



cutting through complexity

GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Philippines

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TAX



Philippines



KPMG observation

Notwithstanding the absence of transfer pricing regulations, taxpayers should still consider transfer pricing especially for their cross-border transactions, as offshore affiliates may have to comply with transfer pricing rules in their jurisdictions. In addition, even for non-transfer pricing audits, the timely submission of documentation may be useful to contest deficiency tax findings. The documentation may also be a defense against possible benchmarking performed by the tax office based on industry averages.

Basic information

Tax authority name

Bureau of Internal Revenue (BIR).

Citation for transfer pricing rules

Section 50 of the National Internal Revenue Code (Tax Code): Draft Revenue Regulations as of August 2006 (still in the process for approval).

Effective date of transfer pricing rules

Not applicable, currently no formal rules.

What is the relationship threshold for transfer pricing rules to apply between parties?

Direct or indirect common control or ownership.

What is the statute of limitations on assessment of transfer pricing adjustments?

There is no existing law or specific statute of limitations on transfer pricing assessment. However the statute of limitations under the Tax Code is generally three years from the date of filing of the return or from the date the return should have been filed. Under certain conditions, however, the statute of limitations may be ten years. No specific provisions on statute of limitations are likewise provided under the draft revenue regulations.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No. However, the audited financial statements must be submitted with the annual income tax return which contains disclosure on related party transactions as prescribed by accounting standards.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to prepare or submit disclosures?

None.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Mitigation of the risk of the tax authority making adjustments during regular tax audits.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Contemporaneous with the transaction being evaluated during the tax audit.

What are the major elements required or recommended to be included in a transfer pricing study?

Based on the draft revenue regulations, the following elements are required:

- general information on the group
- information on each related party in the Philippines
- details on transactions between Philippine entity and all related parties
- transfer pricing analysis
- other relevant information.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

Not yet known in the absence of transfer pricing regulations.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Based on draft revenue regulations the OECD methods are acceptable.

Is there a priority among the acceptable methods?

Not applicable. However, the draft revenue regulations indicate that there is no priority.

If there is no priority of methods, is there a 'best method' rule?

Not applicable, but section 9 of the draft revenue regulations provides for a "best method" rule.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Not applicable, but based on draft revenue regulations, the documentation must be submitted within 45 days of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

The draft transfer pricing regulations remain silent on transfer pricing-specific dispute resolution options and procedures. However, there are remedies available to taxpayers in the

context of regular audits (for taxes of all types), such as protests, appeals and going to the courts. In the event the transfer pricing regulations are finalized and released, it is expected that they will expand on the remedies for taxpayers being subjected to transfer pricing audits.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Not applicable, but the draft revenue regulations refer to the imposition of penalties under the Tax Code (25 percent/50 percent surcharge; 20 percent annual interest; compromise penalties).

To what extent are transfer pricing penalties enforced?

Not yet known in the absence of transfer pricing regulations.

What defenses are available with respect to penalties?

Not yet known in the absence of transfer pricing regulations.

What trends are being observed currently?

In the absence of transfer pricing regulations, no transfer pricing audits are formally being conducted.

Special considerations

Are secret comparables used by tax authorities?

Not applicable.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Not yet known in the absence of transfer pricing regulations but since the tax office subscribes to the OECD Guidelines, regional comparables may be argued to be acceptable.

Do tax authorities have requirements or preferences regarding databases for comparables?

Not yet known in the absence of transfer pricing regulations.

What level of interaction do tax authorities have with customs authorities?

High, but the interaction is not in relation to transfer pricing.

Are management fees deductible?

Yes, provided the management fees are ordinary and necessary expenses and are properly substantiated.

Are management fees subject to withholding?

Yes, subject to Philippine situs rules and application of double tax agreements.

Other unique attributes?

None.

Other recent developments

In March 2008, the BIR issued Revenue Memorandum Circular No. 26-2008 confirming that it subscribes to the OECD Transfer Pricing Guidelines as its Interim Transfer Pricing Guidelines pending finalization of the draft Revenue regulations. It provides further that until the Revenue Regulations on Transfer Pricing are issued, any and all concerns/issues in the interim related to transfer pricing will be resolved in accordance with the principles laid down by the OECD Guidelines. The Revenue Regulations on Transfer Pricing have still not been issued.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?

KPMG has no experience in this area.

When may a taxpayer submit an adjustment to the competent authority?

Currently there are no rules.

May a taxpayer go to the competent authority before paying tax?

Currently there are no rules.

Advance pricing agreements

What APA options are available, if any?

No APAs yet in the absence of transfer pricing regulations. However, the draft revenue regulations have provisions for APAs.

Is there a filing fee for APAs?

Not applicable. The draft revenue regulations do not expressly state whether any fees apply to APAs.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable. There are no APAs yet in the absence of transfer pricing regulations.

Please provide some information on how successful the APA program is and whether there are any known difficulties.

Not applicable in the absence of transfer pricing regulations.

Language

In which language or languages can documentation be filed?

English.

KPMG in Philippines

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