


TRANSFER PRICING AND ITS EFFECTS ON FINANCIAL REPORTS



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FEBRUARY 2020

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FEBRUARY 2020

## PLAGIARISM

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

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## ABSTRACT

In parallel with the increase in capital movements with globalization and the fact that multinational companies have an important place in commercial life, money transfers, service transfers and distribution-based product or service transactions between group companies have increased. This increase brought about the importance of the transactions between the group companies in terms of their suitability to peers and the effects of tax losses such as tax loss and public loss. In this case, the local legislation of the countries, the group of companies, related to the arrangements made between the parties involved in the transactions. These arrangements, also called transfer pricing, and case study of transfer pricing applications are the subject of this thesis.

***Keywords: Transfer pricing, related person, suitability to peers***

## ÖZET

Küreselleşme ile birlikte sermaye hareketlerinin artması, çok uluslu şirketlerin ticari hayatta önemli bir yer edinmesi ile paralel olarak, grup şirketleri arasında yerel ve küresel düzeyde para transferleri, hizmet transferleri ve dağıtımına esas ürün ya da hizmet işlemleri artmıştır. Bu artış beraberinde, grup şirketler arasındaki işlemlerin emsallere uygun olup olmadığının ve vergi ziyayı, kamu zararı gibi vergisel boyuttaki etkilerinin önemini ortaya çıkartmıştır. Bu durumda, ülkelerin yerel mevzuatlarına, grup şirketler, ilişkili taraflar arasında yapılan işlemlere yönelik düzenlemelerin getirilmesini sağlamıştır. Transfer fiyatlandırması olarak da adlandırılan bu düzenlemeler ve transfer fiyatlandırması uygulamalarına yönelik örnek olay incelemesi bu tez çalışmasının konusunu oluşturmaktadır.

**Anahtar Kelimeler** : *Transfer fiyatlandırması, ilişkili kişi, emsallere uygunluk*

## ACKNOWLEDGEMENTS

I would first like to thank my thesis advisor Doç.Dr. Can Tansel KAYA. The door to Doç. Dr. Kaya office was always open whenever I ran into a trouble spot or had a question about my research or writing. He consistently allowed this paper to be my own work, but steered me in the right the direction whenever he thought I needed it.

I must express my very profound gratitude to my parents, my sister and to my husband Ufuk Aydın Çelebi, for providing me with unfailing support and continuous encouragement throughout my years of study and through the process of researching and writing this thesis. This accomplishment would not have been possible without them. Thank you.

## LIST OF ABBREVIATIONS

**IMF** : International Monetary Fund

**OECD** : The Organization for Economic Co-operation and Development

**TL** : Turkish Liras

**WB** : World Bank

**WTO** : World Trade Organization

**TABLE OF CONTENTS**

<b>PLAGIARISM.....</b>	<b>i</b>
<b>ABSTRACT .....</b>	<b>ii</b>
<b>ÖZET .....</b>	<b>iii</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>iv</b>
<b>LIST OF ABBREVIATIONS .....</b>	<b>v</b>
<b>TABLE OF CONTENTS .....</b>	<b>vi</b>
<b>LIST OF TABLES .....</b>	<b>xi</b>
<b>INTRODUCTION.....</b>	<b>1</b>
<b>1. GENERAL INFORMATION ABOUT TRANSFER PRICING.....</b>	<b>3</b>
1.1. Concept and the Scope of Transfer Pricing.....	3
1.2. Purpose of Transfer Pricing .....	5
1.2.1. Purposes Related to Taxation .....	7
1.2.2. International Trade Related Purposes .....	9
1.2.3. Internal Management Related Purposes .....	10
1.3. Historical Development of Transfer Pricing Concept.....	11



1.3.1. International Regulations.....	13
1.3.1.1. Regulations in Great Britain.....	15
1.3.1.2. Regulations in Germany.....	17
1.3.1.3. Regulations in France.....	19
1.3.1.4. Regulations in the USA.....	21
1.3.1.5. Regulations of OECD .....	23
1.3.2. History of Transfer Pricing in Turkey and the Regulations .....	24
1.4. Transfer Pricing Methods.....	25
1.4.1. Comparable Non-Controlled Price Method.....	25
1.4.2. Re-sale Pricing Method .....	26
1.4.3. Cost Plus Method.....	27
1.4.4. Profit Distribution Method .....	28
1.4.5. Process-Based Net Profit Margin Method.....	30
1.4.6. Free and Other Methods .....	31
<b>2. CONCEALED GAIN DISTRIBUTION AND ARRANGEMENTS THROUGH TRANSFER PRICING.....</b>	<b>32</b>
2.1. CONCEALED EQUITY AND CONCEALED GAIN CONCEPTS.....	32

2.2.1. According to law (repealed) numbered 5422 .....	32
2.2.2. According to law numbered 5520 .....	33
2.2.3. According to law numbered 193 .....	34
2.2.4. According to law numbered 3065 .....	35
2.3. RELATED PARTY CONCEPT.....	36
2.3.1. Within Corporate Tax Law.....	37
2.3.2. Within Income Tax Law.....	38
2.4. PRINCIPLE OF COMPLIANCE TO IMPUTED COST AND COMPARABILITY CONCEPT .....	38
2.5. SUBMISSION OF DOCUMENTS FOR TRANSFER PRICING AND TRANSFER PRICING REPORT .....	41
2.6. INTERCOMPANY SERVICES .....	43
2.7. EVALUATION OF THE EFFECTIVENESS OF TRANSFER PRICING PRACTICES .....	44
2.7.1. Treasury Loss Concept .....	45
2.7.2. The Problem of Imputed Cost .....	46
2.7.3. Organizations' Financial Tables and Reporting .....	48
2.7.4. Cash Price Contracts.....	51

<b>3 CONCEALED GAIN DISTRIBUTION AND ARRANGEMENTS THROUGH</b>	
<b>TRANSFER PRICING.....</b>	<b>55</b>
3.1. PURPOSE .....	55
3.2. IMPORTANCE.....	55
3.3. TRANSFER PRICING REPORTS OF THE SELECTED COMPANY	
AND THEIR EVALUATION .....	56
3.3.1. General Overview .....	56
3.3.2. Related Parties .....	57
3.3.3. Analysis about Transfer Pricing .....	61
<b>CONCLUSION .....</b>	<b>75</b>
<b>REFERENCES.....</b>	<b>77</b>

**LIST OF TABLES**

Table 1. <i>MNCs' Purposes of Using Transfer Pricing</i> .....	6
Table 2. <i>History of Transfer Pricing and Regulations</i> .....	13
Table 3. <i>Introduction Part of the Transfer Pricing Reports</i> .....	56
Table 4. <i>Related Parties Main Business Activities</i> .....	58
Table 5. <i>Intercompany Transactions</i> .....	59
Table 6. <i>Risk Analysis</i> .....	60
Table 7. <i>Brief Business Descriptions of Comparable Companies (2016)</i> .....	61
Table 8. <i>Brief Business Descriptions of Comparable Companies (2017)</i> .....	64
Table 9. <i>Results (2016)</i> .....	65
Table 10. <i>Results (2017)</i> .....	66
Table 11. <i>Comparable Companies (2016)</i> .....	67
Table 12. <i>Comparable Companies (2017)</i> .....	68
Table 13. <i>OM- Companies Based on Comparison (2017)</i> .....	69
Table 14. <i>OM- Companies Based on Comparison (2017)</i> .....	69
Table 15. <i>Risk Analysis</i> .....	70

Table 16. <i>License Agreement between the Group and the Company</i> .....	71
Table 17. <i>Conclusion of the Transfer Pricing Analysis for 2016</i> .....	72
Table 18. <i>Conclusion of the Transfer Pricing Analysis for 2017</i> .....	73



## INTRODUCTION

In the last century, developments and growth in world trade have rapidly changed the dimensions of international trade. In the economy and trade, the activities and controls of the national states decreased and the activities of the multinational companies in the world economy increased. International institutions such as the International Monetary Fund (IMF), World Bank (WB), World Trade Organization (WTO), Economic Development and Cooperation Organization (OECD) and so on. With international law accepting individuals, companies and non-state organizations as a subject alongside the nation-state, state sovereignty and economic activities are becoming increasingly limited. In this respect, globalization is a widely used concept to characterize the developments that have gained momentum after 1980 and constitute a broad domain.

Transfer price according to business science; is defined as the price used for the purchase of goods and services in an environment where there is no competition between the units as a result of the geographical and functional division of the enterprises. Enterprises and Tax Administrations transfer price; an entity is defined as the selling price of an entity's goods, intangible rights or services to an affiliated entity. In other words, transfer pricing; refers to the pricing of transfers, leases and borrowings of tangible and intangible goods or services to and from affiliates. The most important feature of transfer pricing is that it is a price in the free market that is different from the price formed by independent persons under similar conditions. The main purpose of such a price policy is; the desire to reduce the tax burden

One of the most important regulations of the Corporate Tax Law is the regulation on transfer pricing. This is because it acts as a valve against taxpayers' erosion of their bases by transferring earnings to each other through contracts established with the related persons and affected by the relationship.

The issue that is important in transfer pricing and even constitutes a starting point for the administration is the “certification obligation. In fact, this obligation is even bound by the Law No. 6728 and Article 8 of the Corporate Tax Law.

Two obligations are covered by the certification obligation. The first one is the obligation to prepare and submit the “Transfer Pricing Report”. The second is that the “Transfer Pricing, Controlled Corporate Earnings and Disguised Capital Form”, which should be given in the annex of the declaration, should be filled in full and in a fair manner.

## **FIRST PART**

### **GENERAL INFORMATION ABOUT TRANSFER PRICING**

#### **1.1. Concept and the Scope of Transfer Pricing**

As a result of globalization movements that gained momentum in the last quarter century, all countries started to work to encourage foreign capital movements. With these efforts, competition in the global arena is increasing with the countries and companies. Multinational Companies (MNCs) have gained significant power to manage the countries in economic wars along with globalization, in which case the MNCs are driven to be more meticulous in the steps to be taken and to be more effective in global competition.

The main objective of the MNCs, which are taxpayers, is to increase the profitability, and as a way of achieving this, they see the tax base as a means of avoiding tax or other methods and paying less taxes. The purpose of this tax-avoidance transaction through transfer pricing is to reduce the company's profit to countries with high tax rates and to pay less tax. The disguised profit distribution through transfer pricing that MNCs are undertaking in line with these targets emerges as a threat to the tax systems of the state and nations.

