

BEPS Transfer Pricing Workshop
Transfer Pricing Documentation, Risk Assessment and Safe
Harbours
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16& 17. Case Study on Bilateral Safe Harbours

Case Study / Role Play on Bilateral Safe Harbours

BASIC FACTS

The simulated negotiations of (a) bilateral safe harbour(s) will involve two fictitious neighbouring countries: the Kingdom of Utopia and the Republic of Fredonia.

General

There are strong historic ties between Utopia and Fredonia; in fact, they were a joint monarchy from the 16th century until 1918. After the Second World War, Fredonia became a government regulated economy, which slowed down its economic development and sharply reduced trade with Utopia. In 1999, Fredonia elected a liberal government dedicated to market economy. Since then, major economic reforms have been implemented in Fredonia. Trade with Utopia is increasing steadily, Fredonia exporting primarily its newly discovered oil, minerals, other natural resources and agricultural products and importing consumer goods, services and technology from Utopia. Fredonia is actively seeking foreign direct investment from Utopia and a number of Utopian companies have already made major investments in Fredonia.

As a result of the growing trade relations between Utopia and Fredonia, tax disputes have also increased, in particular in the area of transfer pricing. **The United Chamber of Commerce for Fredonia and Utopia have called upon the governments to provide more certainty to the taxpayers, keeping in mind the burden that transfer pricing may pose upon taxpayers for relative simple cases.** One possible approach Fredonia and Utopia have decided to examine is the conclusion of one or more bilateral safe harbours.

SPECIFIC INFORMATION ON UTOPIA AND FREDONIA

Utopia and Fredonia have concluded a double tax treaty containing Article 9 and Article 25 based upon the OECD Model Tax Convention. The text of the relevant articles is attached as annex 3.

Specific facts related to Utopia

- 1) The currency of Utopia is the Slug (Sg), which has roughly the same value as that of the U.S. dollar. Utopia has a very low rate of inflation.
- 2) Utopia is a member of the Organisation for Economic Co-operation and Development (OECD). It has signed and ratified the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters.
- 3) Utopia has an extensive network of tax treaties.
- 4) Utopia is home to a significant number of multinational enterprises, including one major mining company and one major oil company, both active in Fredonia.

Specific facts related to Fredonia

- 1) An increasing number of important industrial plants are located in Fredonia. In particular, because of the high level of the skilled workforce in Fredonia, Utopian multinational enterprises have set up multiple manufacturing entities (some of which are high tech industries such as oil rig construction) and research and development entities in Fredonia. **Most of the manufacturing activities are set up in a form of contract manufacturing or toll manufacturing structure and the research and development functions are usually carried out on a contract research and development basis.** For the distribution of the consumer goods in Fredonia, and other countries in the region, several multinational enterprises have set up distribution centres in Fredonia.
- 2) The currency of Fredonia is the Duck (Dk). The current exchange rate is 1,000 Dk for one U.S. dollar.
- 3) Fredonia has concluded only a few tax treaties, mostly with neighbouring countries (including Utopia). These treaties contain an article 9 and article 25 based upon the OECD Model Tax Convention.
- 4) The cost of wages per worker in Fredonia is about 1/2 of the cost of wages in Utopia.
- 5) Fredonia's oil fields are located on its continental shelf, partly beyond its territorial waters. The natural resources exploration is done on the mainland of Fredonia.

Annex 1: Database searches by Utopia's authorities

Regional Database Searches submitted by Utopian authorities —averages years 2010 – 2012						
Source: Sebastian Database						
Figures in 000 of Slugs						
Low Risk Manufacturing						
	Comp A	Comp B	Comp C	Comp D	Comp E	Comp F
Sales	124500	68000	118000	155000	79900	180100
COGS	100000	61500	99000	122800	72600	129200
Gross Profit	24500	6500	19000	32200	7300	50900
OpEx	15000	3280	8900	21880	3560	41200
EBIT	9500	3220	10100	10320	3740	9700
ratios						
Gross profit to sales	19.68%	9.56%	16.10%	20.77%	9.14%	28.26%
EBIT to sales	7.63%	4.74%	8.56%	6.66%	4.68%	5.39%
GP to COGS	24.50%	10.57%	19.19%	26.22%	10.06%	39.40%
EBIT to total costs	8.26%	4.97%	9.36%	7.13%	4.91%	5.69%
GP to OpEx	1.63	1.98	2.13	1.47	2.05	1.23
Interquartile ranges	cost plus	TNMM cost	resale	TNMM sales	Berry	
Low	10.06%	4.91%	9.14%	4.68%	1.24	
1 st	12.72%	5.15%	11.19%	4.90%	1.51	
Median	21.85%	6.41%	17.89%	6.02%	1.81	
Average	21.66%	6.72%	17.25%	6.27%	1.75	
3 rd	25.79%	7.98%	20.50%	7.39%	2.03	
Top	39.40%	9.36%	28.26%	8.56%	2.13	

