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# **EU JOINT TRANSFER PRICING FORUM**

## **Member States' responses to Questionnaire on compensating adjustments/year end adjustments**

**Meeting of 26 October 2011**

**Charlemagne building (CHAR)  
170 rue de la Loi, 1040 Brussels**

Contact:  
Jean-Marc Van Leeuw, Telephone (32-2) 29.58.936  
Julia Topalova, Telephone (32-2) 29.59.311  
E-mail: [taxud-joint-transfer-pricing-forum@ec.europa.eu](mailto:taxud-joint-transfer-pricing-forum@ec.europa.eu)

## Introduction

During the JTPF meeting of 9 June 2011, members agreed the new JTPF work programme which, in relation to compensating/year end adjustments acknowledges the following:

*JTPF members have considered that it would be useful to take stock of the situation prevailing in each MS and prepare an overview. This will be achieved by launching a questionnaire. Based on an analysis of the answers additional work might take place.*

The Secretariat prepared a questionnaire for EU Member States' tax administrations and circulated it for input on 30 June 2011. The questionnaire is in line with document JTPF/015/2010/EN and annex, where additional background information can be found.

The questionnaire on compensating adjustments/year end adjustments is based on paragraphs 4.38 and 4.39 of the OECD Guidelines.

This document contains the full individual responses sent in by the Member States. It also summarizes the key information by highlighting the main areas of consent as well as those where differences feature.

**Responses provided by Member States reflect the situation prevailing on 1 July 2011.**

## SUMMARY OF MEMBER STATES' RESPONSES

Questions	
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>8 MS stated that they do have at least some kind of specific guidance/administrative principles in place, while 19 do not have specific guidance/administrative principles.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>From those 19 MS, 1 MS is planning to introduce respective legislation/guidance.</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>There is no MS stating that compensating/year end adjustments are generally impossible.</p> <p>15 MS - mostly those having already available legal guidance or administrative practice on this issue – generally accept compensating/year end adjustments.</p> <p>However, some MS require further conditions to be met which go beyond those mentioned in Q 3 and Q4 (timing/ranges) for accepting compensating/year end adjustments. Additional prerequisites mentioned were, for instance the need to have the adjustment being reflected in the accounts and the restriction to allow compensating/year end adjustments only in cases when third parties acting with each other would have allowed such an adjustment because of a respective contractual agreement or due to exceptional circumstances.</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>Regarding the issue until which point in time a compensating/year end adjustment would be accepted, all MS that explicitly provided information on their guidance and practice stated that they – taking into account the general limitations mentioned above - would allow a compensating/year end adjustment before closure of the books. The majority of those MS would allow a compensating/year end adjustment also in the tax return, but only a few MS allow them after filing the tax return. However, it has to be mentioned that a correction after closure of</p>

	<p>books in some MS would also depend on whether the adjustments result in lower or higher taxes and on other provisions within their general domestic procedural rules.</p> <p>Regarding the question whether a compensating/year end adjustment depends on a certain situation, most MS having legislation, guidance or administrative practice, regarded a deviation from what is being considered as arm's length as being sufficient, while one MS explicitly applies the inter-quartile range and another MS only allows upward adjustments.</p>
<b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b>	<p>The majority of MS - even those where legislation and/or administrative practice is generally available - do not have specific provisions.</p> <p>MS who did respond on this question generally require a correction of the accounts, what then has to also meet the respective provisions in domestic law.</p>
<b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b>	<p>In the majority of MS where legislation and/or administrative practice is available, the documentation requirements for compensating/year end adjustments conform to the general TP documentation requirements.</p> <p>In MS where specific information/documents are requested, those relate to the specific country requirements for accepting a compensating/year end adjustment. Only one MS normally requests an invoice/credit note to be provided.</p>
<b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b>	<p>The majority of MS does not explicitly oblige taxpayers to make a compensating/year end adjustment.</p> <p>However, some MS consider the performance of compensating/ year-end adjustments as a consequence of the general requirement to conform with the arm's length principle.</p> <p>One MS requires an adjustment in cases where the originally price charged did reduce the tax base.</p>
<b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b>	<p>No MS would deny access to the AC.</p>

<p><b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b></p>	<p>No MS would deny access to the AC.</p>
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	<p>The ratio of Member States allowing or not allowing intentional set-offs is about 50/50.</p> <p>Some MS generally allowing intentional set-offs would, however, do so only if certain additional conditions are met.</p> <p>Several MS indicated their rather limited experience with intentional set offs. In this context one MS suggested not further pursuing this issue due to its limited importance in practice.</p>