Globalization and the resulting international integration as well as rapid technological progress affect both the tax collecting power of countries and the tax



burden distribution. Moreover, over time, the impact of globalization on tax revenues will increase and this situation will be clearly seen in the country's income statistics.

Transfer pricing is the pricing applied to the parent company and its affiliated companies or to the companies and affiliated companies in terms of management and control, with respect to revenue-expense or profit-sharing, in terms of management of goods and services (Saraçoğlu and Kaya, 2006, p. 150).

Transfer pricing is the price applied by an organization for the tangible or intangible goods that it transfers to, or within, its own organization or to any other related organization (Orhun, 2008, p. 128). According to these definitions, transfer pricing can be defined as the accounting technique, which prevents the implementation of the black tax rate by transferring the profits obtained from the companies operating in the international markets in terms of tax accounting between the central and related companies in different countries.

The transfer pricing applied by multinational corporations is used as an important method to increase the profits of the affiliated enterprises operating in countries with lower tax rates in order to achieve the objectives of strategic planning, determining the main activities and minimizing tax. While the determination and solution of transfer pricing does not constitute much problem in domestic transactions, it is not easy to solve the event in international transactions that affect the taxation capacity of more than one country. Although transactions between intra-group companies in the same country are related only to the tax revenues of that country, the pricing of goods and services transfers made with international

characteristics is closely related to the national income and tax income of more than one country (Aktaş, 2003, p. 84).

## **1.2. Purpose of Transfer Pricing**

Companies, apply transfer pricing to reduce their total tax burden and customs obligations, minimize their foreign exchange risks, overcome the restrictions on foreign exchange and cash outflows and strengthen their competitiveness in foreign countries.

Transfer pricing, especially in recent years, is also used by some companies as a company strategy. In this way, as well as the classical purposes such as tax avoidance, tax minimization; companies also have the opportunity to realize their goals such as directing the company's efficiency and performance through transfer pricing. So that, the purposes of transfer pricing can be classified into three groups; purposes related to taxation, international trade related purposes and internal management related purposes. Before identifying these three purposes, it would be valuable to examine the below figure that shows the purposes of MNCs using transfer pricing.

Table 1. *MNCs' Purposes of Using Transfer Pricing*

<b>Purposes</b>	<b>% of MNCs</b>
Purposes Related to Taxation	51
<i>Managing tariffs</i>	4
<i>Complying with tax schedules</i>	7
<i>Managing tax burden</i>	40
International Trade Related Purposes	21
<i>Limitations in cash transfer</i>	2
<i>Competitive status</i>	21
<i>Reflecting the real revenue/costs</i>	5
Internal Management Related Purposes	21
<i>Justice performance evaluation</i>	7
<i>Motivation</i>	9
<i>Other</i>	5

**Reference:** Günaydın, 2000, p. 139.

### **1.2.1. Purposes Related to Taxation**

It is essential that the pricing applied as a result of the transfer of goods and services between the companies that are operating in different countries and the headquarters or other sub-firms with which they are affiliated within and outside the country reflect the real situation in terms of the countries they are located in and thus the tax liabilities of the companies are formed accordingly.

For minimizing the global tax burden of multinational corporations, it is possible to reduce the tax bases and lower their tax burdens compared to the real amounts by applying low or high prices according to the precedent in the transfer of goods and services between them. Indeed, international firms and multinational corporations that dominate the world trade are using this opportunity to the maximum extent by taking advantage of the legal gaps or incentives of countries with different taxation powers.

It is possible to summarize the transfer pricing objectives related to taxation as follows (Anderson and Scott, 1996, p. 47);

1. In the countries in which the tax rates are higher, it is necessary to obtain high prices from affiliated companies and sell them at low prices, whereas in the countries in which the tax rates are lower,
2. To pay the withholding tax against the profit share, patent, know-how, and brand right, and to pay less the withholding tax with the transfer of the payments to be taken from outside the goods.

3. The companies in the countries with high tax rates should be applied to other companies in the group of companies to which they are affiliated. Reduction of taxes by means of low or no representation of the costs, and thus assuming the costs of other companies,

4. To pay less tax by changing the transfer prices in order to protect the customs duties and value-added tax (VAT) less by showing the transfer price of the imported goods low, and to avoid the restrictions on exchange, exchange and exchange rates.

5. The share of the affiliated companies in the country with high tax rates is increased while the share of the affiliated companies in the multinational head office of the multinational company is distributed to the affiliated companies.

As a result it can be said that; companies operating in more than one country are aware of the fact that tax legislation differs by country. As such, they tend to benefit from the advantage of operating in different countries at all times. The transfer pricing practice also appears in such forms as the purchase of goods and services prices among the affiliated companies, as well as the acquisition of very high value of non-profitable subsidiaries. Tax incentives, tax advantages and discounts in countries where the activity is higher than in other countries in order to appear higher than the operating profit, the central expenses in these countries may not be reflected in the subsidiaries. Similarly, tax benefits can be created by avoiding tax by adjusting the prices of rights such as know-how, patent and trademark rights (İnce, 2010, p. 10).

### **1.2.2. International Trade Related Purposes**

Transfer pricing can help multinational companies create and maintain a competitive environment in the international market. This is most often done with either a differentiated strategy or a low cost manufacturer of a product. The appropriate transfer price may allow a branch to enter a new market at a competitive price. In other words, it may facilitate market entry or allow price reductions in response to stagnant demand. Furthermore, it may allow a general reduction in economic conditions in a given geographical area.

With Transfer Pricing, profit transfer between countries is carried out and the borders of the country are exceeded in this way. In the case of multinational companies having restrictions on the transfer of profit from affiliated companies to the center, or if additional taxes have been introduced, the prices of goods and services will be displayed differently in order to overcome these practices. In this context, the prices of goods and services will be inflated and the profit hidden in the inflated price will be transferred to another country. Companies operating internationally often use transfer pricing as a tool to benefit their exchange rate fluctuations. With transfer pricing, resources can be withdrawn from the country where the exchange rate is low and moved to the country where the exchange rate is high. In this way, fixed gains can be achieved when large gains can be applied.

### **1.2.3. Internal Management Related Purposes**

The management objectives of enterprises affect the decisions of transfer prices. In this respect, enterprises benefit from transfer prices, to increase the harmony between managers and business objectives, to evaluate the performance of departments in a fair manner, to compare with other departments and to motivate managers to increase the profitability of departments.

The executives will be able to adjust the income and expenses of their departments by determining decisive decisions on the prices and amounts of goods and services transferred to affiliated enterprises with the transfer prices they will identify.

The targets of the companies related to the concept of transfer pricing affect the decisions of the management in determining the transfer prices. For this reason, companies use transfer pricing as a tool to increase the congruence between company executives and the company's objectives, to identify and compare the cross-department performance with other departments and to motivate department managers to increase the profitability of departments (Kaplan, 2013, p. 65).

The managers of the departments focus on their own units, not the entire firm. The success or failure of the company unit can be said to have an impact on firm performance. At this point, transfer pricing questions such as aim compliance, performance appraisal and preservation of the independence of company units

respond to the question of why transfer pricing is needed in internal management (Işık, 2005, p. 35-36).

Achieving target compliance is a must for a company. For this reason, it is essential to adopt corporate responsibility by the company executives. In this framework, transfer pricing is the main plan of the center through the distribution of profit, cost, investment and expenditures to responsible centers in a formation.

Companies inform their shareholders and the external environment about their financial position through their financial statements. Credit institutions also provide financial opportunities to companies by looking at these tables. The higher the profitability in the financial statements issued by the company, the greater the possibility of obtaining loans from the financial institutions of the company. In this respect, companies use transfer pricing to increase their credibility by playing on the figures in their financial statements.

### **1.3. Historical Development of Transfer Pricing Concept**

The concept of transfer pricing has become an important topic especially in recent years. The most important reason for this is the increase in the number of national and international companies by years. However, the literature on this subject dates back to the beginning of the 1900p. In 1901, the Englishman Harry Sid Gwick, in his work “The Principles of Political Economy”, argued that the companies used their own products during their production, and that the market price for the products in question should be valid. Again at the Du Pont Company in March 1920 and at the



General Motors, whose international trade volume was between 1921 and 1925, it focused on the price of raw materials and semi-finished products in the goods and services they produced and the cost of selling them if they did not cost them (Kurşun, 2008, p. 11).

In 1917, the possibility of centrifugal management policies and transfer pricing could be used as an important tool in tax evasion in the USA. Similar studies have been carried out in similar environments.

The first legal arrangements regarding the misuse of the transfer pricing application by the financial administrations were made in 1917 in the United States with the implementation War Revenues Act Mal. In the United States, companies can demand to use their offspring companies in order to show their income in real terms, and they can request the financial management to give a consolidated tax return in the transactions of the related companies. In the United States, the intended purpose of the distribution power in the United States extended the boundaries by specifying the parties' tax obligations as the correct determination of tax obligations and the prevention of tax evasion, but the application of the consolidated declaration was abolished.

In the 1990s, with the impact of technological progress and globalization, there have been major changes in international trade and business. Artificial transfer pricing opportunities have expanded as the time-to-year production, total quality management, zero-stock level, benchmarking approach, and changes in transportation, communication, and storage costs have changed, and electronic commerce has

changed the transfer methods for production and inter-company goods and services. The organizations formed among the financial administrations have developed new methods for detection and reporting.

On the light of all these developments, the effect of abuse of transfer pricing on trade life and accordingly economic and legal order has increased. Transfer pricing is not pursued only on a national scale today, and the relevant OECD makes committees on many issues to update transfer pricing principles, making financial assistance to entities that are considered as workplaces or businesses, and making updates on e-commerce and stock options.

### 1.3.1. International Regulations

Before detailing the regulations and the history of transfer pricing in outspread European countries, the USA and OECD, it would be useful to view the below figure. This figure is a summary of transfer pricing regulations and history.

