KPMG
cutting through complexity

GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Fiji

kpmg.com/gtps

TAX

Fiji

KPMG observation

Fiji is currently in the second year since the official introduction of Transfer Pricing Guidelines in 2012. Apart from the traditional related party transactional audits involving sales and purchases of goods and services, Fiji Revenue & Customs Authority (FRCA) has plans to also look into areas covering royalty and trademark payments as well as intra-group financing arrangements. Transactions involving other intangibles are also covered under the same Guidelines.

As also outlined in the Fiji Transfer Pricing Guidelines 2012, the FRCA endorses the positions outlined in the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, and proposes to follow the OECD Guidelines in administering Fiji's transfer pricing rules. Consequently, the Fiji Guidelines are supplementary to the OECD Guidelines, rather than supersede them. The OECD Guidelines should be referred to if more detail is required in relation to issues referred to herein (e.g. concept of tested party), or not included in the Fiji Guidelines at this stage e.g. cost contribution arrangements and business restructuring. In this regard, FRCA has also indicated that they will issue additional Guidelines as the need arises.

KPMG in Fiji observed that over the past few years, payment of significant amounts of intra-group charges has become a very contentious area in a number of multinational company audits and many taxpayers have had to defend their positions. Sometimes such defense is hampered by a lack of documentation or evidence to support the arm's length nature of the changes.

Basic information

Tax authority name

Fiji Revenue & Customs Authority (FRCA).

Citation for transfer pricing rules

The arm's length principle is set out under Section 34 of the Fijian Income Tax Act 1974 (the Act) which requires taxpayers to determine and apply the arm's length price for their transactions with an associated person.

Income Tax (Transfer Pricing) Guidelines 2012 (Transfer Pricing Rules 2012) was gazetted under Vol 13 No.8 of January 2012. The scope of Transfer Pricing Guidelines 2012 applies to the acquisition and supply of goods (including tangible and intangible goods), services between associated persons and intra-group financing. Both local and cross-border transactions are covered under Transfer Pricing Guidelines 2012.

Effective date of transfer pricing rules

The Transfer Pricing Guidelines became effective from 1 January 2012. Prior to this date, transfer pricing adjustments were made based on the general anti-avoidance provision.

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

There is no specific threshold being outlined in the Transfer Pricing Guidelines. However, the arm's length principle is fundamental to transfer pricing and requires that transactions between associated parties are to be conducted at arm's length. As previously stated, this means that the transaction should have the substantive financial characteristics of a transaction between independent parties where each aims to get optimum benefit from the transaction.

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

The statute of limitation is 6 years upon the expiration of a particular year of assessment, except in cases of fraud, willful default, or negligence. Fiji is currently in year of assessment 2012. For example, in year of assessment 2012, an assessment can be issued as far back as year of assessment 2006.

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)?

It is to be noted that in Fiji, there is a statutory requirement for the taxpayer to "record, in writing, sufficient information and analysis to verify that its controlled transactions are consistent with the arm's length principle".

It is also noted that the documentation must be contemporaneous and must be in place prior to the due date for filing the relevant tax return.

From a practical perspective, this means the taxpayer must prepare and maintain such documentation as is reasonable in the circumstances. Therefore it is being emphasized that it is up to local management of the Fiji tax office to determine documentation requirements in view of the nature of the relevant transactions.

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?

It's not clear at this stage whether this would be a requirement. However, since the Fiji Transfer Pricing Guidelines is OECD-based, KPMG in Fiji expects that such requirement will apply in the near future.

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

This serves as a first line of defense in the event of a tax audit and avails the taxpayer to a lower penalty rate in transfer pricing audit situations where an assessment or additional assessments have been issued.

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

There is no requirement to submit the documentation but it must be readily available upon request by FRCA. From a practical perspective, this means the taxpayer must prepare and maintain such documentation as is reasonable in the circumstances. Therefore it is up to local management of FRCA to determine documentation requirements in view of the nature of the relevant transactions.

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

The Transfer Pricing Guidelines in 2012, specify that the following should be included: organizational structure, group financial report, nature of the business/industry and market conditions, controlled transactions, pricing policies, assumption, strategies and information regarding factors that influenced the setting of pricing policies, comparability, functional and risk analysis, selection and application of the transfer pricing method.

