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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Egypt

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TAX



Egypt

KPMG observation

Transfer pricing is now one of the most important topics for the Egyptian Tax Authority. The Tax Authority issued the first of three planned parts of transfer pricing guidelines on 29 November 2010. The first part mainly discussed the basis of the arm's length principle, the arm's length pricing methods and the importance of documentation. This first part is generally consistent with the Organisation for Economic Co-operation and Development (OECD) Guidelines.

There has been no announcement from the Tax Authority regarding the date of issuing the remaining two parts of the guidelines.

Basic information

Tax authority name

Egyptian Tax Authority.

Citation for transfer pricing rules

Tax law and tax treaties.

Effective date of transfer pricing rules

2005.

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

Ownership of greater than 50 percent, based on voting power or share capital.

Partnerships, the joint partners, and silent partners therein.

Any two or more companies in which a third person possesses at least 50 percent of the number or value of the shares or voting rights in them.

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

Five years from the filing date of the corporate tax return (which is four months after the financial year-end).

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)?

Yes, it is a statutory requirement to mention the transfer pricing method the company has used for transactions with related parties in the annual tax return.

What types of transfer pricing information must be disclosed?

The name of the related party, nature of the transactions, amount of transactions and the transfer pricing method used.

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

The tax return will be considered incomplete and the Tax Authority may refuse to accept it.

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. The Tax Authority does not require a transfer pricing study and there is no penalty for failing to perform one. However, the Tax Authority has the right to modify the transaction price if they feel such a price is not at arm's length. Therefore, a study is recommended to defend the company's position in front of any challenge from the Tax Authority.

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

The purpose of the documentation is to support the company's transfer pricing and avoid or delay fines and penalties which may be raised following a tax audit.

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

The law is unclear but preparing as early as possible is recommended. While a transfer pricing study per se is not required, the taxpayer is required maintain documents supporting the tax return, which can be requested during the tax audit.

When a transfer pricing study is prepared, should its content follow Chapter V of the OECD Guidelines?

Not yet defined. However, the first part of the Egyptian guidelines (the only part issued to date) is consistent with the OECD Guidelines and therefore it is suggested that Chapter V is followed.

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

No.

Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

Yes.

Is there a priority among the acceptable methods?

According to the tax law, the comparable uncontrolled price method is preferred. If the comparable uncontrolled price method is not applicable, the taxpayer should then look to the resale price or cost plus methods. If these are not applicable, any other method outlined in Chapter II of the OECD Guidelines is generally accepted.

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

Not applicable.

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?

There is no time frame stipulated in the law. However according to the practice documentation should be submitted during the tax audit period.

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

Yes. If a taxpayer disagrees with the adjustment proposed by the Tax Authority, the taxpayer may appeal to the Internal Committee. If not solved at the Internal Committee level, then the taxpayer may appeal to the High Committee. A formal court action may be taken if not solved at the level of the High Committee.

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

There are no special penalties for transfer pricing adjustments. However, if the transfer pricing adjustment has affected the taxable profits, then normal penalties are imposed.

To what extent are transfer pricing penalties enforced?

Not applicable.

What defences are available with respect to penalties?

Not applicable.

What trends are being observed currently?

Not applicable.

Special considerations

Are secret comparables used by tax authorities?

Unknown.

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

Unknown. However, there is no Egyptian-specific database available.

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

At this point in time, there is no public database in Egypt that can be used for benchmarking. Therefore, there is no clear view on tax authority preferences.

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

Unknown.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

Yes, unless services are performed outside of Egypt in a tax treaty country, in which case the applicable tax treaty provision should be applied.

Are year-end transfer pricing adjustments permitted?

Yes. The common practice is that transfer pricing adjustments are made at the year-end within the annual income tax return required to be filed by the taxpayer.

Other unique attributes?

None.

Other recent developments

The Tax Authority has issued a formal transfer pricing guideline. However, this is part one of three and there is no information about when the other parts will be issued.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

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

Almost always.

When may a taxpayer submit an adjustment to competent authority?

During the 5 years after the adjustment year, limited by the Tax Authority inspection.

May a taxpayer go to competent authority before paying tax?

No formal rules exist in this area.

Advance pricing agreements

What Advance Pricing Agreements (APA) options are available, if any?

Unilateral; advance rulings (in the form of pre-approved pricing agreement).

Is there a filing fee for APAs?

No.

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

No.

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

The Tax Authority has not yet issued any APAs, and it is unclear when the first will be issued.

Language

In which language or languages can documentation be filed?

Arabic. However, the documents can be prepared in English. The Tax Authority may require an official Arabic translation in the case of tax audits.

KPMG in Egypt

Khaled Balbaa

Tel: +202 3536 2211

Email: kbalbaa@kpmg.com

As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.

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