## AUSTRIA

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>Compensating adjustments at the end of a year before the tax return is filed in order to reflect an arm's length price in the books of an enterprise are allowed under Austrian current practice, if they would be undertaken between unrelated parties as well.</p> <p>In accordance with the OECD-TPG, the Austrian Transfer Pricing Guidelines 2010 stipulate that when data from years following the year of the transaction are used, care must be taken to avoid the use of hindsight. Ex-post corrections of the profits of an enterprise, for example by adapting the costs, might only be required if the same procedure would have been made between independent enterprises as well.</p> <p>However, in case there is no proper documentation available about the cost finding, a transfer pricing adjustment could be made on the basis of the actually incurred costs. This procedure is justified if the taxpayer could not provide appropriate documentation in due time (see paragraph 33 of the Austrian Transfer Pricing Guidelines 2010,  <a href="https://findok.bmf.gv.at/findok/showDoc.do;jsessionid=B5188A6D25C473332C2D7469B4F0FCB6?sort=Relevanz&amp;bAppDat=1288216800000&amp;timeContext_to=190288306800000&amp;bDokTypBez=Richtlinie&amp;timeContext_from=1288216800000&amp;searchNr=1&amp;sortDesc=true&amp;bPage=1&amp;base=RLSeg&amp;bRequestName=Externer+Link&amp;gid=SDRLSEG-49970.1.10+02.11.2010+14%3A42%3A11%3A28-1&amp;bErw=...&amp;bBehoerde=BMF&amp;bGz=BMF-010221%2F2522-IV%2F4%2F2010&amp;srcName=trip#Heading87">https://findok.bmf.gv.at/findok/showDoc.do;jsessionid=B5188A6D25C473332C2D7469B4F0FCB6?sort=Relevanz&amp;bAppDat=1288216800000&amp;timeContext_to=190288306800000&amp;bDokTypBez=Richtlinie&amp;timeContext_from=1288216800000&amp;searchNr=1&amp;sortDesc=true&amp;bPage=1&amp;base=RLSeg&amp;bRequestName=Externer+Link&amp;gid=SDRLSEG-49970.1.10+02.11.2010+14%3A42%3A11%3A28-1&amp;bErw=...&amp;bBehoerde=BMF&amp;bGz=BMF-010221%2F2522-IV%2F4%2F2010&amp;srcName=trip#Heading87</a>)</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>N/A</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> </ul>	<p>If the conditions are fulfilled, i.e. if an adjustment would also take place between independent parties, it could be effectuated at the point of time when an independent third party would have effectuated it. However, it should be borne in mind that both parties have to adjust their financial accounts and that this might have repercussions on VAT reporting requirements.</p>

<ul style="list-style-type: none"> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	<p>Adjusting prices after filing the tax return does not seem to be supported by factual practices between unrelated parties.</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>Currently, there are no specific provisions in existence in Austria on this question. This means that whatever third parties in an unrelated transaction would have accepted to undertake would be acceptable for the related transaction.</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>Compensating adjustments are usually implemented via a book-to-tax reconciliation (Mehr-Weniger-Rechnung), i.e. at first they are only reflected in the tax balance sheet.</p>
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b></p>	<p>In the first place, it is the onus of the taxpayer to document that compensating adjustments (e.g. an increase in the sales prices or a decrease in the purchase prices after the conclusion of the respective contracts for the transactions) are accepted between unrelated parties. Otherwise no specific documentation requirements exist in connection with compensating adjustments, i.e. the documentation requirements in case of compensating adjustments correlate to those of transfer pricing documentation in general (see paragraph 302 et seq. of the Austrian Transfer Pricing Guidelines).</p>
<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>In general, it could be assumed that unrelated parties do their price setting for a contracted period of time and are consequently not in a position to change prices within a contracted period. Arm's length behaviour requires the same for the pricing of controlled transactions.</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal</b></p>	<p>N/A</p>

with it under the AC provisions?	
<b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b>	Yes.
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	<p>Yes. According to paragraph 318 of the Austrian Transfer Pricing Guidelines 2010, a clear and reciprocal agreement concluded (usually in writing) in advance is required in order to reach acceptance of internal set offs. Such an agreement would not be required only if a clear internal coherence with regard to the activities is evident.</p>



## BELGIUM

Questions	Answers
<b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b>	No
<b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b>	No
<b>3. When do you accept such adjustments to be made?</b> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	N/A
<b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b>	N/A
<b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b>	N/A
<b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-</b>	N/A

company agreement compulsory?	
7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?	N/A
8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?	N/A
9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?	N/A
<p><b>10. Adjustments vs intentional set-offs</b>  The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”  In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.  Are intentional set-offs allowed in your MS and under which circumstances?</p>	N/A

## BULGARIA

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>Corporate Income Tax Act allows for compensating adjustments in case the reported transfer prices for goods, services or rights transferred in a controlled transaction deviate from the prices which would have been established had the transaction taken place at arm's length.</p> <p>The legal base for such adjustments is Art. 15 of the Corporate Income Tax Act. This provision stipulates that where related persons perform their commercial and financial relationships under conditions influencing the amount of the taxable base and these conditions differ from those which would be made between unrelated persons, the taxable base shall be determined and taxed accordingly under those conditions which would have been attained at arm's length.</p> <p>The text of the Corporate Income Tax Act could be found at the official web site of the National Revenue Agency – <a href="http://www.nra.bg/en/page?id=522">http://www.nra.bg/en/page?id=522</a></p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>N/A</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	<p>The compensating adjustments are made in the tax return.</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>Compensating adjustments apply where there is a deviation of the actual transfer prices reported by a taxpayer from the arm's length prices which would have been charged in comparable circumstances.</p>
<p><b>5. How are compensating adjustments</b></p>	<p>Compensating adjustments are not subject to any special characterization for direct tax</p>

<p><b>characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>purposes. The adjustments are in the form of upward or downward corrections in the amount of the accounting profits.</p>
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b></p>	<p>No documentation is requested from the taxpayer at the time of filing of the tax return. Documentation which supports the methodology of establishing the arm's length prices in the specific case may be requested from the taxpayer in the course of a tax examination.</p>
<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>In principle the taxpayers are allowed to make compensating adjustments when there is a deviation of the actual transfer prices reported by a taxpayer from the arm's length prices which would have been charged in comparable circumstances. The Tax Administration does not apply any arm's length test to these compulsory adjustments at the stage of filing of the tax return.</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b></p>	<p>Yes, if the adjustment is sanctioned by the tax administration in a relevant procedure.</p>
<p><b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b></p>	<p>Yes</p>
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and</b></p>	<p>Bulgaria does not apply any specific legal provisions on intentional set-offs. In this case each individual transaction is valued in accordance with its substance and the arm's length principle is applied separately to each transaction.</p>

<b>under which circumstances?</b>	
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## CYPRUS