Table 2. *History of Transfer Pricing and Regulations*

	<b>Germany</b>	<b>France</b>	<b>United Kingdom</b>
First regulations	1934	1933	1951
Compliance with OECD Regulations	√	√	√
Methods	-Comparable Non-Controlled	Methods specified in	Methods specified in

	Pricing -Re-sale Pricing - Cost Plus -Profit Distribution -Process Based Net Profit Margin Method	the OECD Guidelines	the OECD Guidelines
Burden of Proof	Taxpayer	Tax Department	Tax Department
Specific Audit of Transfer Pricing Processes	-	√	√
Authorized Audit Unit	Tax Department	-	Transfer Pricing Group
Punishment	-	Tax Department	√
Certification Requirement	√	√	-
Other Special Cases	Backward Price Adjustments Method		Advance Covered Capital Agreements

**Reference:** Acuner, 2013, p. 637-638

### *1.3.1.1. Regulations in Great Britain*

The authority to regulate transfer pricing in the UK belongs to the Royal Revenue and Customs administration. There are comments that Britain's transfer pricing rules have gone by 1918. It is accepted that the third part of the Income Tax Act 1918 includes the principle of compliance with its peers and general principles. The definitive issue is the regulation in section 37 of the Finance Act of 1951 (Finance Act 1951). No change was made in the legislation within the period of more than 50 years after this date. (Ateş, 2011, p. 27) The regulation in section 37 becomes the section 770 of the Income and Corporation Taxes Act 1988 issued in 1988. It has come. The UK Internal Revenue Administration carries out transfer pricing through sections 770-773 of the Income and Corporation Taxes Act 1988 issued in 1988. The principle of conformity with its peers was taken as basis (Taşkın, 2012, p. 163). These arrangements are in line with the OECD guidelines; it is assumed that there is a flexible explanation of the principle of conformity with peers in the transfer of tangible and intangible assets. It has been strengthened by recent legal regulations. The above regulations are effective in determining the tax base in the vicinity of the principle of conformity with their peers in cases where less tax is paid in the UK. In the event that the taxpayer operating in the United Kingdom purchases goods at prices above its value in the relations with the affiliated companies in other countries or sells goods at prices below its value, the revenue management processes are evaluated based on the amounts appropriate for their counterparts and carries out the necessary inspections. On the other hand, if the taxpayer operating in the UK receives goods and

services at low prices from its subsidiary in the other country or sells goods and services at high prices, no action will be taken (Işık, 2005, p. 82).

The regulations are mainly aimed at increasing the tax base in the UK. In cases where there is a tax agreement, the tax base of the UK may be reduced if the counter-state demands a correction according to the provisions of the agreement (Kızılot, 2002, p. 43). The 1998 tax law had a direct judgment that Britain would cooperate with the OECD on transfer pricing. Compliance with the principle of conformity of the peers was changed with the amendments, and some of the burden of proof was transferred from the revenue administration to the multinational company. In addition, new certification requirements were introduced in line with the OECD Guidelines.

The new regulations broaden the scope, transactions and agreements and include direct and indirect, inbound and outbound financial funding. Arrangements for secondary adjustments have not yet been made. The general penalty system applied to the wrong statements of the taxpayer will be applied to transfer pricing. Up to 100% tax adjustment penalty may be imposed on negligence and defective or fraudulent acts (Işık, 2005, p. 82).

Advance Pricing Contracts are included in sections 85 - 87 of the 1999 Law on Finance. Regulation on disguised capital in article 209 of the Law, if the amount of interest paid or the amount of debt received is too high for the debt received from the subsidiary, the paid interest will not be deducted from the tax base. Interest paid will be considered as dividend (Işık, 2005: 82). The United Kingdom's implicit capital

regulations are consistent with Article 9 of the OECD Model (Kızılot, 2002, p. 174). Interest on borrowings that are not suitable for their peers is not considered as expense. Although it is not official, it is recommended by the revenue administration that the ratio of the debt equity ratio to the ratio of 1: 1, and the ratio of pre-tax and pre-interest rate profit to 3: 1 is 3: 1. These rates of the revenue administration are indicative and the final evaluation is made according to the actual nature of the incident (Kızılot, 2002, p. 180). The revenue administration recognizes that these ratios reflect historical averages and consider them to be reasonable rates in their evaluations. However, the above ratios can be revised according to the characteristics of each event, the sector averages and the status of the group of companies in the group. Therefore, different rates can be determined as a result of tax payers' negotiations (Kızılot, 2002, p. 180). With the regulations that will be effective from January 2004, transactions within the UK are also included in the covered income. The regulations applicable to the regulations on the covered capital as of April of the same year are combined with the transfer pricing.

#### *1.3.1.2. Regulations in Germany*

The German tax legislation does not have very detailed rules on transfer pricing. In Article 8 of the German Corporation Tax, the issue of the Corporate Tax base is taken into account in the determination of the implicitly distributed earnings and the issue is placed in a very broad framework. The principles of transfer pricing in Germany are generally administrative and have been formed before 1980 and have been shaped by administrative and judicial decisions for a long time (Ağar, 2011, p. 46). In Germany, the Federal High Tax Court is based on the attitude of the

institution's (attentive, cautious li manager regarding transfer pricing. The Supreme Court said, l what price or compensation would be required for a property owner to sell a property to them? What would he pay for the third person, who was not an associate in the alignment of a good and careful institution manager? What would he demand from a third party who was not a partner in these relations? Bu. The German transfer pricing rules consist of the Corporate Tax Act 8 (3), the Foreign Transactions Tax Act (Section 1 (1)) and the OECD Model 9 (1) (Işık, 2005, p. 73).

Tax laws in Germany do not comply with the OECD Guidelines. However, it is generally accepted that the principle of conformity with its peers can be found in Article 1 of the Foreign Transactions Act. This article is applied in case of German companies' selling their goods and services to foreign dependent partners at a low cost.

According to the German tax legislation, taxpayers are required to determine the price appropriate for their peers according to traditional methods. To determine the most appropriate method, comparability analysis is required. In the case of a comparable process, first of all, traditional processing methods must be applied. If there is no comparable method, it is possible to apply other methods as an alternative (Avşaroğlu, 2013, p. 271).

In Germany, the legislation on transfer pricing was established in 2003. In 2003, additional transfer pricing legislation involving new law applications was adopted by the parliament (Acuner, 2013, p. 762). The issues which cannot be solved due to legal gaps between the taxpayers and the administration have been regulated

especially for the regulation of transfer pricing. Taxpayers are not obliged to submit the documents to be prepared for transfer pricing nor any documents made with the related persons to the tax administration in the annex of the corporate tax declaration. Taxpayers are required to submit the documents related to transfer pricing on the basis of tax examination within 60 days upon request by the relevant investigator (Acuner, 2013, p. 764).

### *1.3.1.3. Regulations in France*

In France, there is no direct regulation on implicit earnings and implicit capital. The main legal basis for French transfer pricing is the Code Général des Impôts (CGI) 57 of the General Tax Code. Article 209I of CGI is also applied to enterprises subject to corporate tax, although this arrangement is explicitly based on income taxed enterprises (Ateş, 2011: 28).

Only the income generated by the company operating in France is taxable and thus, the income of a French parent company in a foreign country cannot be taxed since it is not available in France.

According to the application of Article 57 of the General Tax Law, the tax administration is obliged to prove the transfer and transfer of the transferred profit. However, there is no obligation to prove this aspect in transactions with the corporations in France with tax havens. The definition of the related person is regulated in two ways as legal and actual. The legal implication is the relationship that arises in accordance with French Law;



- When a business has a weighted portion of the capital of another business,
- When an entity has the majority of the voting rights of another entity,
- When a business has the power to decide directly or through an institution in another business

France has transposed the principle of compliance with the precedents defined in Article 9 of the OECD Model Tax Agreement to Article 57 of the General Tax Code. There are references to the Transfer Pricing Guidelines for International Companies and Tax Administrations published by OECD in legal arrangements for transfer pricing.

In the legal rules for transfer pricing, France has adopted the principle of conformity to the peer to be applied to transactions under cross-border transactions.

According to the General Tax Code (CGI) 57, it is not sufficient for the tax office to demonstrate its control power in order to make a tax adjustment, and it should be shown that the transactions subject to the examination transfer the profits indirectly from France to abroad (Ateş, 2011, p. 28).

The rules in the sections related to the regulations that are not allowed to be discounted in the determination of the corporate income are applied to the subjects related to the covered income and covered capital (Işık, 2005, p. 78).

France accepted traditional transaction methods (comparable price method, resale price method, cost plus method) and operational profit methods (net profit distribution method and profit distribution method) as transfer pricing methods. Firstly, traditional transaction methods are taken into consideration and then operational profit methods are applied to the rules.

In the tax system, disguised profit distribution through transfer pricing is regulated in Article 109 / 1-1 of the General Tax Law. According to the aforementioned provision, the fact that the profit is not allocated as a reserve and not included in the capital means that the profit is distributed. If the earnings remain within the institution, they will be seen either in reserves or in capital. If earnings are not shown in capital or reserves, they are deemed to be distributed. Shareholders are required to be the shareholder of the company in order to be considered as distributed. If it is not known who the beneficiary of this distribution is, the tax administration has the possibility to request additional information about the beneficiary of the excess from the entity distributed (CGI m. 117). The response time of the institution is 30 days. In case of not responding or inadequate answer, the corporation may be subject to a tax penalty of one solid amount of tax (Ağar, 2011, p. 68).

#### *1.3.1.4. Regulations in the USA*

The first legal arrangements for transfer pricing have been put forward in the United States. The arrangements made by other countries and organizations after the USA were based on the regulations in the United States. OECD regulations are in line with US regulations despite minor differences (Kapusuzoglu, 200, p. 25).

The transfer pricing issue, which is very important in terms of state sovereignty and taxation in the USA, is regulated in section 482 of the US Income Law. 482 Article 2 - whether two or more organizations, commercial activities or whether they have a legal entity that is owned or controlled by the same interests directly or indirectly in the distribution of income and discounts between taxpayers, whether they are established in the United States or whether they are affiliated or in any event, the Minister of Finance shall determine whether it is necessary to allocate, allocate or distribute taxes in order to prevent the abduction of taxes or to clearly reflect the income of any of these activities, business activities or businesses; commercial activities or enterprises may be distributed, allocated or shared among them (Tokay, 2010, p. 132).

