have been approved on the basis of the OECD Guidelines and the then valid supplementary regulations on the interpretation of the arm's length principle, or which should have been approved, will be continued until 1 January 2007. By that date the modernization of the corporate tax system will probably be given form. It goes without saying that, in accordance with the general principles of sound administration, a reasonable term will be granted, as from 1 January 2007, in which the MNE group can bring, to the extent necessary, the conditions and/or the transfer pricing system it uses in line with the regulations."

POLAND

Paragraph 23 Ordinance of the Minister of Finance of 10 th September 2009 on the Mode and Procedure of Determining Taxpayers' Income by Estimating Prices in Transactions Effected by These Taxpayers (Dz.U. No.160 of 29 September 2009, Item 1268)

English version

1.Where a taxpayer shares the costs jointly incurred by related entities for the manufacture of intangibles, the level of the cost incurred by the taxpayer may be deemed to have been determined in accordance with the arm's-length principle only where such terms, in light of expected benefits from such sharing, would be approved by unrelated entities.

2.The terms referred to in Clause 1 apply in particular to charging these costs to the entities (in proportion to expected benefits) and, additionally, to allocation of benefits which were not expected (taken into account) on setting these terms (in proportion to the level of considerations).

3. Where a taxpayer has an opportunity to obtain comparable benefits within the agreement referred to in Clause 1, or from an unrelated entity and in either of these cases the taxpayer will incur lower expenses, the lower value shall be taken for the purpose of determining the fair market value of the considerations of this taxpayer.

4. In the cases referred to in Clauses 1-3, the provision of Paragraph 3 Clause 3 shall apply accordingly.

PORTUGAL

Articles 11.º and 16.º of the Decree n.º 1446-C/2001, 21th of December

Portuguese version

Artigo 11.º
Acordos de partilha de custos

1 - Há acordo de partilha de custos quando duas ou mais entidades acordam em repartir entre si os custos e os riscos de produzir, desenvolver ou adquirir quaisquer bens, direitos ou serviços, de acordo com o critério da proporção das vantagens ou benefícios que cada uma das partes espera vir a obter da sua participação no acordo, nomeadamente do direito a utilizar os resultados alcançados em projectos de investigação e desenvolvimento sem o pagamento de qualquer contraprestação adicional.
2 - No acordo de partilha de custos celebrado entre entidades relacionadas, a aplicação do princípio referido no artigo 1.º determina a existência de uma relação de equivalência entre o valor da contribuição imposta a cada uma das partes no acordo e o valor da contribuição que seria imposta ou aceite por uma entidade independente em condições comparáveis.
3 - A quota-parte nas contribuições totais que é da responsabilidade de cada participante deve ser equivalente à quota-parte que lhe for atribuída nas vantagens ou benefícios globais resultantes do acordo, avaliada através de estimativas dos rendimentos adicionais a auferir no futuro ou das economias de custos que se espera obter, podendo, para esse feito, no caso de não ser possível uma avaliação directa e individualizada daquelas contrapartidas, ser utilizada uma chave de repartição apropriada, que tenha em conta a natureza da actividade objecto do acordo e um indicador que reflicta de forma adequada as vantagens ou benefícios esperados, nomeadamente o volume de negócios, os custos como o pessoal, o valor acrescentado ou o capital investido.
4 - Quando a contribuição de um participante para um acordo de partilha de custos não tiver correspondência equivalente na parte que lhe for atribuída nas vantagens ou benefícios esperados, deve haver lugar a uma compensação adequada de modo que seja restabelecido o necessário equilíbro.
5 - Para efeitos da determinação do lucro tributável, as contribuições efectuadas por um participante num acordo de partilha de custos devem ser tratadas de acordo com o regime que seria aplicável às despesas que o sujeito passivo realizaria se desenvolvesse directamente as mesmas actividades, ou se adquirisse, numa operação não vinculada comparável, bens, direitos ou serviços idênticos aos que são utilizados no âmbito do acordo.
6 - Os custos globais, que, nos termos do acordo, sejam objecto de partilha pelos participantes, são calculados líquidos de subsídios ou de outras contrapartidas recebidas que tenham o mesmo efeito destes, não sendo aceite qualquer majoração desses custos por aplicação de margens de lucro.
7 - No caso de acordos de aquisição conjunta de bens, direitos ou serviços, o débito do custo de aquisição destes deve ser acrescido de margem adequada aos custos de estrutura da entidade adquirente.

Artigo 16.º
Documentação relativa a acordos de partilha de custos e de prestação de serviços intragrupo

1 - A documentação relativa a acordos de partilha de custos deve conter, entre outros, os seguintes elementos informativos:

a) Identificação dos participantes e de outras entidades relacionadas que participarão na actividade objecto do acordo ou que poderão vir a explorar ou utilizar os resultados daquela actividade;
b) Natureza e tipo de actividades desenvolvidas no âmbito do acordo;
c) Identificação e bases de avaliação da quota-parte de cada participante nas vantagens ou benefícios esperados;
d) Processo de prestação de contas e métodos utilizados para repartição dos custos, incluindo os cálculos a efectuar para determinar a contribuição de cada participante;
e) Pressupostos assumidos nas projecções dos benefícios esperados, periodicidade de revisão das estimativas e previsão de ajustamentos resultantes de alterações no funcionamento do acordo ou de outros factos;
f) Descrição do método utilizado para efectuar ajustamentos nas contribuições dos participantes motivadas por alterações nos pressupostos que serviram de bases ao acordo ou por modificações substanciais nele introduzidas posteriormente;
g) Duração prevista para o acordo;
h) Afectação antecipada de responsabilidades e tarefas associadas à actividade do acordo entre os participantes e outras empresas;
i) Procedimentos de adesão e exclusão de um participante do âmbito do acordo, bem como os procedimentos destinados a pôr-lhe termo e, em qualquer dos casos, as respectivas consequências;
j) Disposições sobre pagamentos compensatórios.