Low risk Distributors						
	Comp O	Comp P	Comp Q	Comp R	Comp S	Comp T
Sales	190000	178000	270800	221400	159000	240000
COGS	159600	147000	224700	181500	128800	192000
Gross Profit	30400	31000	46100	39900	30200	48000
OpEx	21000	19580	32500	28700	22300	36000
EBIT	9400	11420	13600	11200	7900	12000
ratios						
Gross profit to sales	16.00%	17.42%	17.02%	18.02%	18.99%	20.00%
EBIT to sales	4.95%	6.42%	5.02%	5.06%	4.97%	5.00%
GP to COGS	19.05%	21.09%	20.52%	21.98%	23.45%	25.00%
EBIT to total costs	5.20%	6.86%	5.29%	5.33%	5.23%	5.26%
GP to OpEx	1.45	1.58	1.42	1.39	1.35	1.33
Interquartile ranges	cost plus	TNMM cost	resale	TNMM sales	Berry	
Low	19.05%	5.20%	16.00%	4.95%	1.33	
1 st	20.66%	5.24%	17.12%	4.98%	1.36	
Median	21.54%	5.28%	17.72%	5.01%	1.40	
Average	21.85%	5.53%	17.91%	5.24%	1.42	
3 rd	23.08%	5.32%	18.75%	5.05%	1.44	
Top	25.00%	6.86%	20.00%	6.42%	1.58	

Regional Database Searches submitted by Utopian authorities —averages years 2010 – 2012						
Source: Sebastian Database						
Figures in 000 of Slugs						
Low Risk R&D						
	Comp G	Comp H	Comp I	Comp L	Comp M	Comp N
Sales	9570	4850	9070	11070	5300	12000
COGS						
Gross Profit	9570	4850	9070	11070	5300	12000
OpEx	7656	4607	8760	10655	5500	11670
EBIT	1914	243	310	415	-200	330
ratios						
Gross profit to sales	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
EBIT to sales	20.00%	5.01%	3.42%	3.75%	-3.77%	2.75%
GP to COGS	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
EBIT to total costs	25.00%	5.27%	3.54%	3.89%	-3.64%	2.83%
GP to OpEx	1.25	1.052745822	1.035388128	1.03894885	0.963636	1.028278
Interquartile ranges	cost plus	TNMM cost	Resale	TNMM sales	Berry	
Low	#DIV/0!	-3.64%	100.00%	-3.77%	0.96	
1 st	#DIV/0!	3.01%	100.00%	2.92%	1.03	
Median	#DIV/0!	3.72%	100.00%	3.58%	1.04	
Average	#DIV/0!	6.15%	100.00%	5.19%	1.06	
3 rd	#DIV/0!	4.93%	100.00%	4.69%	1.05	
Top	#DIV/0!	25.00%	100.00%	20.00%	1.25	

Building of the different Data Sets

The selection criteria considered:

- Industry and Trade classifications (SIC, NACE codes)
 - Low Risk Manufacturing:
 - Annual research, development and product engineering less than 5 pct. of turnover
 - not engaged in advertising, marketing and distribution activities
 - not engaged in credit collection
 - not engaged in warranty administration
 - Low Risk Distribution
 - Annual research, development and product engineering less than 5 pct. of turnover
 - Not engaged in manufacturing or assembly functions with regard to the products distributed
 - Marketing and advertising expense do not exceed 15 pct. of turnover
 - Low Risk R&D
 - Not engaged in product manufacturing and assembly,
 - Not engaged in advertising, marketing and distribution
 - Not engaged in credit collection
 - Not engaged in warranty administration
- Keywords: trade description terms related to low risk manufacturing, low risk distribution and low risk research and development
- Independence: Direct and indirect shareholding of 50 pct. or more are excluded from the data samples
- Range –years covering 2010 – 2011 - 2012
- Geographic location: Utopia, Fredonia, Harmonia, Calmia, Zenistan, Concordistan, Tranquilia