As it can be seen, the regulation on transfer pricing of the department numbered 482 has drawn a very wide area of authority to the administration by not searching the related persons to have common interests instead of singling the related individuals individually, and not conducting the activity as a legal entity for the use of correction authority

After the US Congress legalized the transfer pricing legislation with the section 482 mentioned above, ABD IRS was instructed intra-group companies to conduct a comprehensive study on transfer pricing and to specify the rules and strategies that apply under section 482 and the applicable rules.

The IRS published "White Paper" in 1988 in accordance with this instruction. White Paper, the re-sale price method, sales price method, sales, and distribution

business related to the associated operations, cost plus methods are also designed for production, manufacturing activities (Aktas, 2004, p. 179)

#### *1.3.1.5. Regulations of OECD*

As a result of the globalization of the world order and the increasing role of international companies in the world economy, it started to deal with the phenomenon of transfer pricing in OECD. In this context, the OECD issued several guidelines and reports on various dates related to transfer pricing.

The OECD study on transfer pricing was recorded in 1977 as the “OECD Tax Agreement Model Transfer”. Following this, in 1979 the OECD Financial Affairs Committee published a guide to be accepted by most countries. Pricing Guidelines for Multinational Corporations and Tax Administrations 1979. Again in 1999, a number of additions and updates were reprinted (Karabulut, 2014, p. 99-100). At the same time, although a number of additions were made in 2008, a significant change was made in 2009. The amendment is an important update of profit methods if the transaction to date is 1995.

The Guide to Transfer Pricing for Multinational Corporations and Tax Administrations came into being through a review of the OECD's Transfer Pricing and Multinational Enterprises Report (1979). The original version of the OECD Financial Affairs Committee, approved on 27 June 1995, was approved by the OECD Council on 13 July 1995.

### **1.3.2. History of Transfer Pricing in Turkey and the Regulations**

Transfer pricing or concealed profit distribution was first included in 1949 as “*thin capitalization*”, “*hidden reserve*” under the Corporate Tax Law No: 5422 to Turkish Tax Legislation. Transfer pricing is not only an application aimed at explaining the profit transfers of the companies operating in the international dimension, but also the purpose of preventing the transfer of profits between related companies within the country.

In this context, the provisions of Article 13 of the Corporate Tax Law No: 5520, which entered into force in our legislation on 21.06.2006, have not narrowed the scope of the implicit gain institution, but the transfer pricing concept has been added to our legislation with the title of “Disguised Profit Distribution via Transfer Pricing”. This article entered into force on 01.01.2007. All institutions of transfer pricing have been prepared by taking into account the recommendations in the “Guidelines on Transfer Pricing for Multinational Companies and Tax Administrations” prepared by the OECD Finance Committee in 1995 (Türk, 2008, p. 52).

The last plan called as “Plan for Discharge and Action Plan” (PDAP), which was prepared by the OECD, was announced on 19 July 2013 and was approved by the G20 Leaders’ Summit which came together in September 2013 in Saint Petersburg. Tax losses and the steps to be taken in order to prevent these losses in the countries where multinational companies operate in different countries because the creation of new institutional frameworks and road maps related to the struggle against PDAP.

## **1.4. Transfer Pricing Methods**

The basic principle is to ensure that every country receives a fair share from the pool of international trade and direct investments, and the prevention of the erosion of tax bases as a result of some manipulative transactions. Realization of trade and investments between countries, within the framework of economic rules without any deviation, is possible by the MNCs, which carry out these trade and investments mainly by carrying out related establishment procedures within the framework of some adopted methods and criteria (Hainsworth, 2000, p. 7).

The price to be applied for the transfers of tangible and intangible goods and services between the related parties shall not be different from the price formed between independent organizations in the free market under the same or similar conditions.

The transfer of goods or services between the entities associated with each other must be realized at this price. Since the transfers of the MNCs themselves occupy a very large place in the total trade in the world, a number of methods have been developed in order to determine the market price, especially in the transfers to the companies to which these companies are related.

### **1.4.1. Comparable Non-Controlled Price Method**

The comparable non-controlled price method is determined on the basis of the market price that the real or legal persons who sell or buy comparable goods or services in a manner that a taxpayer will apply will be applied to each other in the

transactions they perform with each other. For the implementation of this method, the transaction with the related persons should be comparable with the transactions of the persons who are not related to each other. For example; In the case of transactions under control, the delivery price is the delivery price including transportation and insurance, and in the case of non-controlling transactions, the sale should be corrected because the transaction does not take place under similar conditions in case of the delivery price excluding transportation and insurance. The differences in transportation and insurance constitute definite and detectable effects on the price. Compared to other methods, MNCs prefer the comparable uncontrolled price method in the transfer of goods and services with two related entities, in the presence of comparable non-controlling transactions, and in determining the price or cost that are compatible with peers.

#### **1.4.2. Re-sale Pricing Method**

The resale price method refers to the calculation of the appropriate price to the peers by deducting an appropriate gross sales profit from the price to be applied if the goods or services are resold to natural or legal persons that do not have any connection between them. In the re-sale price method, the basis for reaching the appropriate price or price for peers is the sale and the price or price to be applied to real or legal persons who do not have any connection between them (Gümüş and Bilge, 2006, p. 129).

This method is also based on the expected price of a product purchased from the related person if it is resold to an unrelated natural or legal person. A reasonable

gross sales profit is deducted from this price (resale price). When calculating the reasonable gross profit, sales and operating expenses of the seller and the risks and assets used should be taken into consideration. In other words, the reasonable gross profit must be an objective profit rate that includes the functions and risks determined or assumed by market conditions that can be applied at the time of transaction for the goods or services in question. On the other hand, in cases where this method is applied, the person or organization that usually sells does not make any value-added contribution to the goods that he / she buys, nor does he physically change the structure of the product or sells the product in the same way.

#### **1.4.3. Cost Plus Method**

The cost plus method refers to calculating the cost of the price appropriate for peers by increasing the cost of the related goods or services by an appropriate gross profit rate (Ufuk, 2007, p. 23).

Taking into account the market conditions and the functions performed, the amount of the related goods and services will be increased by a reasonable gross profit rate and the amount will be the appropriate price or price for the transactions made to the related persons. As stated above as a profit margin to be added to the cost, it should be as much as the gross profit rate applied by the party performing the transactions with the unrelated persons regarding these goods or services. However, if such a profit margin is not available or if the number of transactions is insufficient to compare, the external precedent may be used, provided that it is comparable under the same conditions (ICC General Communiqué No: 1, 2007, p. 15).



Similar to the resale price method, the resale price method, the sale price to the costs by going to the cost of the amount is reached in this method while the cost of sales and at this stage is made comparison. This method is often used to determine the price of the semi-finished products sold by the group companies that make frequent purchases with each other.

#### **1.4.4. Profit Distribution Method**

Profit distribution method; it assesses whether the distribution in the consolidated operating profit or loss related to one or more of the transactions under one or more of the controls is appropriate to the price or price (Nazalı, 2007, p. 151). In other words, profit distribution method; it is the method that provides the distribution of the combined profit of the enterprise to the related companies according to the function and risk profile. In this evaluation, the relative value of the contribution of each taxpayer to the operating profit or loss is important (Beylik, 2004, p. 6).

The profit distribution method aims to eliminate the effect of the conditions in a controlled process on profit (Kökbulut, 2007, p. 146). In this context, the following factors are taken into consideration when applying the profit distribution method (Yıldırım, Balcı and Kiraz, 2002, p. 66).

- Expenses for the acquisition, production or sale of a product or for the provision of services,

- The capital or assets used during the development of a product or service delivery, or the degree of risk assumed,
- Relative importance of the functions performed at each stage of the process,
- Other measurable factors.

This method should be used in cases where there are no comparable transactions where traditional transaction methods (comparable price method, cost plus method, resale price method) cannot be used and where transactions between related persons are an integral part of each other (ICC General Communiqué No: 1, 2007, p. 19). In the dividend distribution method, the profit to be shared is determined from the transaction of the related companies. This profit is then shared among the related companies. In this context, the total profit from the transactions under control is shared in two stages. In the first stage, the profit margin of each related company is determined by considering the profit margin obtained by unrelated companies from similar types of uncontrolled transactions. In the second stage, if the remaining profit remaining from the total profit after the profit distribution to the related companies is found in the first stage, this profit is recalculated among the related companies according to the functions they are undertaking and the risks they are loaded, and the profits of the related companies from the transactions under control are recalculated. Therefore, as a result of the necessary improvements, the appropriate price is determined for the peers that the related persons will apply in the transactions under control (Özmen, 2008, p. 304).

#### **1.4.5. Process-Based Net Profit Margin Method**

The net profit margin based on transaction is a method based on the comparison of the net profit margin with the net profit margin resulting from the transactions of an entity with the non-relationship parties and the similar transactions with the related parties (Biçer, 2007, p. 192). The Transaction-Based Net Margin Method is based on a taxpayer's transaction; It is a method based on the examination of the net profit margin determined on a related and appropriate basis such as costs, sales or assets (Küçük, 2007, p. 82)

The implementation of the net profit margin method based on the transaction is similar to the application of the resale price method with the cost plus method. The difference between the net profit margin method and the other two methods is the calculation of the net profit margin in the other two methods while calculating the gross profit margin. As in other methods, comparability analysis can be performed in the net profit margin based on transaction. However, even if there is a difference in the transactions, the net operating profit margin is less affected by this difference than the gross profit margin taken into consideration in the cost plus and resale price method (GİB General Communiqué No: 1, 2007, p. 22).

In this method, which is used to find the fair value, the net profit margin applied in a comparable non-controlling transaction should be applied. If no application is available, the net profit margin applied by an unrelated entity in a comparable non-controlling operation is applied. In the implementation of the profit margin method based on the transaction, the function analysis of the related

institutions is required. In cases where the net operating profit margins of the enterprises that are not related to the organization will be taken into account, it should be determined whether the transactions are comparable and how much correction should be taken in order to produce the correct result. In such analyzes, the profit of the related entities' transactions under a single control should be taken into consideration (ICC General Communiqué No: 1, 2007: 22). The advantage of this method is that the net profit margins are less influenced by transactional differences than the comparable uncontrolled price method. The disadvantage is that the net profit margin can be influenced by some factors that have little or no direct effect on the price or gross profit margin.