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>Articles of tax legislation apply for tax purposes only.</p> <p>Therefore companies can reflect a different price for tax purposes than price actually agreed between companies. Of course tax adjustment is made for purpose of increasing tax profits if accounting profits are lower.</p> <p>Relevant article – s.33 of Income Tax Law website <a href="http://www.mof.gov.cy/ird">www.mof.gov.cy/ird</a> (Law in Greek)</p>
<p><b>2. If no, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>N/A</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>On payment of temporary assessment/self-assessment for specific year of assessment and in tax return.</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>When actual prices fall outside the arm's length range and arm's length range would give higher profits.</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>No special characterisation. Considered tax adjustments to net profit shown in Profit and Loss Account</p>

<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b></p>	<p>Documentation that would support arm's length price.</p>
<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>Yes. If actual price gives lower profits than arm's length price and actual price not within arm's length range.</p> <p>Arms length price tested on selection basis</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b></p>	<p>To deal with it prior submission of tax return, I think perhaps it would create unnecessary delay. Problem when there are time limits in domestic legislation.</p>
<p><b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b></p>	<p>Yes</p>
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS</b></p>	<p>Strictly speaking no. Adjustments need to be made.</p>

<b>and under which circumstances?</b>	
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## THE CZECH REPUBLIC

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>No specific legal provisions on compensating adjustments, however domestic legislation does not forbid taxpayers to make these adjustments. At first it is audited, whether the original transaction was realized in accordance with arm's length principle. Mostly we would not accept compensating adjustments at those taxpayers, among which there was not any real transaction realized in the discussed taxable period.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>Guidelines on corresponding adjustments are going to be released soon.</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>It always depends on circumstances of the case, generally before submitting a tax return. After the tax period it could be done only by submitting a supplementary tax return based on new facts documented properly.</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>Falling outside the range of II-III quartile ascertained in the detailed comparable analysis.</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>No specific legal provisions on compensating adjustments.</p>

<b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b>	Submission of any documents and statements proving validity of the compensating/ year-end adjustment (e.g. agreements, functional and comparable analysis made for the original transaction realized between associated enterprises, price calculation, definition of costs etc.).
<b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b>	No.  Arm's length test is not applied solely to the compensating adjustment, however it has to be made at the beginning of the transaction/s realized between associated enterprises, so that arm's length principle is assured.
<b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b>	Taxpayers are not forced to make such adjustments, see answer to question 7 above.
<b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b>	Yes, if the taxpayer applies and submits all relevant documents.
<b>10. Adjustments vs intentional set-offs</b> <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b> <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to</b>	There are no specific legal provisions on intentional set-offs in our jurisdiction. First of all the result from the transactions must be always arm's length and useful for both of the sides. We prefer to examine individual transaction, in more difficult and complex cases it is possible to analyse the transactions altogether, however the transactions need to be prove that they are connected as mentioned in Article A.3.1 of the OECD Guidelines.

**transactions undertaken between them, may implicitly “adjust” the respective results.**

**Are intentional set-offs allowed in your MS and under which circumstances?**

## DENMARK

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>No specific legislation about <b>YEA</b> but there is an internal order (Bekendtgørelse No. 42 of 24<sup>th</sup> January 2006, art. 7, 2). See section 5.4.1 in the Danish Transfer Pricing Documentation Guidelines: <a href="http://www.skat.dk/display.aspx?oId=146730&amp;vId=92251">http://www.skat.dk/display.aspx?oId=146730&amp;vId=92251</a></p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>N/A</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>The adjustments can be made up to the submission of the tax return. Subsequent a formal application must be filed to the tax authorities.</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>According to the Danish legislation inter-company transactions have to comply with the ALP. If not adjustments have to be made.</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in</b></p>	<p>In most cases the classification is without relevant significance. Until now a reclassification has</p>

<p><b>your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>not been an usual practice.</p>
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b></p>	<p>It is compulsory to specify any YEA made in the transfer pricing documentation. It must be evident from the documentation how the YEA was made, to which parties it applies and that the YEA is in accordance with the arms length principle. No written inter-company agreement has to be entered.</p>
<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>According to Danish legislation inter-company transactions have to comply with the ALP and given that not is the case you could say the taxpayers are obliged to make appropriate YEA.</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b></p>	<p>Yes</p>
<p><b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b></p>	<p>Yes</p>
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the</b></p>	<p>Internal set-offs must be specified in the transfer pricing documentation and the arms length price must be demonstrated for each transaction.</p>

**respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.  
Are intentional set-offs allowed in your MS and under which circumstances?**

## ESTONIA

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	No specific legislation concerning compensating/year-end adjustments.
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	No
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	N/A
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	N/A
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	N/A
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-</b></p>	N/A

company agreement compulsory?	
<b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b>	N/A
<b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b>	N/A
<b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b>	N/A
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	N/A



## FINLAND

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>No legislation. Year-end adjustments are allowed in practice based on arm's length principle.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>N/A</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>Year-end adjustments are allowed during the year, before year-end and after year-end but before closing books if the adjustments are also made in financial accounts. Compensating upward adjustments after closing the books are allowed in the tax return if the adjustments are based on arm's length principle=</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>Any arm's length situations.</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>Compensating downward adjustments in the tax return after closing the books are not tax deductible.</p>
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-</b></p>	<p>General documentation requirements apply</p>

company agreement compulsory?	
<b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b>	Year-end adjustments are expected based on arm's length principle.
<b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b>	N/A
<b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b>	Yes
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	Intentional set-offs are allowed if the outcome is arm's length.