- Size: In the selection of companies to derive the range, due regard has been had to the size of the companies; in particular with regard to turnover (sales) and staffing.
 - Production:
 - Turnover: min 5,000,000 Sg – Max 250,000,000 Sg
 - Employees Min 10 – max 250 with a payroll between 300,000 and 7,500,000 Sg
 - Research and Development
 - Turnover: 1,000,000 Sg – Max 250,000,000 Sg
 - Employees: min 10 – max 150, with a payroll between 300,000 and 4,500,000 Sg
 - Distribution
 - Turnover: 5,000,000 – 250,000,000 Sg
 - Employees: min 10 – max 150, with a payroll between 300,000 and 4,500,000 Sg
- Asset comparability: e.g. stock, plant, intangibles – in the selection of companies to derive the range, due regard has been had to the assets used by the companies.
 - Low risk manufacturing:
 - Intangible assets with a max of 5 pct. of balance sheet total
 - Assets related to the manufacturing function: at least 85 pct. of the company's assets consist of manufacturing plant and equipment, raw material inventory and work in process inventory
 - Finished product inventory did not exceed 25 pct. of turnover
 - Low Risk Distribution
 - Intangible assets with a max of 15pct of balance sheet total
 - Total assets did not exceed 15,000,000 Sg
 - Low Risk R&D
 - Companies did not become owner of the potential developed intangibles

Annex 2: Database searches by Fredonia's authorities

Figures submitted by Fredonian authorities on the basis of Tax Files- year 2013 (1)						
Source: Fredonian Ministry of Finance						
Figures in Million Ducks						
All Manufacturing Activities (including extraction of natural resources and shipyard and oil rig manufacturing)						
	Comp A	Comp B	Comp C	Comp D	Comp E	Comp F
Sales	122010	66640	115640	151900	78302	176498
COGS	90000	55350	89100	110520	65340	116280
Gross Profit	32010	11290	26540	41380	12962	60218
OpEx	14250	3116	8455	20786	3382	39140
EBIT	17760	8174	18085	20594	9580	21078
ratios						
Gross profit to sales	26%	17%	23%	27%	17%	34%
EBIT to sales	15%	12%	16%	14%	12%	12%
GP to COGS	36%	20%	30%	37%	20%	52%
EBIT to total costs	17%	14%	19%	16%	14%	14%
GP to OpEx	2.25	3.62	3.14	1.99	3.83	1.54
Interquartile ranges						
	cost plus	TNMM cost	resale	TNMM sales	Berry	
low	20%	14%	17%	12%	1.54	
1st	23%	14%	18%	12%	2.05	
median	33%	15%	25%	13%	2.69	
Average	32%	15%	24%	13%	2.73	
3rd	37%	17%	27%	14%	3.50	
top	52%	19%	34%	16%	3.83	

All Distribution Activities						
	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Comp 6
Sales	171000	160200	243720	199260	143100	216000
COGS	147630	135975	207847.5	167887.5	119140	177600
Gross Profit	23370	24225	35872.5	31372.5	23960	38400
OpEx	18900	17622	29250	25830	20070	32400
EBIT	4470	6603	6622.5	5542.5	3890	6000
ratios						
Gross profit to sales	14%	15	15%	16%	17%	18%
EBIT to sales	3%	4%	3%	3%	3%	3%
GP to COGS	16%	18%	17%	19%	20%	22
EBIT to total costs	3%	4%	3%	3%	3%	3%
GP to OpEx	1.24	1.37	1.23	1.21	1.19	1.19
Interquartile ranges						
	cost plus	TNMM cost	resale	TNMM sales	Berry	
low	16%	3%	14%	3%	1.19	
1st	17%	3%	15%	3%	1.20	
median	18%	3%	15%	3%	1.22	
Average	19%	3%	16%	3%	1.24	
3rd	20%	3%	16%	3%	1.23	
top	22%	4%	18%	4%	1.37	