#### **1.4.6. Free and Other Methods**

If the institutions are not able to meet the peers at the appropriate price with any of the methods described above, they will be able to use the methods they can freely determine in accordance with the nature of the transaction. The main criterion in determining the method is to choose the most appropriate method for the nature of the process (Yıldırım, Balcı and Kiraz, 2008, p. 67).

## **SECOND PART**

### **CONCEALED GAIN DISTRIBUTION AND ARRANGEMENTS THROUGH TRANSFER PRICING**

#### **2.1. CONCEALED EQUITY AND CONCEALED GAIN CONCEPTS**

In order to maintain their operations and achieve their goals, businesses need resources and foreign resources, in other words, borrowing to meet their financing need. In this respect, the enterprises can obtain the loans they can obtain through borrowing from third parties or partners outside the company.

##### **2.2.1. According to law (repealed) numbered 5422**

With the provisions of Article 17 titled “Disguised Profit” in the repealed Law no. 5422, in the event that there is an increase or a decrease in the amount of goods or services, leases, borrowed money purchases made by the institutions within the scope of related person or the company's partners, According to the precedent made by their partners for their work in the company on blood and beech relatives up to 3rd degree, their spouses would be deemed to be implicitly distributed as high or low payments.

In this case, although the law numbered 5422 only converges to the essence of transfer pricing, it has not been able to solve the problems encountered in practice. Because the law failed to respond to international legislation and requirements, the relevant person, compliance with peers, the determination of the peer price and which methods will be used to address the main topics.

### **2.2.2. According to law numbered 5520**

In our legislation, the concept of concealed gain distribution through Transfer Pricing has been introduced for the first time with the provisions of Article 13 of the Corporate Tax Law no. with the amendment to Article 41 of the Income Tax, which also includes income taxpayers.

The gap created by the inability of the Law No. 5422 to keep up with the conditions and requirements of the time and its inadequacy in producing a solution to the problems that arose has caused corporate tax law's article 13.

Within the framework of this law, the precedent price principle, which has not been mentioned by the law no 5422, will be used to determine that the gain will be deemed distributed through transfer pricing, which transactions will be accepted as the purchase and sale of goods, the concept of related person, who will be considered a related person under the conditions, The methods to be considered in the selection of these methods, the agreement procedures with the Ministry of Finance, the treasury losses in which transactions to seek, certification issues and the powers given to the council of ministers are discussed in detail.

The fundamental differences between the concepts of disguised profit distribution in the law no 5442 and the transfer pricing concepts defined in the law no. 5520 are repealed in the figure below.

The tax result of disguised profit distribution through transfer pricing is that expenditure made for disguised profit distribution is not accepted as an expense.

However, the implications of the disguised earnings vary according to the status of the interlocutor against the tax laws and the transactions of the interlocutor regarding the distributed profit. There are different opinions in the literature.

According to this opinion adopted by the Revenue Administration during the KVK no. This is because the place where the disguised profit distribution system through transfer pricing has gained its main function as a tax security institution is the process where the corporate tax is eroded. It may also be considered as a commercial gain or other income element in terms of gain which is implicitly distributed. The criticized situation here is the amount implicitly distributed and is an expense that is not already accepted by law. On the other hand, the disguised profit is the result of a real transaction. For these reasons, there is no need to carry out an assessment in the presence of an interlocutor in addition to the organization that makes disguised earnings (Işık, 2005, p. 240).

### **2.2.3. According to law numbered 193**

With the regulations made within the scope of Law No. 5615, significant changes were made in GVK. When the changes are examined, it is understood that in addition to the inclusion of the minimum subsistence system in the system, a number of applications especially in the Corporate Tax Law are added to the income tax and a parallel regulation is tried to be obtained (Biyar, 2007, p. 1).

The transfer pricing application was not only aimed at corporate taxpayers, but also became effective among real persons with commercial earnings. According to this application (Biyan, 2007, p. 1);

- The spouses, superintendents and sub-notes of the owner of the undertaking, including the third degree, including the shareholder and beech relatives, direct or indirect partners, the partners of these companies, the management of these companies, other companies under the control of the company shall be deemed as related person.
- If the differences deemed to have been withdrawn from the entity are taken into account in the calculation of the income or corporate tax base declared by the related person, the taxation of the related person is corrected accordingly. The provisions of Article 13 of the Corporate Tax Law no. 5520 shall apply to the related persons and transactions made with them.

#### **2.2.4. According to law numbered 3065**

The relationship of the disguised profit distribution system with VAT through transfer pricing is particularly evident in the necessity of completing the VAT according to the equivalent price when the goods or services are transferred to the addressee determined by law at a price that is not free of charge or equivalent. The issue is particularly controversial in terms of interest.

The opinion of the tax administration on the subject is as follows. In cases where the relations specified in Article 13 of the KVK exist, VAT must be charged on



the interest received against the loan. In addition, a certain interest must be collected due to the provision of unrequited resources and a VAT should be calculated over this interest (Özbalcı, 2004, p. 448-449).

In the decision of the 9th Chamber of the Council of State dated 23.10.1997 and numbered E.1996 / 3270, numbered K.1997 / 3335; the transaction of lending money to the shareholders of the obliged company which is determined to distribute disguised earnings in terms of corporate tax shall be Since it is a transaction made within the scope of the activity, it is subject to VAT.”

### **2.3. RELATED PARTY CONCEPT**

One of the important criteria in transfer pricing application is the identification of related persons. Therefore, it is necessary to identify the company (s) and the persons with whom the firms have contacts in this context.

The concept of "related party" is very important in transfer pricing practice. In other words, the question of who will be considered to be a related person is not very important. Because the transfer pricing application is valid, the purchase-sale relationship of the goods or services must be realized between the related parties. Transfer pricing arrangements do not apply to the purchase or sale of goods or services between unrelated persons.

According to the new corporate tax law numbered 5520 the concept of “related person” (“related party”) is wide. This situation requires the determination of whether taxpayers are related to each other in each purchase and sale relationship. In

order to make the operations related to transfer pricing more effective, the boundaries of the related parties must be reduced significantly. It may also be appropriate to introduce a lower limit for transactions with related parties, to eliminate the obligation to issue and submit documents for transactions within those limits. On the other hand, the fact that the transfer pricing application is not applied in domestic transactions and that it is applied only in foreign transactions narrows the concept of related party.

### **2.3.1. Within Corporate Tax Law**

Disguised profit distribution method through transfer pricing has been introduced into the Turkish Tax System in accordance with the EU standards with the articles 11 and 13 of the Corporate Tax Law numbered 5520 (Tuncer, 2012, p. 224).

According to the article 13 of the Corporate Tax Law related party; refers to the real person or institution to which the institutions have their own partners, institutions or their partners, directly or indirectly or directly under the influence of their administration, supervision or capital.

Partners' spouses, partners' or partners' top and bottom and third-party relatives and beech relatives are also considered as related persons. All transactions made with the persons in the countries or regions declared by the Council of Ministers shall be deemed to have been made with the related persons by taking into consideration whether the tax system of the country where the profit is obtained provides a taxation opportunity at the same level as the taxation capacity created by the Turkish tax system and the exchange of information is taken into consideration.

### **2.3.2. Within Income Tax Law**

With the amendment made to the article 41 of the Income Tax Law, the spouse, superintendent and sub integration of the undertaking, including the third degree relatives, and the direct or indirect partners of these companies, the direct persons and institutions of these companies, supervision, and administration of these companies, and other companies under capital control.

Again, the business and transactions performed by the owner of the company with the partner company will be evaluated within the scope of related person. For example, the real person (A) and the real person (C) who is the partner of (B) AŞ and their business and transactions between them shall be considered within the scope of the related person.

### **2.4. PRINCIPLE OF COMPLIANCE TO IMPUTED COST AND COMPARABILITY CONCEPT**

The basis of the transfer pricing application is the re-determination of the price determined by the institutions in relation to the purchase and sale and service provision between the related parties within the framework of the principle of conformity with peers.

The concept of conformity to peers is built on the person concerned; if the situation that arises as a result of the business and transactions between the related persons or institutions and the situation between the unrelated persons or institutions is different, the profit that should be accrued on behalf of the enterprise does not

accrue due to these conditions, and the actual profit that should be accrued is included in the operating profit and the taxation of the enterprise accordingly as defined.

In order to reach the price which is the cornerstone of transfer pricing, the internal precedent will be used first and the external precedent will be used in order to reach the most suitable price in case the healthy and reliable price cannot be determined with the internal precedent or the possibilities do not allow.

The internal precedent, which is applied in the determination of the precedent price, refers to the price or price used by the taxpayer in the transactions and transactions performed with unrelated persons.

Comparability, which is one of the most important issues for the methods used in determining the peer price to give the most realistic results, means that the transactions between the related parties and the transactions between the related parties and the unrelated persons are comparable. Transactions between related persons in this definition are called controlled transactions and transactions between unrelated persons are called uncontrolled transactions.

The basic principle of comparability analysis, which is necessary to find the appropriate price and price for peers, is to analyze different sides of transactions of the same type. In order for these comparisons to yield reliable results, the necessary corrections should be made so that the differences between the situations and the parties compared do not adversely affect the outcome.

In the comparability analysis applied to the current works and transactions, the characteristics of the goods or services compared, the structure of the market in which the transactions take place, the economic conditions in the market, the function analysis and the business strategies of the institutions will be taken into consideration. It will be possible to list the issues to be taken into consideration when comparing transactions between related parties and uncontrolled transactions as follows;

- Properties of goods and services subject to processing
- Function analysis
- Conditions of the market subject to processing
- Business strategies determined by the institutions performing the transaction

Taxpayers are obliged to determine and use the most appropriate method according to the nature of the transaction. Taxpayers use traditional trading methods and profit-based trading methods to determine the price they will apply to transactions with related parties under the principle of compliance with peers. The so-called traditional trading methods are comparable price method, cost plus method, and resale price method. Transactional profit methods are profit distribution method and net profit margin method. If the taxpayer cannot reach the precedent price by using any of these, he / she can use any method determined by himself / herself.

However, if all these methods do not allow price and price determination within the framework of the principle of conformity with peers, the taxpayer may

make the necessary determinations by a method determined by himself. This method, which will be determined by the taxpayers, is also subject to the fact that it should be determined in accordance with the principle of compliance with peers (Çakır 2016, s.160).

