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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Latvia

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TAX



Latvia



KPMG observation

As of 1 January 2013 the legislation requires a written transfer pricing study with specific information included, if a taxpayer's annual net turnover exceeds 1.43 million Euros (EUR) and intra-group transactions undertaken exceed EUR14,300.

Basic information

Tax authority name

Valsts ienemumu dienests.

Citation for transfer pricing rules

General transfer pricing requirements to carry out related party transactions at arm's length prices are set out in the Latvian Law on Corporate Income Tax.

The Latvian Law on Taxes and Duties sets the requirement for particular taxpayers in preparing transfer pricing documentation. It lists the information that must be included in the transfer pricing documentation.

The Cabinet of Ministers regulation No. 556 as of 1 July 2006 provides the methods to be used when determining arm's length prices. The tax legislation in Latvia allows the use of Organisation for Economic Co-operation and Development (OECD) Guidelines when choosing a transfer pricing method.

Effective date of transfer pricing rules

1 April 1995 in general. 1 July 2006 for transactional net margin method (TNMM) and profit split. 1 January 2013 for transfer pricing documentation requirements and Advance Pricing Agreements (APAs).

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

Any transaction between foreign related companies (20 percent ownership and above) or Latvian companies belonging to the same group of companies (at least 90 percent ownership or voting rights) must be carried out on an arm's length basis, i.e. market value.

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

Transfer pricing adjustments and a penalty can be applied by the tax authority for the previous 5 years – starting from the corporate income tax payment date.

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)?

An entity is required to disclose related party transactions to the tax authority in the annual corporate income tax return.

What types of transfer pricing information must be disclosed?

Along with the annual corporate income tax return, the following information must be submitted:

- the name of the related party to the transaction
- the registration number and country of registration
- the transaction type and amount
- the transfer pricing method applied
- the amount for which taxable income is increased (the amount of transfer pricing adjustment), if any.

The taxpayer also must show in the corporate income tax return the amount by which its Latvian-related party has increased its taxable income for non-compliance with the arm's length principle, if any.

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

A penalty can be applied for late filing of a tax return varying from EUR70 – 700. If no return is filed, the maximum penalty can be applied EUR700.

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?

Yes, for certain transactions. If the annual net turnover of a Latvian resident or a non-resident's permanent establishment in Latvia exceeds EUR1.43 million and the intra-group transaction value exceeds EUR14,300, they are required to prepare a full transfer pricing study. If a transfer pricing study cannot be submitted within a month of request, as a penalty the tax authority is free to determine the arm's length prices based on its own information.

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

Shifting the burden of proof, and requirement in practice/expectation of tax authorities.

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

If the taxpayer is required to prepare a full transfer pricing documentation (net turnover and transaction value criteria are met), it must be submitted to the tax authority within a month of the request.

Based on KPMG in Latvia's experience, extensions are possible. However, each case must be negotiated.

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

Yes, with some exceptions.

Latvia is not a member of the OECD, thus the OECD Guidelines are not applicable. However, Latvian legislation is based on the OECD Guidelines, and the court practice shows that the taxpayer and tax authorities should take into consideration the provisions of the OECD Guidelines.

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. All five methods are acceptable.

Is there a priority among the acceptable methods?

Comparable uncontrolled price (CUP) method, resale price method and cost-plus method are preferred.

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?

A month, if the taxpayer is required to prepare full transfer pricing documentation.

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

No. Options available are just appealing to General Director and then to the court.

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

Yes. A penalty of 20 percent or 30 percent is applied. It can be halved i.e. 10 percent or 15 percent if the tax infringement is not considered as a repeated tax infringement and the taxpayer has complied with the statutory due dates for submitting tax declarations and tax payments as well as has been cooperative with the tax administration.

To what extent are transfer pricing penalties enforced?

Always.

What defences are available with respect to penalties?

Transfer pricing documentation.

What trends are being observed currently?

The tax authority's interest in transfer pricing has increased and as a result more transfer pricing audits are performed by the tax authority.

Special considerations

Are secret comparables used by tax authorities?

KPMG in Latvia has no information about the use of any secret comparables.

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

Yes, if local comparables can be found. If local comparables are not available, a European benchmarking study is acceptable.

If local comparables are found by the tax authority but they are not included in the entity's benchmarking study, the tax authority could use that as an argument to challenge the entity's results.

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

No. The tax authority itself uses the Amadeus database. However, there are no requirements or recommendations on the use of any specific database. Some entities prefer to use the Amadeus database because it is more likely that the tax authority would obtain the same, or at least similar, benchmarking study results.

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

High. It is combined – customs and transfer pricing audit specialists work side by side in the audit team.

Are management fees deductible?

Yes, provided the benefit can be demonstrated.

Are management fees subject to withholding?

Yes, 10 percent unless service provider submits residence certificate to apply the relief under the double tax treaty.

Are year-end transfer pricing adjustments permitted?

Yes. The taxpayer may reduce its corporate income tax base by the difference between intra-group prices and market prices by which its qualified related party has increased its corporate income tax base.

Furthermore, the taxpayer is in certain cases even required to make period (e.g. year-end) adjustment for ongoing related party transactions if actual payments over the year are not arm's length.

If the transfer pricing adjustment is made in the tax return and one of the parties is engaged in VAT exempt transactions, VAT adjustments for the transactions might be required.

Other unique attributes?

None.

Other recent developments

Not applicable.

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?

KPMG in Latvia has no experience with double tax relief being requested for transfer pricing adjustments under the double tax treaty.

When may a taxpayer submit an adjustment to competent authority?

No formal rule.

May a taxpayer go to competent authority before paying tax?

Yes.

Advance pricing agreements

What APA options are available, if any?

The following options are available:

- advance rulings
- APAs are possible.

Is there a filing fee for APAs?

The fee per APA is EUR7,114.

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?

APAs were introduced only a year ago, thus there is no established practice or trend yet.

Language

In which language or languages can documentation be filed?

There are language requirements. According to Official Language Law all documents prepared in Latvia (including business supporting documents) should be in the Latvian language. Thus, the tax authority is entitled to ask for a translation to Latvian language of either the full documentation or its parts.

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