## FRANCE

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>Nous ne disposons pas de législation autorisant les ajustements compensatoires. Les ajustements compensatoires de fin d'année sont bien entendu autorisés, à condition qu'ils visent à se conformer au principe de pleine concurrence, et que le prix de transfert déclaré fiscalement, rendu ainsi conforme au principe de pleine concurrence, coïncide avec le prix effectivement pratiqué pour la transaction entre entreprises associées considérée.</p> <p>En revanche les ajustements compensatoires au sens du paragraphe 4.38 des principes OCDE ne sont pas autorisés.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>No</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>N/A</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>N/A</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>N/A</p>
<p><b>6. What kind of documentation/justification do</b></p>	<p>N/A</p>

<p><b>you request from the taxpayer? Is an inter-company agreement compulsory?</b></p>	
<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>N/A</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b></p>	<p>N/A</p>
<p><b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b></p>	<p>N/A</p>
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	<p>La compensation entre un ajustement positif et un ajustement négatif, tous deux dûment justifiés au regard du principe de pleine concurrence, est envisageable s’ils ont une valeur égale. Si l’entité française retire un bénéfice de ses relations intra-groupe qui compose en partie la sous-rémunération identifiée par le service de contrôle, cela peut conduire à diminuer la rectification. Dans ce cas, toutefois, la question méritera d’être posée de savoir si la documentation de prix de transfert remise à l’administration en début de contrôle était pertinente.</p>

## GERMANY

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>Germany does not have domestic legislation allowing compensating/year end adjustments.</p> <p>Under administrative guidelines, adjustments made by the taxpayer after controlled transactions have taken place are acceptable in cases where a predetermined agreement about the controlled transaction is in existence and all relevant factors to determine the price were agreed in advance, thus the adjustment follows from a mere calculation and both parties to the transaction have no influence on the adjustments (e.g. an adjustment of interest payment following a reference interest rate). Adjustments depending on the result (e.g. the net profit) of one of the parties are, however, explicitly excluded.</p> <p>In exceptional cases, adjustments are accepted where the taxpayer can show credibly, based on documentation, that independent parties in comparable cases would accept such adjustments. See points 3.4.12.8 and 3.4.20(e) of the Administrative Principles - Proceedings, Federal Ministry of Finance circular of 12 April 2005, Federal Tax Gazette Part I, page 570, <a href="http://www.bundesfinanzministerium.de/nr_73738/DE/BMF_Startseite/Aktuelles/BMF_Schreiben/Internationales_Steuerrecht/014.html">http://www.bundesfinanzministerium.de/nr_73738/DE/BMF_Startseite/Aktuelles/BMF_Schreiben/Internationales_Steuerrecht/014.html</a></p> <p>In addition Germany accepts (choice of the taxpayer) the (retrospective) use of TNMM, but only in cases when the tested party is an enterprise with routine functions and with limited risk. In principle the comparable data of the audited years have to be used, but those data are normally not available at the time when the tax return is filed. The following answers do not cover these cases.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>N/A</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> </ul>	<p>Adjustments permitted by the administrative guidelines (see answer to question 1 above) would be accepted:</p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> </ul>

<ul style="list-style-type: none"> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	<ul style="list-style-type: none"> <li>• After year-end but before closing books</li> </ul> <p>Note, however, adjustments depending on the result (e.g. the net profit) of one of the parties are explicitly excluded (but see answer to question 1, last paragraph).</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>See answer to question 1 above.</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>For accepted adjustments see answer to question 1.</p> <p>The Administrative Principles - Proceedings (see reference in answer to question 1 above) prescribe that, if a taxpayer makes adjustments for transactions of the past which are intended to adjust the result of the taxpayer to the net results of comparable enterprises, such adjustments are not respected for tax purposes (point 3.4.20(e) of the circular).</p> <p>However, during mutual agreement procedure, the German competent authority is prepared to deal with a compensating/year-end adjustment if the result can be regarded as being arm's length.</p>
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b></p>	<p>To the extent adjustments are accepted, a prior inter-company agreement is generally compulsory under German domestic law. Documentation will depend on the type of adjustment. Note, however, that adjustments depending on the result (e.g. the net profit) of one of the parties are explicitly excluded under the administrative guidelines. See answer to question 1 above.</p>
<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>No, the taxpayer is generally not obliged to make compensating/year end adjustments. On the contrary, adjustments depending on the result (e.g. the net profit) of one of the parties are explicitly excluded under the administrative guidelines. An obligation to make adjustments would only exist in cases mentioned in the answer to question 1 (e.g. a contract following a reference interest rate).</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal</b></p>	<p>Yes</p>

with it under the AC provisions?	
<b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b>	Yes
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	<p>Under German domestic law, intentional set-offs would require a prior inter-company agreement, and would of course overall need to be arm’s length.</p> <p>At this point, it does not appear useful to enter into a more detailed discussion of intentional set-offs in the context of a discussion of compensating/year-end adjustments. The German Federal Ministry of Finance is not aware of cases where compensating/year-end adjustments were undertaken by way of intentional set-offs.</p>

## GREECE

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>A company is allowed to make compensating adjustments related to its expenses according to those defined in article 31 of the Income Tax Code.</p> <p>Moreover, according to the circular letter 1159, (Governmental Gazette 1657 B') issued on 26-07-2011, compensating adjustments of expenses are also allowed for associated enterprises.</p> <p>It is noticed that the tax return should reflect the actual transactions as recorded in the books and accounts.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	<p>With the submission of annual tax return</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>NA</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>NA</p>



<b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b>	NA
<b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b>	NA
<b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b>	NA
<b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b>	Yes, depending on the actual facts
<b>10. Adjustments vs intentional set-offs</b> The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.” In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective	NA

<b>results.</b> <b>Are intentional set-offs allowed in your MS and under which circumstances?</b>	
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## HUNGARY