## **2.5. SUBMISSION OF DOCUMENTS FOR TRANSFER PRICING AND TRANSFER PRICING REPORT**

Large taxpayers are required to prepare corporate taxpayers affiliated to the tax office for domestic and international transactions with related persons and for transactions with related persons in free zones. Other corporate taxpayers, on the other hand, only for transactions with related persons abroad and in free zones; taxpayers in free zones are obliged to prepare for transactions with domestic related persons. There is no obligation to prepare such a Report for income taxpayer's subject to the provisions of transfer pricing.

These reports must be prepared until the corporate tax return is submitted. However, there is no obligation to submit these Reports as annexes to the corporate tax return. On the other hand, corporate taxpayers who deal with related persons (as well as those having a gain on foreign corporation controlled by the corporation with a covered capital transaction) are obliged to fill out a form only in the annex of the corporate tax return. Transfer pricing report must be compatible with this form.

Since it is not possible to prepare this report which should contain certain details immediately, taxpayers should prepare this Report in advance in order not to

be subject to criminal assessment. In these reports, information about the group / holding structure to which the taxpayer is affiliated, finding information about the company, providing information and characteristics related to the sector in which it operates, related information and risk / function analyzes, related transactions and market conditions, The methods used to determine the peer price, information about the suitability of these methods should be available.

Although it is not foreseen that the taxpayers are obliged to prepare reports related to domestic and foreign transactions with corporate taxpayers who are not affiliated to the tax office and with the related taxpayers and the related taxpayers, it is not foreseen that the list of documents foreseen in case of an examination related to these transactions. Since the documents in this list are not documents that can be created immediately upon the request for submission, it is undoubtedly useful for these taxpayers to prepare their documents in this context as a file in advance.

In order to determine that the price / price applied in transactions with related parties is determined within the framework of the principle of conformity with the peers, it is useful and obligatory to keep the records, ruler and other documents for the determination or calculation of the price / price as proof paper. Because these documents and records are very important for taxpayers in terms of both the chosen method and justification in pricing, and the accuracy and correct application of this method, and the administration in terms of the health of the examination.

While the obligation of submission is limited to the period of time limit, it may sometimes be wrong for the taxpayers to keep the retention period limited to this

period. This is because it is not easy to determine how the TF provisions apply in contracts where the pricing is done for a long period of time between the parties. Sometimes it is necessary to go beyond the timeout period for detection. For example, if a bank leases the immovable of an affiliated company to use it as a branch for ten years, comparison of precedent will also require examination of these contracts.

## **2.6. INTERCOMPANY SERVICES**

Intercompany services shift covers the services provided to each other by the subsidiaries of the company located in the headquarters or within the same group, which occur among the related companies listed in the law. In order to make the evaluation in relation to intra-group services within the framework of transfer pricing, the existence of the following conditions must be confirmed;

- Determining whether the service is actually provided by the relevant institution,
- Determining whether the receiving party really needs the service,
- If the service is actually taken under the current conditions, it is not checked whether the determined service price is in line with peers.

In order to determine whether intra-group service is provided between related parties due to the concept of conformity to the precedents which form the basis of transfer pricing application, it should be emphasized whether it adds any commercial or economic value to the party receiving the service within the group.



If a related company obtains a service that it does not need from a company that is in the central position or another company within the same group, or if a service is provided to a group member only because it is a group member, it cannot be considered that the company obtains intra-group services (Bilir 2014, p. 15).

In intercompany services, service cost is another matter that is as important as whether or not the service is actually provided. The price determined in the Group services should be handled individually for both service and service parties and evaluated within the framework of the principle of compliance with peers.

In the services provided to one or more companies within the same group, determination of the appropriate price for the peers shall be provided by using the related methods specified in the law.

## **2.7. EVALUATION OF THE EFFECTIVENESS OF TRANSFER PRICING PRACTICES**

Transfer pricing initially emerged as a business economics concept and was used to determine the price to be applied between its own segments. However, when international companies began to use transfer pricing as a tax planning tool to reduce the taxes they would pay between countries, transfer pricing became a problem in international tax law.

One of undergoing significant changes with the 5520 Tax Act regulations in Turkey are also regulations concerning the disguised profit distribution via transfer

pricing. Considering the Corporate Tax Law No. 5520, the things to be done about transfer pricing in order to ensure the effectiveness of taxation are listed below.

### **2.7.1. Treasury Loss Concept**

The provision of the seventh paragraph added to the article 13 of the Corporate Tax Law No. 5520 is as follow;

“Full of taxpayers with foreign institutions, offices or representatives in Turkey within the scope of the transactions between related persons within the country realized earnings distributed as implicit recognition that is conditional on the emergence of the Treasury lossep. The purpose of the treasury loss is to accrue any missing or late tax accrual on behalf of the corporation and related persons due to the prices and prices determined contrary to the principle of conformity with the peers.”

The relationship between the penalty provisions and the treasury loss criterion in transfer pricing has been the subject of controversy since the first day of application of the article. Those claiming that the treasury loss should be sought as a condition, claim that the tax loss must be realized in order to be able to mention the existence of disguised profit distribution, but this loss is not realized by adding the amount that causes the tax base of one institution to the base of another institution in the same year (Kapusuzoğlu, 2008).

The concept of treasury loss is defined as the missing or late accrual of all taxes that should be accrued on behalf of the corporation and related persons due to the prices and prices determined contrary to the principle of compliance with

precedents. Although it is not explicitly stipulated in the Law, it is possible to consider not only the corporate tax, but also the income and value added tax, as well as all transaction-related taxes when examining the presence or loss of the Treasury.

In order for a provision in any tax law to be effective in terms of other tax laws, this should be emphasized separately and clearly. Based on the general statement of the Corporate Tax Law, it is not correct to make an expanding interpretation of the taxes that have separate laws such as Value Added Tax and Stamp Tax. In order for the regulation to include other taxes, there is a clear provision in the law. Therefore, the administration should make more concrete statements on this issue in the following periods.

On the other hand, since the concept of treasury loss entered into the legislation as of 2008, taxpayers are subject to penalty assessments in the same type of transactions before 2008, even though they are subject to criminal transactions by seeking treasury loss criterion.

### **2.7.2. The Problem of Imputed Cost**

The price or price applied in the purchase or sale of goods or services with related parties should be in accordance with the price or price in the absence of such relationship. This is called the principle of conformity to peers. The main purpose of the principle of conformity to peers is that the price or price applied in the purchase or sale of goods or services between related parties is equal to the price or value

determined between the persons who are not related to the purchase or sale of the goods or services under comparable conditions.

A comparability analysis is required to determine the price or price that is appropriate for peers. The comparability analysis is based on the comparison of the conditions of the controlled transactions with those of the uncontrolled processes. For this reason, the concept of comparability means that the differences between the transactions should not materially affect the elements of comparison in any way or that the differences that affect the material should be corrected by certain transactions.

The main factors considered in the determination of comparability are as follows;

- Qualities of goods or services,
- Analysis of the functions and risks undertaken,
- Economic conditions in the market in which the transaction takes place,
- Business strategies of institutions.

In the comparative analysis that should be done during the determination of the precedent price, these headings have to be examined in detail. It is necessary to elaborate this section in order to guide the studies to be carried out by taxpayers in various sectors. Moreover, in other country applications, these headings are presented to taxpayers in detail (Biyani, 2007, p. 92).

There are two main problems faced by taxpayers and tax administrations in the implementation of this issue. These are excessive values in comparable examples and whether loss firms are included in the range. If there are excessive values in comparable examples; this means that there is an error in the comparison results or that the parties concerned are experiencing an extraordinary situation. While some countries' administrations accept excessive values, others reject direct values and exclude them from the range. Whether the loss firms are included in the range is another problem encountered in the application of precedent price range. While some countries do not include damages in the range, others see damages as a normal consequence of economic life and include them in the range.

### **2.7.3. Organizations' Financial Tables and Reporting**

Failure by the administration to determine the procedures for transfer pricing on time based on the authority granted by law or to the lack of clearness of the established procedures may cause difficulties in implementation. One of the difficulties encountered in Turkey, certification, given the limited time and the lack of sufficiently clear that the information requested is actually in the form which is to require comment. However, the administration's guiding and tolerant behavior can prevent this difficult period from damaging the business life.

Documents related to prices and prices determined in accordance with the principle of conformity with peers; the records should be kept in the tables and charts during a time-out period in order to be able to explain the reasons for the application

in a future tax review. In addition, taxpayers must be able to identify each and every related person separately and fully in order to fulfill their certification obligations.

In applications related to transfer pricing transactions to be made in Turkey of the existing data base in Europe for determining the arm's length price range it is required to be made by both administrations may use taxpayers. Done urgently work on creating a database will be in place in Turkey. Otherwise, comparisons cannot be made, and it may not be possible to make accurate transfer pricing without comparison (Çiçek, 2012, p. 222).

In the transfer pricing application, the purpose of certification and administration is to make the records and procedures applied in the transfer pricing process clearly understood by the administration and the taxpayer. It is compulsory that the information and documents prepared by the taxpayers indicating that the commercial transactions are established within the framework of the principle of conformity with the peers and submitted if requested by the administration.

Until the issuance of the corporate tax declaration regarding the foreign transactions made by the taxpayers registered in the Big Taxpayers Tax Office within the scope of the related person during the annual accounting period, the corporate tax payers operating in the free zone and other corporate taxpayers within the accounting period related to the related persons within an accounting period. They are obliged to prepare a Transfer Annual Transfer Pricing Report and submit it to the Administration upon request by the Administration after the expiry of this period (Yaman 2013, p. 80).

The taxpayers who do not need to prepare an Annual Transfer Pricing Report on transactions with related parties are listed below. However, these taxpayers, who are not obliged to prepare a report, are obliged to submit the information and documents listed in the General Communiqué on Disguised Profit Distribution through Transfer Pricing Serial I (Dündar 2016, s.165).

According to this;

- Domestic transactions of corporate taxpayers with related parties
- Foreign transactions of corporate taxpayers operating in free zones with related persons
- There is no need to prepare an Annual Transfer Pricing Report regarding both domestic and international transactions made by income taxpayers with related parties.

Within the scope of transfer pricing application, General Communiqué No. 1 on Disguised Profit Distribution through Transfer Pricing, which applies the provisions regarding the Penalties in Tax Procedure Law, is stated in terms of not complying with the principle of compliance with peers in business and transactions, and keeping, storing and presenting information and documents when necessary.