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?

The Transfer Pricing Guidelines 2012 provided that traditional transactional methods should be considered first before transactional profit methods.

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

As noted, the preference is for traditional transactional methods. However, the Fiji Transfer Pricing Guidelines of 2012, recognizes the method requiring the fewest adjustments and providing the most reliable measure of an arm's length result is preferred.

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?

At this stage, the time frame requirement is not clear. However, in most situations, the normal demand situations, documentation should be made available to FRCA within 30 days from the date of request.

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

The dispute resolution option available to taxpayers, apart from the competent authority process, is to appeal through the judicial system. In Fiji, the first level of appeal is generally to the Tax Tribunal.

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

Where an adjustment is sustained, the Commissioner may assess penalties for omission of income. Penalty rates range from 20 percent to 75 percent calculated on the tax shortfall. The rate of 75 percent applies where the income is knowingly or recklessly omitted, and in any other case the 20 percent applies. In addition, penalties for late filing (20 percent) and/or late payment (25 percent) may also apply depending on the circumstances.

To what extent are transfer pricing penalties enforced?

Based on limited known transfer pricing cases to date, it appears that penalties are always enforced.

What defences are available with respect to penalties?

The availability of a local contemporaneous transfer pricing documentation will assist taxpayers to appeal for a lower penalty rate. In addition, if the taxpayer has acted in good faith and extended full cooperation during the tax audit, FRCA will also take into account these factors.

What trends are being observed currently?

Transfer pricing audits started in 2012 and it is expected to intensify and will continue to intensify in future. In addition to the usual focus on transactions involving sales and purchases of goods, the Fijian tax authorities are also increasing their scrutiny on payments for intra-group services as well as looking into intra-group financing arrangements and payments in relation to intangible properties.

In most cases, common audit triggers include companies declaring consistent losses, fluctuating profitability or those making very low profits. Companies with significant amounts of related party transactions, especially payments for intra-group services and companies that underwent supply chain or business restructuring, are also likely to be selected for a tax audit.

Special considerations

Are secret comparables used by tax authorities?

Yes. Based on other international industry information available to FRCA.

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

Yes. It is a preference of the Fijian tax authority to use local companies as comparables. Only in cases where no local comparable could be identified is the use of foreign comparable companies in a benchmarking analysis an option.

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

At the present, there are no good quality commercial databases for local companies.

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

Presently low. However, after the merger of the two departments in 1998, there has been a vast improvement in enforcement measures enhanced through the implementation of integrated operations with other relevant agencies. It is expected that there will be an increase in the level of interaction between the two divisions in future.

Are management fees deductible?

Yes. Provided that the following criteria have been met:

- a service has been provided
- the charge should meet the arm's length standard.

The key focus is a realistic allocation, not accounting perfection and FRCA is looking for a fair charge for the services provided and a reasonable effort into establishing a basis for future calculations.

Are management fees subject to withholding?

Yes, if payment of the management fees is for services in Fiji by non-residents. If services were performed outside Fiji, withholding would not be applicable.

Are year-end transfer pricing adjustments permitted?

Yes, year-end adjustments are permitted to ensure that the arm's length principle is upheld.

Other unique attributes?

None.

Other recent developments

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Limited. Fiji has signed double tax treaties with 9 countries.

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

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

From an international practice perspective, taxpayers may initiate a mutual agreement procedure if there is a risk of double taxation and there is a treaty agreement with the foreign counterparty. In most cases, this is after being issued the Notice of Additional Assessment. However, in Fiji's situation, this will need to be clarified with the local tax authority.

May a taxpayer go to competent authority before paying tax?

KPMG in Fiji expects so, but needs further clarification from FRCA.

Advance pricing agreements

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

According to the Transfer Pricing Guidelines 2012, at this stage FRCA is not in a position to commit to an APA process.

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 can be prepared in English.

KPMG in Fiji

Lisa Apted
Tel: +679 3301 155
Email: lapted@kpmg.com.fj

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.

kpmg.com/socialmedia

kpmg.com/app

Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 133196

Publication date: June 2014