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	No legislation or guidelines.
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	N/A
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	N/A
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	N/A
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	N/A
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-</b></p>	N/A

company agreement compulsory?	
7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?	N/A
8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?	N/A
9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?	N/A
<p><b>10. Adjustments vs intentional set-offs</b>  The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”  In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.  Are intentional set-offs allowed in your MS and under which circumstances?</p>	N/A

## IRELAND

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>We have no specific legislation or guidelines. Our general transfer pricing legislation is based on the OECD Transfer Pricing Guidelines.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>Neither is being considered.</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>N/A</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>N/A</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>N/A</p>
<p><b>6. What kind of documentation/justification do</b></p>	<p>N/A</p>

<p><b>you request from the taxpayer? Is an inter-company agreement compulsory?</b></p>	
<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>N/A</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b></p>	<p>N/A</p>
<p><b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b></p>	<p>N/A</p>
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	<p>N/A</p>

## ITALY

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	No
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	No
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	N/A
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	N/A
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	N/A
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-</b></p>	N/A

company agreement compulsory?	
7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?	N/A
8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?	N/A
9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?	N/A
<p><b>10. Adjustments vs intentional set-offs</b>  The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”  In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.  Are intentional set-offs allowed in your MS and under which circumstances?</p>	N/A



## LATVIA

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>The taxpayer's right of adjustment is laid down in Paragraph 2, 5 and 6 of Section 12 of law "On Enterprise Income Tax". Adjustments are allowed in line 30 of Enterprise Income Tax Declaration for the taxation period; the taxable income can be increased by the sum of difference caused by the transaction original price deviation from the market price. The provision allowing the income tax reductions on the basis of transactions with related parties entered into force in 2011 and its application is to be started when the 2011 fiscal year ends.</p> <p><a href="http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Enterprise_Income_Tax.doc">http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Enterprise_Income_Tax.doc</a>  <a href="http://www.likumi.lv/doc.php?id=167919#157309">http://www.likumi.lv/doc.php?id=167919#157309</a></p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>N/A</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	<p>In the tax return.</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>Compensating adjustments should be applied to the taxable year, but corrections of tax return can be made also on previous three years if the tax audit on these years is not started. The compensating adjustments should be made in situation when transfer price differs from the market price (arm's lengths price) which is determined when applying transfer pricing methods. Compensating adjustment can be also made by reducing taxable income in case</p>

	when related company which is resident of EU country or the European Economic Area country, with which Latvia has signed the Convention for the Avoidance of Double Taxation and Prevention of Fiscal Evasion and the Convention is in force, makes an adjustment according to transfer pricing methods and such adjustment is confirmed by tax administration of related company's Tax Administration.
<b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b>	Compensating adjustments are characterised as reducing or enhancing of taxable income in tax return.
<b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b>	The method used for determination of market price (arm's lengths price) should be shown in tax return and confirmation of Tax Administration of related company's made adjustments should be hold by the taxpayer. During the tax audit the taxpayer is obliged to prove the application of market price (arm's lengths price) using transfer pricing methods. There are no special documentation requirements regarding transfer pricing in Latvia.
<b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b>	Yes, the taxpayer is obliged to make compensating adjustments if the taxable income should be enhanced. See the answer on question 4. Arm's length's test is made during the tax audit.
<b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b>	Yes
<b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b>	Yes
<b>10. Adjustments vs intentional set-offs</b> The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that	No

<p><b>enterprise in return.”</b> <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b> <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	
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## LITHUANIA

Questions	Answer
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>There are no legal provisions allowing compensating adjustments stated in Lithuanian legal acts.</p> <p>The way to adjust the prices overall is by using ordinary accountancy principles and means, i. e. by adjusting transactions themselves to get to the requisite result: drawing a credit note or invoice of other type that would correct the prices. Thus, these adjustments would affect respective obligations of other taxes (e.g. VAT).</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>There are no projects of legal acts amendments concerning compensating adjustments introduced so far. More plausible is practical regulation that could be achieved through measures of soft law – explanations of tax administration, court decisions. For this moment there is no practice incurred in the field of compensating adjustments.</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>As a general rule such adjustments would be accepted if made in the tax return</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>Adjustments are applied when prices fall outside the range of the arm's length.</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>If Lithuanian entity increases costs without proper substantiation, it would deny a right for tax deductions.</p>

<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b></p>	<p>The documentation requirements are the same as for transfer pricing on general. There is no legally inter-company agreements requirement stated</p>
<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>There is no such obligation.</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b></p>	<p>Looking from a broader point of view, the answer would be rather affirmative.</p>
<p><b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b></p>	<p>Application of AC provisions in the case are reserved as an ultimate mean.</p>
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	<p>The answer depends on a case. If adjustments made are based on documentation or by other proof, this might make the case eligible for intentional set-offs to be acknowledged by tax administration.</p>

## LUXEMBOURG

Questions	
<b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b>	N/A
<b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b>	No
<b>3. When do you accept such adjustments to be made?</b> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	N/A
<b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b>	N/A
<b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b>	N/A
<b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b>	N/A

<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>N/A</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b></p>	<p>N/A</p>
<p><b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b></p>	<p>N/A</p>
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	<p>N/A</p>

## MALTA

Questions	Answers
<b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b>	No domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines there on exist.
<b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b>	No consideration as such
<b>3. When do you accept such adjustments to be made?</b> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	N/A
<b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b>	N/A
<b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b>	N/A
<b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-</b>	N/A



company agreement compulsory?	
7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?	N/A
8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?	N/A
9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?	N/A
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	N/A

## THE NETHERLANDS

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>The Netherlands does not have specific legislation allowing or disallowing compensating/year end adjustments. The Netherlands follows the Transfer Pricing Guidelines in which both ex post and ex ante method are allowed. In practice this means that the ex post method (including compensating adjustment) is allowed provided that it is applied in a consistent manner, i.e. for a longer period and on both sides of the border.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>No additional guidance beyond the Transfer Pricing Guidelines on this point is under consideration.</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	<p>During the entire assessment process, provided the ex post method is applied in a consistent manner, i.e. for a longer period and on both sides of the border.</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>Falling outside the range.</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>No specific rules apply.</p>