#### **2.7.4. Cash Price Contracts**

Only corporate taxpayers can benefit from advance pricing agreements. This situation causes injustice for the income taxpayers. On the other hand, for advance pricing agreements, it is possible for taxpayers registered with the Taxpayers Department of the Big Taxpayers as of 01.01.2008 and for all foreign taxpayers as of 01.01.2009 to apply to the Administration on the method to be determined for foreign transactions with related persons. This situation leads to application differences and inequality among taxpayers. It may be beneficial for the administration to provide income taxpayers with the right of agreement in terms of eliminating inequality.

Price agreements in advance to be made between taxpayers and the tax administration in Turkey is subject to a 3 year period. However, insurmountable problems can create a situation under the terms of the company resulting from the economic and political stability of emerging countries such as Turkey is not sufficiently stable. Therefore, the shorter duration of advance price agreements may be beneficial to both sides.

#### **Preliminary assessment**

The application made by the taxpayer to the Contracting Entity within the scope of the cash pricing agreement shall be pre-evaluated in the light of the information and documents submitted.

The Contracting Entity shall subject to the preliminary assessment whether the status of the taxpayer is in compliance with the cash pricing agreement in the light of



the information and documents available on the application of the taxpayer. As a result of this evaluation, the Administration may either approve the agreement or request additional information and documents.

### Analysis

After providing the necessary data from the information and documents provided by the taxpayer, comparable transactions, applicable methods, assets used, terms of the agreement and other minimum issues are evaluated within the scope of the advance pricing agreement.

In this context, the evaluation and analysis process should be finalized by the Administration for six months for unilateral advance pricing agreement applications and twelve months for multilateral agreement requests (Official Gazette, 2017: 2).

### Acceptance or Rejection of Agreement

As a result of the application of the taxpayer, the Contracting Entity may decide whether to accept the agreement or, if certain changes are made, accept or reject the agreement after considering the necessary conditions and performing the necessary analysis. If the Contracting Authority accepts the application of the taxpayer, a cash pricing agreement is signed between the two parties. This process is finalized within nine months for unilateral agreement requests or two months for multilateral agreement requests after the entry of the application request into the administrative records or the period may be extended if the parties agree (Official Gazette, 2017: 3)

The signing of a cash pricing agreement between the administration and the taxpayer does not imply that the taxpayer cannot be subject to tax inspection on the subject of the agreement or any other matter. Therefore, the works and transactions within the scope of the agreement may be subject to examination at any time within the legal period. The Contracting Entity shall monitor whether the taxpayer complies with the terms of the signed agreement on the annual report to be submitted by the taxpayer by 25 April.

#### Renewal of the Agreement

The taxpayer may apply to the Contracting Entity for the renewal of a valid advance pricing agreement 9 months before the end of the agreement period.

The taxpayer shall submit to the Contracting Entity the information and documents proving that there is no change in the conditions specified in the current agreement and that the method determined in the agreement meets the principle of conformity to peers in accordance with the nature of the transactions being understood (GİB, 2017: 11).

If the Contracting Entity decides that the conditions specified in the agreement in force as a result of the examination of the application are valid and the agreement complies with the principle of conformity with the peers, the agreement shall be continued for another period. In addition, the administration may reject the request of the taxpayer to renew the agreement.

#### Revision of the Agreement

The pre-agreed cash pricing agreement between the taxpayer and the Contracting Entity may be revised upon the application of one of the parties when the following conditions are met (Kaplan 2012: 105);

- Failure of an essential matter to be realized in the agreement
- Substantial changes in one or more elements of the terms of the agreement,
- If the changes in international legislation affect the agreement negatively,

#### Cancellation of Agreement

In the event that one or more of the following conditions exist, the Contracting Entity shall unilaterally, retrospectively cancel the advance pricing agreement with the taxpayer and consider the agreement never made and refer the taxpayer to the tax inspection (Official Gazette, 2007: 25);

- Failure of the taxpayer to comply with the conditions determined by the advance pricing agreement,
- Understanding that the information and documents submitted by the taxpayer to the administration are incomplete, misleading and do not reflect the truth,
- Failure to submit an annual report on the agreement to be submitted to the Contracting Entity by April 25 every year during the advance pricing agreement.

## **THIRD PART**

### **CONCEALED GAIN DISTRIBUTION AND ARRANGEMENTS THROGUH TRANSFER PRICING**

#### **3.1. PURPOSE**

Main aim of conducted case studies, conducting the taxpayers prepared by the content analysis report required to prepare TP report in Turkey and in practice, the Administration presented TP reports, disguised capital, related party transaction, the arm's length principle of TP.

#### **3.2. IMPORTANCE**

Within the scope of the literature section, the transfer pricing report is very difficult to prepare in terms of its content and is a detailed report within the framework of the annexes and documents to be submitted as annexes. This case analysis, investigation of major companies of any transfer pricing prepared by the report from Turkey's path towards institutions that will prepare the transfer pricing report on the future map will be presented and is thought to be important to work with these device

### 3.3. TRANSFER PRICING REPORTS OF THE SELECTED COMPANY AND THEIR EVALUATION

This is me you study, published by one of Turkey's leading companies, two transfer pricing report is examined. Subject reports are the 2016 and 2017 reports. It has been prepared by the independent audit company in the report for both years. At the point of evaluation of the reports, firstly the general framework for the general overview of the reports was evaluated by years.

#### 3.3.1. General Overview

The report for both years starts with the introduction. The figure for the details discussed in the introduction by years is presented below.

Table 3. *Introduction Part of the Transfer Pricing Reports*

Year 2016	Year 2017
Purpose of the report and the relevant legislation	Introduction
Work performed	
Limitations of the report	

<p>Location of Information Required by Section 7.1 of <i>“The report for both years’ starts with the introduction. The table for the details discussed in the introduction by years is presented below.”</i></p>	
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Among the reports for the years 2016 and 2017, the main difference regarding the introduction section is the detailed evaluation under the different headings in the introduction section of the report in 2016, while the introduction section in 2017 contains only paragraphs related to the scope of the report.

In both reports, business description was made in the headings following the entry. In this context, information on the company's shareholding structure, organizational structure, products, services, customers, suppliers, market and economic conditions were provided.

The following headings include related parties, the transactions among them, and the TP analysis.

### **3.3.2. Related Parties**

In relation to the related persons, first the title, address and telephone information of the related persons of the company are given. The reports include a table that identifies the location of related persons within the group structure chart. In

addition, the main business lines of the related parties of the company are also included in the reports.

Table 4. *Related Parties Main Business Activities*

Year Ended 2016

<b>Related Party</b>	<b>Sales</b>	<b>Holding</b>	<b>Production</b>	<b>R&amp;D</b>	<b>Service</b>
XXX Italy	X		X	X	X
XXX India	X		X	X	X
XXX Croatia	X		X	X	X

Year Ended 2017

<b>Related Party</b>	<b>Sales</b>	<b>Holding</b>	<b>Production</b>	<b>R&amp;D</b>	<b>Service</b>
XXX Italy	X		X	X	X
XXX India	X		X	X	X
XXX S.p.A		X			X

As can be seen, one of the company's group companies is XXX Croatia; sales, production, R&D and service sectors. In 2016, XXX S.P.A. has been incorporated as holding company.

In both 2016 and 2017, the company had transactions with group companies. Group company transactions in 2016 and 2017 are presented in the tables below.

Table 5. *Intercompany Transactions*Year Ended 2016

<b>Transactions</b>	<b>Purchases (TL)</b>	<b>Sales (TL)</b>
Raw materials and semi-finished goods	120.446.966,11	0,00
Finished goods and commercial goods	154.798.039,63	1.375.363,19
Intangible property	3.858.296,00	0,00
Other	86.962,68	1.279.420,37
<b>Total</b>	<b>279.190.264,42</b>	<b>2.654.783,56</b>

Year Ended 2017

<b>Transactions</b>	<b>Purchases (TL)</b>	<b>Sales (TL)</b>
Raw materials and semi-finished goods	128.788.527,94	0,00
Products and trade goods	171.741.438,73	4.879.143,50
Intangibles	5.591.678,56	0,00
Other	72.005,30	211.738,44
<b>Total</b>	<b>306.193.650,53</b>	<b>5.090.881,94</b>



As it can be seen from Figure 5, the company's intercompany transactions increased from the year 2016 to 2017. The total purchase is 279.190.264, 62 Turkish Liras in 2016 and it increases to 306.193.650,53 Turkish Liras in 2017.

According to the transfer pricing reports, there are several risks according to the functions of the group. These are;

Table 6. *Risk Analysis*

<b>Functions</b>	<b>Related Parties</b>	<b>XXX Turkey</b>
Production Planning	X	X
Assembling / Production	X	X
Quality Control	X	X
R & D	X	X
Marketing	X	X
Sales & Distribution		X
Warranty	X	X
Collection & Invoicing		X
Administrative, Financial & Information Technology Factors	X	X
<b>Risks</b>	<b>Related Parties</b>	<b>XXX Turkey</b>
Market Risk	X	X
Inventory Risk		X
Warranty Risk	X	X

Credit Risk		X
Foreign Exchange Risk		X
Product Liability Risk	X	X

### 3.3.3. Analysis about Transfer Pricing

According to the report of the year ended 2016 and 2017, there are three transfer pricing analysis. These are for;

- Purchase of parts and components from related parties for assembly purposes,
- Purchase of finished products from related parties for distribution purposes,
- License to use “XXX” and “YYY” brand in manufacturing

The objective of the analysis conducting for “purchase of parts and components from related parties for assembly purposes” is to investigate from a Turkish transfer pricing perspective the purchase parts and components by XXX Turkey from related parties for local assembly purposes. According to this purpose two searches are done. These searches are for; selection of comparable companies and comparability analysis. The first search is done for Turkish comparable manufacturers in publicly available sources. The second search is done for comparable manufacturers in Bureu Van Dijk’s Amadeus Database. The founded firms via Bureu Van Dijk’s Amadeus Database are as follow;