Figures submitted by **Fredonian authorities** on the basis of Tax Files- year 2013 (1)

Source: Fredonian Ministry of Finance

Figures in Million Ducks

All R&D Activities (including exploration of oil and natural resources)

	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Comp 6
Sales	8134.5	4122.5	7709.5	9409.5	4505	10200
COGS						
Gross Profit	8134.5	4122.5	7709.5	9409.5	4505	10200
OpEx	7656	3224.9	7008	9056.75	4400	9919.5
EBIT	478.5	897.6	701.5	352.75	105	280.5
ratios						
Gross profit to sales	100%	100%	100%	100%	100%	100%
EBIT to sales	6%	22%	9%	4%	2%	3%
GP to COGS	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
EBIT tot total costs	6%	28%	10%	4%	2%	3%
GP to OpEx	1.06	1.28	1.10	1.04	1.02	1.03
Interquartile ranges	cost plus	TNMM cost	resale	TNMM sales	Berry	
Low	#DIV/0!	2%	1.00	2%	1.02	
1 st	#DIV/0!	3%	1.00	3%	1.03	
median	#DIV/0!	5%	1.00	5%	1.05	
Average	#DIV/0!	9%	1.00	8%	1.09	
3 rd	#DIV/0!	9%	1.00	8%	1.19	
Top	#DIV/0!	28%	1.00	22%	1.28	

(1) Tax files are based upon local GAAP balance sheet, profit and loss statement and explanatory notes thereto.

Annex 3: Convention for the Avoidance of Double Taxation between the Kingdom of Utopia and the Republic of Fredonia with respect to Taxes on Income and on Capital

[...]

ARTICLE 3 GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

- a) the term “person” includes an individual, a company and any other body of persons;
- b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- c) the term “enterprise” applies to the carrying on of any business;

[...]

ARTICLE 9 ASSOCIATED ENTERPRISES

1. Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

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

2. Where a Contracting State includes in the profits of an enterprise of that State —and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

[...]

ARTICLE 25
MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

ARTICLE 26
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person

[...]

Annex 4: Description of the Corporate Tax System on the Kingdom of Utopia

Introduction

In Utopia, companies are subject to the federal corporate income tax, which is levied under the Corporate Tax Law. A special Hydrocarbon Tax, imposed under the federal Hydrocarbon Tax Law (not attached), also applies to profits from certain hydrocarbon exploration and exploitation activities.

Residence

There are two criteria for establishing a company's residence in Utopia for tax purposes. A company is considered to be a resident of Utopia if at least one of the following criteria is met:

- a) Central management and control, i.e. in most cases where the board of directors meets to direct the company's policy, rather than its day to day business.
- b) Incorporation in Utopia: companies incorporated in Utopia are resident thereof.

Taxable base

Worldwide income of resident companies and domestic income of non-resident companies is taxable. The taxable income is determined under the rules of the Corporate Tax Law, which generally apply to the profits determined under generally accepted accounting standards.

Rates

The current rate of corporate tax under the Corporate Tax Law of Utopia is 33 1/3%.

Transfer pricing and thin capitalisation

There are no specific provisions in Utopian tax law regarding thin capitalisation. Tax authorities rely on the rules denying the deduction of unreasonable expenses to counter the most abusive thin capitalisation cases.

The Utopian Corporate Tax Law provides for a possible adjustment of taxable profits where a Utopian entity which is controlled by a foreign enterprise is subject to trading conditions which differ from those which would apply between independent enterprises. The same applies with respect to the computation of the profits of permanent establishments in Utopia which are owned by a foreign enterprise.

Associated enterprises

Two enterprises are considered to be associated where:

- a) One enterprise participates directly or indirectly in the management, control or capital of the other, or
- b) The same person or persons participate(s) directly or indirectly in the management, control or capital of both enterprises.

A person or enterprise participates directly or indirectly in the management, control or capital of an enterprise where:

- a) It owns, directly or indirectly, more than 50% of the share capital of the enterprise, or
- b) It has the practical ability to control the business decisions of the enterprise.