<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b></p>	<p>The compensating adjustment must be substantiated by the taxpayer (an inter-company agreement in writing is not compulsory). The compensating adjustment is allowed provided that the ex post method is applied in a consistent manner, i.e. for a longer period and on both sides of the border.</p>
<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>If the taxpayer applies the ex post method, it is expected that the taxpayer makes a compensating adjustment (if necessary). Furthermore, if e.g. in an APA a cost plus 5% is agreed upon then an adjustment is expected in case the actual result appears to be different. See answer to question 6 above.</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b></p>	<p>Yes, if double taxation arises and the other conditions of the AC are met.</p>
<p><b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b></p>	<p>Yes, if double taxation arises and the other conditions of the AC are met.</p>
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to</b></p>	<p>Yes. See Par. 3.1.2 Decree IFZ2001/295</p> <p>Unofficial translation on <a href="http://www.oecd.org/dataoecd/19/57/38415243.pdf">http://www.oecd.org/dataoecd/19/57/38415243.pdf</a></p> <p>“1.5. Request to lower transfer pricing adjustments (<i>Paragraphs 1.60-1.64</i>)  When the tax administration audits a taxpayer's books, the taxpayer is entitled to apply for a reduction in the proposed adjustment of a transfer price if the taxpayer is of the opinion that the adjustment proposed by the tax administration does not take sufficient account of compensating transactions. Under the OECD Guidelines, tax administrations have discretionary powers either to grant or deny such requests. The distinction made in the OECD Guidelines between a situation in which a taxpayer demonstrates the presence of an intentional set-off at the time when a tax</p>

<p><b>transactions undertaken between them, may implicitly “adjust” the respective results.</b></p> <p><b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	<p>return is filed and a situation in which an intentional set-off is stated by the taxpayer (and the acceptability is demonstrated) at the point when the tax administration recommends certain adjustments on the basis of a tax audit, is not relevant to the Netherlands' situation. In both cases, the taxpayer retains his statutory right to lodge an objection or appeal.”</p>
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## POLAND

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>According to Polish tax system, taxpayer is required to pay pre-payments during the year, which then are settled annually. There is no specific provisions allowing compensating/year end adjustments and no internal administrative guidelines on their implementation.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>There are no legislation and guidelines under consideration in this scope.</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	<p>N/A</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>N/A</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>N/A</p>
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-</b></p>	<p>N/A</p>

company agreement compulsory?	
7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?	N/A
8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?	N/A
9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?	N/A
<p>10. Adjustments vs intentional set-offs  The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”  In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.  Are intentional set-offs allowed in your MS and under which circumstances?</p>	N/A

## PORTUGAL

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	No
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	No
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	N/A
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	N/A
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	N/A
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-</b></p>	N/A

company agreement compulsory?	
<b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b>	N/A
<b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b>	N/A
<b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b>	N/A
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	No



## ROMANIA

Questions	Answers
<b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b>	No
<b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b>	Not Yet
<b>3. When do you accept such adjustments to be made?</b> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	N/A
<b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b>	N/A
<b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the</b>	N/A

<b>adjustments being reclassified?</b>	
<b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b>	N/A
<b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b>	N/A
<b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b>	N/A
<b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b>	N/A
<b>10. Adjustments vs intentional set-offs</b> The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.” In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to	N/A

<p><b>transactions undertaken between them, may implicitly “adjust” the respective results.</b></p> <p><b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	
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## SLOVENIA

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>Domestic legislation regarding transfer pricing is determined in the Corporate Income Tax Act (CITA) and the Rules on transfer pricing (RTP) and follow the OECD guidelines. Neither the CITA nor the RTP provide provisions implicitly allowing or disallowing compensating/year end adjustments.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>N/A</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>In principle the application of arm's length principle should lead to determination of a correct arm's length price. The determination of a price is made on the basis of financial planning that was available at the point in time the actual transaction was entered into. Having said that, the taxpayer may wish to make an adjustment ex post if he acted in good faith and the adjustment is due to a substantial change in circumstances or facts which he should be able, or will need to explain in the tax audit. When taking account of ex post adjustments it should also be taken into consideration the adoption of ex post adjustments between independent enterprises. Most likely independent enterprises would consider ex post adjustments if specified in the contract and due to a substantial change in circumstances or facts.</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>See answer to question 3 above. In case the arm's length price falls in the range of arm's length prices, the arm's length price is to be chosen that best reflects the circumstances and conditions of the transaction.</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the</b></p>	<p>See answer to question 3 above. In case the arm's length price falls in the range of arm's length prices, the arm's length price is to be chosen that best reflects the circumstances and conditions of the transaction.</p>

adjustments being reclassified?	
<b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b>	The documentation requirements for transfer pricing purposes are determined in the Tax Procedure Act in article 382. In general a taxpayer needs to provide for a master file, country-specific documentation, the extent and type of business involved with associated companies and the foundation of determining the comparable market prices.
<b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b>	Our MS do not oblige taxpayers to make compensating/year end adjustments.
<b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b>	On a case by case basis, depending on all facts and circumstances of the case.
<b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b>	On a case by case basis, depending on all facts and circumstances of the case.
<b>10. Adjustments vs intentional set-offs</b> The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.” In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them,	We do not have any experience with intentional set-offs, as we have not had such case yet.