Table 7. *Brief Business Descriptions of Comparable Companies (2016)*

No	Company Name	Description of Business
1	Agrikon Cabin & Agrotechnical Works Ltd. / Agrikon Kam. Ltd.	Manufacture of combines and parts of agricultural
2	Alstor AB	Manufacture of small and articulated tractors for wood transport
3	Brieda E C. – S.R.L.	Manufacture and trade of agricultural machines
4	Grim S.R.L.	Manufacture & wholesale of agricultural machinery
5	Hantech Machine Manufacturing & Trad. Private Co. Ltd.	Manufacture of agricultural machines and spare parts
6	Impea S.R.L.	Manufacture of agricultural machines
7	Italcab S.P.A.	Design and manufacture of booths of agricultural & industrial vehicles

8	LKT, S.R.O.	Manufacture of forest tractors
9	Lochmann Cabine Srl	Manufacturer of tractor booths
10	Messersi' S.P.A.	Develop and manufacture of various municipal and agricultural machinery
11	Pronar Sp. Z.O.O.	Manufacture of tractors and trade of agricultural machinery & spare parts
12	Ursus S.A.	Manufacture and sale of tractors and agricultural machinery
13	Volentieri Pellenc – S.R.L.	Manufacture and distribution of high precision viticulture machinery

The companies selected by the same method in 2017 are as below;

Table 8. *Brief Business Descriptions of Comparable Companies (2017)*

No	Company Name	Description of Business
1	Agrikon Cabin & Agrotechnical Works Ltd. / Agrikon Kam. Ltd.	Manufacture of combines and parts of agricultural
2	Alstor AB	Manufacture of small and articulated tractors for wood transport
3	Brieda E C. – S.R.L.	Manufacture and trade of agricultural machines
4	Grim S.R.L.	Manufacture & wholesale of agricultural machinery
5	Hantech Machine Manufacturing & Trad. Private Co. Ltd.	Manufacture of agricultural machines and spare parts
6	Impea S.R.L.	Manufacture of agricultural machines
7	Italcab S.P.A.	Design and manufacture of booths of agricultural & industrial vehicles
8	LKT, S.R.O.	Manufacture of forest tractors
9	Messersi' S.P.A.	Develop and manufacture of various municipal and agricultural machinery
10	OK Zachlumi, A.S.	Manufacture of special metal pallets and equipment for transport, handling & storage, including related components
11	Pronar Sp. Z.O.O.	Manufacture of tractors and trade of

		agricultural machinery & spare parts
12	Ursus S.A.	Manufacture and sale of tractors and agricultural machinery

According to the transfer pricing report of the year ended 2016 the result are as below;

Table 9. *Results (2016)*

Maximum	12,07%
Upper Quartile	7,40%
Median	2,52%
Lower Quartile	1,46%
Minimum	-0,57%
XXX Turkey in 2016	7,87%

According to the transfer pricing report of the year ended 2017 the result of the analysis are as below;

Table 10. *Results (2017)*

Maximum	16,71%
Upper Quartile	7,83%
Median	2,77%
Lower Quartile	1,71%
Minimum	-3,18%
XXX Turkey in 2017	2,61%

Net cost plus margin results of the comparable companies computed by using the financial data of comparable agricultural machine manufacturer companies in the above mentioned figure.

The second transfer pricing analysis is for “purchase of finished products from related parties for distribution purposes”. The objective of the analysis is to investigate from a Turkish transfer pricing perspective the finished products by XXX Turkey from related parties for local assembly purposes. According to this purpose, differ from the first analysis of transfer pricing, only one search has done. This is about to select the companies that are comparable. 8 companies are selected according to searching criteria.

Table 11. *Comparable Companies (2016)*

No	Company Name	Description of Business
1	Agriargo UK Limited	Distribution of farm machinery /&equipment
2	Agrotron 2007 EOOD	Wholesale trade of agricultural machinery, equipment & supplies
3	Demeter S.A.	Wholesale distribution of farm machinery & equipment
4	Fiaccadori Soluzioni S.R.L. in Breve Fiaccadori S.R.L.	Wholesale distribution of farm machinery & equipment
5	Map-Masini Agricole Performange SRL	Wholesale distribution of farm machinery & equipment
6	Rapid Kb Ood	Wholesale distribution of farm machinery & equipment
7	Unimarco, A.S.	Wholesale distribution of farm machinery, equipment & supplies
8	Duran Maquinaria Agricola SL	Wholesale distribution of agricultural & forestry machinery



Table 12. *Comparable Companies (2017)*

No	Company Name	Description of Business
1	Agriargo UK Limited	Distribution of farm machinery /&equipment
2	Agrotron 2007 EOOD	Wholesale trade of agricultural machinery, equipment & supplies
3	Demeter S.A.	Wholesale distribution of farm machinery & equipment
4	Fiaccadori Soluzioni S.R.L. in Breve Fiaccadori S.R.L.	Wholesale distribution of farm machinery & equipment
6	Rapid Kb Ood	Wholesale distribution of farm machinery & equipment
7	Unimarco, A.S.	Wholesale distribution of farm machinery, equipment & supplies
8	Duran Maquinaria Agricola SL	Wholesale distribution of agricultural & forestry machinery

As it can be seen from the above tables, most of the companies selected as comparable companies are same both in 2016 and 2017

The operating margin of the selected comparable companies computed by using the financial data. The results are as below;

Table 13. *OM- Companies Based on Comparison (2017)*

Maximum	13,40%
Upper Quartile	9,03%
Median	3,32%
Lower Quartile	1,00%
Minimum	-0,92%
XXX Turkey in 2016	0,35%

Table 14. *OM- Companies Based on Comparison (2017)*

Maximum	9,32%
Upper Quartile	7,70%
Median	4,42%
Lower Quartile	1,74%
Minimum	-1,21%
XXX Turkey in 2017	2,14%

The last TP analysis for is for “License to use “XXX” and “YYY” brand in manufacturing”. For this analysis, firstly the main risks concerning the license agreements between the Group and the Group’s manufacturing companies and third-party licensees.

Table 15. *Risk Analysis*

<b>Risk Type</b>	<b>XXX Group</b>	<b>XXX Manufacturing Companies</b>	<b>3<sup>rd</sup> Party Licenses</b>
Reputational risk or the brand devaluation risk assoc. with incorrect use	X	X	
Reputational risk or the brand devaluation risk assoc. with inadequate production process standards	X	X (indirect)	
Risk of a reduction in royalty flows assoc. with market down- turns	X		
Risk of unsuccessful investments in developing brands	X		
Risk of the unauthorized use of brands by third parties	X (value of the brand & lack of royalty flows)	X (decline of the sales)	X (decline of the sales)

Risk of insufficient profitability from sales of products manufactured under a license agreement.		X	X
Credit risk of the royalties that are collected	X		

The essential terms of the license agreement entered into by Group and the Company located in Turkey are as below;

Table 16. *License Agreement between the Group and the Company*

<b>Agreement</b>	Trademark License Agreement
<b>Parties</b>	SSS Group – XXX San.ve Tic. A.Ş.
<b>Date</b>	04.01.2016
<b>Period</b>	10 Years
<b>Products</b>	Tractors and combine harvesters produced or assembled at the Turkey Plant excluding products that are simply

	imported and marketed by XXX Turkey.
<b>Territory</b>	Turkey, Armenia, Azerbaijan, Georgia, Iran, Iraq, Syria
<b>Exclusive Rights</b>	No
<b>Sub-License</b>	No
<b>Payment</b>	Lump-sum defined on a yearly basis

As a result of the three analysis done for the year 2016 for transfer pricing are concluded as follow;

Table 17. *Conclusion of the Transfer Pricing Analysis for 2016*

<b>Intercompany Transaction</b>	<b>TP Method</b>	<b>Tested TP / Margin</b>	<b>Comparable Range used for FY 2015</b>
Purchase of Parts + Components for Local Assembly Purposes	Transactional Net Margin Method	Net Cost + Margin: 7,87%	-0,57% -12,07%

Purchase of Finished Goods for Distribution Purposes	Transactional Net Margin Method	Operating Margin: 0,35%	-0,92%-13,40%
Royalty Payment	Comparable Un-Controlled Price Method	Effective Royalty Rate: 1,75 %	2,70%-6,60%

Table 18. *Conclusion of the Transfer Pricing Analysis for 2017*

<b>Intercompany Transaction</b>	<b>TP Method</b>	<b>Tested TP / Margin</b>	<b>Arm's Length Price / Margin</b>
Purchase of Parts + Components for Local Assembly Purposes	Transactional Net Margin Method	Net Cost + Margin: 2,61%	1,71% - 7,83%
Purchase of Finished Goods for Distribution	Transactional Net Margin Method	Operating Margin: 2,14%	1,74% - 7,70%

Purposes			
Royalty Payment	Comparable Un- Controlled Price Method	Effective Royalty Rate: 2,56 %	2,73%-7,08%



## CONCLUSION

With the disappearance of global borders, the increasing volume of trade in the world has caused capital movements to transcend the economic boundaries. The areas where the public is active and the interventionist policies of the public are also affected by the wind of global change and significant changes have been experienced in the financial and financial markets.

It is known that countries are trying to provide tax advantage by lowering tax rates in order to encourage multinational companies to invest in their countries and to gain tax competition in global markets. In order to optimize the profits of international trade, multinational companies, which also use the advantages of operating in multiple countries, transfer their capital to other countries according to their tax policies.

As a result, countries' economies become fragile, unemployment rates rise, inflation rises, and tax revenues suffer significant losses. In order to prevent this, countries incorporate the OECD's regulation of disguised profit distribution through transfer pricing into their legislation.

Within the scope of the thirteenth article of corporate tax numbered 5520, General Communiqués and Decisions of the Council of Ministers and the disguised profit distribution system through TP have been included in the legal legislation in our country in parallel with the OECD regulations. The regulation explains in detail who will be covered by this article, how the transfer price will be calculated, how the



prices to be preceded in the calculations will be determined and the methods that can be applied when making this determination.

In the world, the system of disguised profit distribution through transfer pricing has become multidisciplinary, not only a financial issue, but also in the fields of economics, business, statistics, engineering and law, and this requires the formation of know-how that requires considerable expertise.

Transfer pricing report and certification processes are also important issues related to transfer pricing processes in our country. Transfer pricing reports, which require high knowledge and should be prepared by individuals who are competent in tax regulations with technical competence, are especially important for large-scale transactions of multinational companies with taxable results. It is considered that these reports, which should be presented at a global level, are important in document-based reporting and presentation of whether the transactions between the group companies are appropriate for their peers.

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