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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Estonia

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TAX



Estonia



KPMG observation

The number of tax audits covering transfer pricing issues is increasing. The need to prepare documentation in full compliance with the local regulations is important as proper documentation will significantly ease the audit process and help to avoid the extension of the audit period.

Basic information

Tax authority name

Eesti Maksu- ja Tolliamet (Estonian Tax and Customs Board).

Citation for transfer pricing rules

General rules are established by the Income Tax Act. Organisation for Economic Co-operation and Development (OECD) compliant methods and pricing principles are established with the Decree by the Minister of Finance.

Effective date of transfer pricing rules

Current general rules are effective from 1 January 2000. Amended rules together with documentation requirements are effective from 1 January 2007. New regulations concerning related parties in the Income Tax Act are effective from 1 January 2011.

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

According to the Estonian Income Tax Act, persons are considered to be associated if they have common economic interests or if one person has dominant influence over the other. The official translation of the legislations defines associated persons as:

1. spouses, cohabiters, direct blood or collateral relatives;

2. companies belonging to one group;
3. legal person and natural person who owns at least 10 percent of the share capital, total number of votes or rights to the profits of the legal person;
4. one person, together with other persons with whom the person is associated, owns more than 50 percent of the share capital, total number of votes or rights to the profits of a legal person;
5. legal persons where more than 50 percent of the share capital, total number of votes or rights to the profits belong to one and the same person or associated persons;
6. persons who own more than 25 percent of the share capital, total number of votes or rights to the profits of one and the same legal person;
7. legal persons where all members of the management boards or the bodies substituting for the management boards are the same persons;
8. employers and their employees, employee's spouses, cohabiters or direct blood relatives;
9. a person is a member of the management or controlling body of a legal person, or the spouse or a direct blood relative of a member of the management or controlling body.

Where 'legal person' is broadly defined as a company, 'natural person' is an individual, and 'person' can be either a legal or natural person.

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

Three years from the filing date of the tax return. In the event of intentional failure to pay or withholding an amount of tax, the limitation period for making an assessment of tax is 5 years. In Estonia, tax returns are submitted on a monthly basis.

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.

What types of transfer pricing information must be disclosed?

Not applicable.

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

Not applicable.

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?

For companies which qualify under the documentation requirement, yes, for all transactions.

The documentation requirement applies to:

- credit and financial institutions and insurance companies
- if one party of the transaction is a person domiciled in a low tax rate territory
- a company:
 - which employs 250 persons or more including the personnel of its associated companies
 - which has annual turnover (associated persons' turnover included) of 50 million Euros (EUR) or more for the previous taxation period
 - whose consolidated balance sheet total was EUR43 million or more
- a non-resident through its permanent establishment registered in Estonia:
 - under the same conditions as a resident company.

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

Penalty protection, shifting the burden of proof.

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 transfer pricing study must be submitted within 60 days of request.

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

Yes.

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?

No.

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

Yes.

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?

The documentation must be submitted within 60 days of the tax authorities' request.

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

Disputes are generally resolved between taxpayers and the tax authorities. If they fail to reach an agreement, the taxpayer has the right to turn to administrative court. There is no tax arbitration institution or a special tax court in Estonia.

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

General rules are applicable, but there is no special penalty for transfer pricing. Thus, if the taxpayer fails to submit the documentation, a penalty up to EUR3,200 may be imposed.

To what extent are transfer pricing penalties enforced?

So far no penalties have been imposed.

What defences are available with respect to penalties?

Documentation.

What trends are being observed currently?

The number of audits covering transfer pricing issues is increasing. Also, in advance of a tax audit, the tax authorities may request transfer pricing documentation from the taxpayers to determine the need for a tax audit. Focus has not been set on any specific type of transaction and all the transactions between the taxpayer and its related parties are subject to scrutiny with equal level of detail. Audits tend to be long and may be extended for a certain period of time if sufficient documentation and/or evidence to prove arm's length pricing are not available.

Documentation in the local language is highly preferred by the tax authorities.

Special considerations

Are secret comparables used by tax authorities?

No.

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

Yes. Estonian comparables are preferred, but if not available, foreign comparables are accepted.

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

No.

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

Unknown, but in Estonia, tax and customs authorities operate as one institution.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

Management fees are subject to withholding tax only if a non-resident is rendering management services in Estonia. If a double tax treaty can be applied, the obligation to withhold income tax can be avoided.

Are year-end transfer pricing adjustments permitted?

Yes.

Other unique attributes?

None.

Other recent developments

We are not aware of any planned significant developments in the transfer pricing regulations.

Discussions regarding possible Advance Pricing Agreement (APA) rules have taken place.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

The double tax treaty network of Estonia is extensive, with 56 treaties altogether.

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

Almost always.

When may a taxpayer submit an adjustment to competent authority?

No formal rules. Basically anytime within 3 years of the submission of the tax return on the adjusted period.

May a taxpayer go to competent authority before paying tax?

Yes, but no formal rules.

Advance pricing agreements

What APA options are available, if any?

APAs are currently not available.

Is there a filing fee for APAs?

Not applicable.

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.

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

Not applicable.

Language

In which language or languages can documentation be filed?

The documentation may be presented in a foreign language, but the tax authority may request that they be translated into Estonian.

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