Annex 5: Description of the Corporate Tax System of the Republic of Fredonia

Introduction

In Fredonia, companies may be subject to two types of income taxes, which are levied under the **Tax on Profits of Legal Entities Law** and the **Tax on Income Law**. The two taxes have many similarities. However, they differ as to the group of the taxable companies, their economic activities, the kind of tax incentives and exemptions and the tax rates applied.

Taxable persons

The following enterprises are subject to the tax imposed under the **Tax on Profits of Legal Entities Law**:

- The State enterprises including State banks, insurance companies, railways and other State economic organisations;
- Joint stock companies created in Fredonia with the exception of enterprises with foreign participation;
- Certain other entities (clubs and student associations) having legal personality.

The following enterprises are subject to the tax imposed under the **Tax on Income Law**:

- State enterprises founded by local authorities;
- Cooperatives;
- Partnerships including partnerships of companies;
- Enterprises with foreign participation (joint ventures);
- Companies or other enterprises having their head office or seat abroad;
- Individual entrepreneurs, resident or non-resident, who are registered in the Commercial Register.

Residence

In the case of companies and partnerships, Fredonian law does not refer to the concept of "residence" as such. For these taxpayers, the extent of tax liability depends on whether they are registered in the Commercial Register; if they are so registered, they are taxable on their worldwide income. In order to be registered the company must be incorporated in Fredonia. If this is the case, the commercial law requires that its seat or head office must be located in Fredonia. In the case of partnerships, the commercial law requires that they be registered if the partnership agreement is concluded in Fredonia.

Foreign enterprises that have their seat or head office abroad are taxed on income from businesses carried on in the territory of Fredonia and other income from Fredonian sources.

Taxable base

Generally, income derived from both Fredonian and foreign sources is taxable. The taxable base is the net profit as determined under the GAAP, which permits the deduction of all expenses incurred in conducting the business, subject to specific disallowances of certain expenses which are made in the relevant tax law (e.g. expenses in the form of penalties, charges for air pollution, sewage disposal fees and similar payments are not deductible).

Rates

Under the **Tax on Profits of Legal Entities Law**, profits are taxed at a flat rate of 25%. Under the **Tax on Income Law**, income is taxed at a rate of 25%. However, foreign enterprises that have their seat or head office abroad are liable to income tax on their Fredonian-source income at a rate of 20%.

Transfer pricing and thin capitalisation

A new provision of the Fredonian tax laws allows the tax authorities to adjust the profits of any taxpayer to reflect the profits that the taxpayer would have realised with respect to transactions with related parties if these transactions had been effected on the same terms and conditions as those that would have applied between independent enterprises.

Another new provision allows the Fredonian tax authorities to deny the deduction of interest paid to a non-resident associated enterprise if the interest deduction exceeds 50% of the profit (before interest) of the payer and the tax authorities consider that it is reasonable to treat part of the interest as a dividend.

Definition of related parties

The Fredonian tax law defines a related party as an enterprise, an organisation or an individual that has one of the following *de jure* and *de facto* relationships with another enterprise, organisation or individual:

- Direct or indirect control of another entity with respect to capital (financing), business operations, purchases, sales, etc.;
- Direct or indirect common control;
- Other relationship due to mutual interest.

Parties are deemed related if:

- The total direct or indirect shareholding of one party in another is more than 25%, or a third party has a direct or indirect shareholding of more than 25% in both parties;
- A loan granted by one party (with the exception of banking or financial institutions) to another party if the totality of the loans amounts to more than 50% of the paid up capital, or one party guarantees more than 10% of the total debts of the other ;
- More than half of senior managers (including board members or directors) or at least one of the board members controlling the board are appointed by the other party, or more than half of senior managers of both parties (including board members and directors) of at least one of the members of the board of directors controlling the board are appointed by a common third party;
- More than half of senior managers (including board members or directors) of one party holds the post of senior manager in another party, or at least one of the members of the board of directors which controls the board holds the post of member of the board of directors of the other party;
- The production or business operation of one party is only possible if intellectual property or know-how of the other party is provided;
- The purchase or sale is mainly controlled by the other party;
- The receipt or provision of services is mainly controlled by the other party; and
- Both parties share the same economic interest.