<p>may implicitly “adjust” the respective results. Are intentional set-offs allowed in your MS and under which circumstances?</p>	
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## SLOVAKIA

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>Yes.</p> <p>The Act No. 595/2003 Coll. on Income Tax as later amended in its Section 12 para.5 stipulates the following:</p> <p>(5) The tax base of a non-resident related party shall also include the difference between the prices agreed in business transactions of non-resident related parties (including the prices of services, loans, and credits), and the prices applied between unrelated parties in comparable business transactions, as long as such a difference results in a reduction of the tax base. The difference above shall be determined in accordance with Section 18 (Adjustments of Tax Bases of Non-resident Related Parties). At the determination of the tax base of a non-resident related party, it shall also be allowed to treat prorated expenses as tax expenses (costs), which were incurred in the provision of services by a third party, with which it is related, as long as:</p> <ul style="list-style-type: none"> <li>a) the service is documented as being related to the scope of business of such a dependent party;</li> <li>b) the non-resident related party would have to place an order for such a service with unrelated parties or provide such a service in-house, if the service were not provided by a party, to which it is related;</li> <li>c) the price of the service was determined on an arm's length basis;</li> <li>d) the party shall submit evidence of the aggregate amount of expenses (costs) incurred in the provision of such a service, and their distribution among the beneficiaries of such a service.</li> </ul> <p><b>Generally:</b></p> <p>Under the current wording of the Section 17 (5) of the Income Tax Act, there is an obligation to increase the tax base by the difference between the actually applied price of the transaction and the arm's length price of the transaction, but only if the difference reduced the tax base. The row no. 110 of the Corporate Tax Return is adapted to the mentioned stipulation and it allows to adjust (increase) the tax base by the amount of the difference between the price stated in the accounts of the taxpayer (row no. 100) and the arm's length price (i.e. non-accounting adjustment of the tax base). The only guidance for the application of the aforementioned is the explanatory note to the filing of the Corporate Tax Return (row 110).</p>

<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>N/A</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>Based on a current wording of the Income Tax Act it is possible to come to the conclusion that the Slovak Republic accepts the compensating adjustments that increase or decrease the tax base only if they are part of the accounting (i.e. compensating adjustments made before closing books for the current tax period).</p> <p>However, if the compensating adjustments were made after the end of the current tax period before the deadline for filing tax return (which are not included in the accounts and are made only for tax purposes in tax return), it would be possible to accept (make) compensating adjustments only in case that it increases the tax base.</p> <p>If the taxpayer made the self-initiated upward adjustments of the tax base after the term for filing the tax return, he should include it in the additional tax return according to our tax law. There are also penalties resulting from the additional tax return. However, the penalty does not differ with the tax issue.</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>Only the general rule applies. The taxpayers are obliged to include the difference between the actually applied price of the transaction and the arm's length price of the transaction to their tax base, but only if the difference reduced the tax base.</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>Only the general rule applies. The taxpayers are obliged to include the difference between the actually applied price of the transaction and the arm's length price of the transaction to their tax base, but only if the difference reduced the tax base.</p> <p>There is no specific definition of compensating adjustment in Slovak direct tax legislation.</p>
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b></p>	<p>Transfer pricing documentation requirements are specified in general and the scope of documentation requirements is in compliance with EU TPD. The taxpayer should prove the arm's length principle has been observed in the pricing of the controlled transactions. The inter-company agreement is not explicitly listed in the list of information required in the transfer pricing documentation, but the tax authority may ask for it during the tax audit.</p>



<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>Yes, the taxpayers are obliged to include the difference between the actually applied price of the transaction and the arm's length price of the transaction to their tax base, but only if the difference reduced the tax base.</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b></p>	<p>If this is a situation when a taxpayer is forced to make such adjustment by a parent company and our tax administration does not agree with such an adjustment, it would be probably acceptable to deal with it under the AC provisions. However, we should follow on a case by case basis taking into account all relevant circumstances of a pertinent case.</p>
<p><b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b></p>	<p>See answer to question 8 above.</p>
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	<p>We do not have a special treatment of this issue in the domestic tax legislation. Any adjustments made between related companies should be made on an ALP basis and properly documented.</p>

## SPAIN

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>There is neither specific domestic legislation allowing compensating/year end adjustments nor administrative guidelines on their implementation in Spain.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>No legislation or guidelines to establish these adjustments are under consideration in Spain.</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• During the year</li> <li>• Before year-end</li> <li>• After year-end but before closing books</li> <li>• After closing books but before filing tax return</li> <li>• In the tax return</li> <li>• After filing tax return</li> </ul>	<p>N/A</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>N/A</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>N/A</p>
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-</b></p>	<p>N/A</p>

company agreement compulsory?	
7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?	N/A
8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?	N/A
9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?	N/A
<p><b>10. Adjustments vs intentional set-offs</b>  The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”  In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.  Are intentional set-offs allowed in your MS and under which circumstances?</p>	N/A

## SWEDEN

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>No, we do not have any particular legislation but a practice which derives from domestic case law and interpretation of the OECD Transfer Pricing Guidelines.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>No</p>
<p><b>3. When do you accept such adjustments to be made?</b></p> <ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>Taxpayers are entitled under generally applicable tax rules to make corrections in all of the above mentioned situations. However, to avoid penalties a correction after filing the tax return must be done prior to a tax audit or investigation.</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>No restrictions apply.</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the</b></p>	<p>They will be characterised as an additional price or refund of price, i.e. as a deductible cost or taxable income. The risk of the adjustments being reclassified is depending on whether or not it is shown that the adjustments lead to an arm's length result. If not, they will <u>not</u> be treated as</p>

adjustments being reclassified?	price adjustments.
<b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b>	We would request documentation showing that the adjustment leads to an arm's length result. Normally we request an invoice/credit note or likewise between the parties, which shows that there is some kind of agreement.
<b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b>	We would normally expect taxpayers to make a compensating/year end adjustment if the unadjusted result is not within an arm's length range. It is however not compulsory, but if there is a tax audit and it is found that an adjustment should have been made by the taxpayer to reach an arm's length result the tax administration will make an income adjustment.
<b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b>	Yes
<b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b>	Yes
<b>10. Adjustments vs intentional set-offs</b> The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.” In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to	Yes, they are taken into consideration if the transactions are in accordance with the arm's length principle. In addition, we often allow unintentional set-offs between the same parties to the extent that they are in accordance with the arm's length principle.