Source: **http://info.portaldasfinancas.gov.pt/NR/rdonlyres/9C6AD1C6-5AD0-479D-A820-10426B2E0C8A/0/portaria_1446-c-2001_de_21_de_dezembro_i_serie_b.pdf**

English version:

Article 11 has the following content:

1 - A cost sharing arrangement (CCA) is recognized when two or more entities agree to share the costs and risks of producing, developing or obtaining assets, rights or services, in proportion to the advantages or benefits that each participant expects to obtain from its participation in the CCA specifically the right to exploit its interests in the outcome of the research and development projects without paying any additional contribution.
2 – In a CCA between associated enterprises, the application of the principal referred in no 1 above requires the value of the contribution required of each of the participants in the agreement to be equal to the amount of the contribution that would be required of or accepted by an independent entity under comparable conditions.
3 – The proportionate share of the overall contributions for which each participant is liable should be consistent with the participant's proportionate share of the overall benefits to be received under the arrangement, as assessed from estimates of additional income to accrue in future or expected costs savings. If a direct or individual assessment of these considerations is not possible, an appropriate allocation key can be applied, taking into account the nature of the activity and the relationship with the expected benefits, labour costs or the value of the capital invested.
4 – When the contribution of one participant to a CCA does not correspond to his share of the expected benefits, there should be a balancing payment so that equality between contributions and benefits is restored.

5 – The contributions made by a participant to a CCA should be treated for tax purposes as the expenses would be that the taxpayer would incur if he either carry out the same activities directly or if, in comparable uncontrolled transaction, goods, rights or services similar to those used within the context of CCA were obtained.
6 – The overall costs, which, under the terms of the CCA, are to be shared by the participants, must be calculated net of subsidies or other considerations with similar effect and no mark-up is to be accepted.
7 – In case of arrangements for the joint purchase of goods, rights or services, an appropriate proportion of the purchaser's overhead costs must be added to the overall costs to be shared between the participants.

Article 16. The documentation on CCA must contain the following:
a) Description of the participants and other associated companies that will be involved in the activity cover by the
agreement or that are expected to benefit from or use the results of that activity.
b) The nature and type of activities carry out within the scope of agreement.
c) Description and basis of the manner to determine each participant's proportionate share in the expected advantages or benefits.
d) Accounting procedures and methods applied to allocate costs, including the calculations to be made to determine each participant's contribution.
e) The assumptions behind forecasts of expected benefits, frequency of review of the expected benefits and forecasts of the adjustments arising from changes in the operation of the agreement or in other facts.
f) Description of the method applied to make adjustments to participant's contribution following changes in the assumptions basic to the agreement or substantial changes subsequently introduced.
g) Expected duration of the CCA.
h) Anticipated allocation of responsibilities and tasks associated with the activity between participants and other companies.
i) Procedures for a participant entering or withdrawing from the agreement.
j) Rules about compensating payments.

SLOVENIA

Article 23 of the Rules on Transfer Pricing (RTP)

English version

The agreement on cost division shall be deemed as the agreement between two or more parties who share the costs and risks of research and development, manufacturing or acquiring of assets, services or rights that determine the type and scope of share of an individual participant.

The proportionate share of an individual participant to the entire agreed contribution has to be in accordance with the proportionate share of the participant in expected benefits under the agreement in the manner, in which non-associated enterprises would be prepared to make a contribution under the same or comparable circumstances – with regard to reasonably expected benefits under the agreement. The share of an individual participant in business results (benefits) of the activity under the agreement on cost division has to be determined in the manner in which it applies or would apply under the same or comparable circumstances between non-associated enterprises.

Article 23 of the RTP provides for CCAs without however setting out specific documentation requirements for CCAs.

SPAIN

Article 16.6 of the Tax Corporation Act

Spanish version

La deducción de los gastos derivados de un acuerdo de reparto de costes de bienes o servicios suscrito entre personas o entidades vinculadas, valorados de acuerdo con lo establecido en el apartado 4, estará condicionada al cumplimiento de los siguientes requisitos:

a. Las personas o entidades participantes que suscriban el acuerdo deberán acceder a la propiedad u otro derecho que tenga similares consecuencias económicas sobre los activos o derechos que en su caso sean objeto de adquisición, producción o desarrollo como resultado del acuerdo.
b. La aportación de cada persona o entidad participante deberá tener en cuenta la previsión de utilidades o ventajas que cada uno de ellos espere obtener del acuerdo en atención a criterios de racionalidad.
c. El acuerdo deberá contemplar la variación de sus circunstancias o personas o entidades participantes, estableciendo los pagos compensatorios y ajustes que se estimen necesarios.

El acuerdo suscrito entre personas o entidades vinculadas deberá cumplir los requisitos que reglamentariamente se fijen.

Source: **http://noticias.juridicas.com/base_datos/Fiscal/rdleg4-2004.t4.html#a16**

English version (unofficial translation)

Tax allowance of expenses incurred under a cost contribution arrangement for goods or services entered between related persons or entities and assessed under the provisions of paragraph 4, is contingent to the fulfilment of the following requirements:

a) Persons or entities subscribing the agreement must take ownership or other right deriving similar economic consequences on assets or rights to be acquired, produced or developed, as the case may be, under the agreement.

b) Contributions made by each participant person or entity shall take into account the expected profit or benefit to be derived from the agreement on a reasonable basis.

c) The agreement must provide for variations in circumstances, participant persons or entities, by determining balancing, buy-in and buy-out payments and for any adjustment that may be deemed necessary.

The agreement entered by related persons or entities shall meet any regulatory requirement set out.