<p><b>transactions undertaken between them, may implicitly “adjust” the respective results.</b></p> <p><b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	
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## UNITED KINGDOM

Questions	Answers
<p><b>1. Does your MS have domestic legislation allowing compensating/year end adjustments and/or (internal) administrative guidelines on their implementation? Please briefly indicate key points addressed and include the official reference (and electronic link)?</b></p>	<p>The legal requirement is for the taxpayer to make a tax return that is in accordance with the arm's length principle. This follows from our legislation at Section 147(3) Taxation (International and Other Provisions) Act 2010 ('TIOPA 10'):</p> <p><i>The profits and losses of the potentially advantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.</i></p> <p>A 'potentially advantaged person' refers to a taxpayer that would receive a tax advantage (either reduced profits or increased losses) by making a return that is not on the arm's length basis, (Section 155 TIOPA 2010).</p> <p>S147(3) TIOPA 10 states that a taxpayer calculates the profits for tax purposes (i.e. for the tax return) on the arm's length basis. There is no legal obligation for tax purposes for accounts to be prepared using arm's length prices. For the purposes of transfer pricing a taxpayer may adjust the price of a transaction at any point up to and including in the tax return. The adjustment may be made in the tax computation.</p> <p>This is re-iterated in our guidance: <a href="#">INTM432100 - Schedule 28AA: how it works - Advantage in relation to UK taxation</a>. (Please note that TIOPA 2010 has now replaced the legislation at Schedule 28AA Income and Corporation Taxes Act 1988 for accounting periods ending on or after 1 April 2010, but the same principle applies to both statutes.)</p> <p>If the accounts are prepared on a non-arm's length basis and that does not make the person a potentially advantaged person, the legislation does not permit a downward adjustment to taxable profit in the tax computations.</p>
<p><b>2. If not, are legislation and/or guidelines under consideration and when may they be introduced?</b></p>	<p>Not applicable</p>
<p><b>3. When do you accept such adjustments to be made?</b></p>	<p>The adjustments can be made at any point, up to and including in the tax return. A taxpayer may submit an amended return incorporating a change to any transfer pricing adjustment made from</p>

<ul style="list-style-type: none"> <li>• <b>During the year</b></li> <li>• <b>Before year-end</b></li> <li>• <b>After year-end but before closing books</b></li> <li>• <b>After closing books but before filing tax return</b></li> <li>• <b>In the tax return</b></li> <li>• <b>After filing tax return</b></li> </ul>	<p>the accounts figure within certain time limits (generally within 12 months of the filing date for the return which itself is generally 12 months from the end of the relevant period of account).</p>
<p><b>4. To what situations (e.g. deviation from the median range, falling outside the range) do compensating/year end adjustments apply?</b></p>	<p>The taxpayer is required to file a return on the arm's length basis. The tax system requires the taxpayer to self-assess the tax due, so we do not specify criteria when a compensating adjustment should be made. It is up to the taxpayer to determine when an adjustment is required.</p> <p>It is not permissible to make a downward adjustment to the accounts profits to arrive at the taxable profits (see answer to question 1 above).</p>
<p><b>5. How are compensating adjustments characterised for direct tax purposes in your jurisdictions? What is the risk of the adjustments being reclassified?</b></p>	<p>There is no characterisation of the compensating adjustment and there is no risk of it being reclassified.</p>
<p><b>6. What kind of documentation/justification do you request from the taxpayer? Is an inter-company agreement compulsory?</b></p>	<p>There are no special documentation requirements for compensating adjustments.</p> <p>The documentation requirements are the same as for transfer pricing in general.</p>
<p><b>7. Does your MS oblige taxpayers to make compensating/year end adjustments? If yes, please explain in which cases. Do you apply any arm's length test to these compulsory adjustments?</b></p>	<p>There is no obligation to make an adjustment. The requirement is for the taxpayer to file the tax return which is in accordance with the arm's length principle.</p>
<p><b>8. In case a taxpayer is forced to make such adjustment do you accept to deal with it under the AC provisions?</b></p>	<p>Not applicable</p>



<p><b>9. If the taxpayer makes a compensating/year end adjustment and you challenge it, do you accept to deal with it under the AC provisions?</b></p>	<p>Yes, provided the conditions of the AC are met.</p>
<p><b>10. Adjustments vs intentional set-offs</b>  <b>The OECD Guidelines in paragraphs 3.13 to 3.17 describe intentional set-offs as “a benefit provided by one associated enterprise within the group that is deliberately balanced to some degree by different benefits received from that enterprise in return.”</b>  <b>In other words, in some circumstances it may be the case that two or more associated enterprises, by offsetting the respective unbalanced positions related to transactions undertaken between them, may implicitly “adjust” the respective results.</b>  <b>Are intentional set-offs allowed in your MS and under which circumstances?</b></p>	<p>Intentional set-offs are allowable subject to specific guidance.  <a href="#">INTM463100 - Transfer Pricing: OECD and methodologies: which transactions to review - Intentional set offs</a>. (Please note that INTM463100 refers to paragraphs 1.60 to 1.64 of the 1995 Transfer Pricing Guidelines. These paragraphs are now at 3.13 to 3.17 of the 2010 Guidelines).</p>