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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Lithuania

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TAX



Lithuania



KPMG observation

Transfer pricing rules were implemented in Lithuania in 2004. In general, they are a condensed form of the Organisation for Economic Co-operation and Development (OECD) Guidelines.

Over the past few years, transfer pricing has been subject to higher scrutiny. The tax authorities are increasingly requesting companies to submit transfer pricing documentation for review.

The Lithuanian tax authorities have direct access to the BvD Amadeus database allowing them to analyze benchmarking studies and perform adjustments. It is more likely than in previous years that benchmarking studies will be challenged in terms of the methodology of benchmarking analysis and comparability of transactional parties. They are also increasing investigations of transactions involving management services, centralized purchasing services, loans and license agreements.

Basic information

Tax authority name

Valstybine mokesciu inspekcija (State Tax Inspectorate).

Citation for transfer pricing rules

Order No. 1K-123 of the Minister of Finance (9 April 2004).

Effective date of transfer pricing rules

2004.

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

Ownership higher than 25 percent, based on voting power, or under common control, or in cases where the parties can otherwise influence each other.

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

Generally, the current year and 5 previous taxable years.

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)?

Disclosures related to transfer pricing (form FR0528 for declaring transactions with related parties) must be submitted to the tax authorities with the annual corporate income tax return. Transfer pricing documentation must be prepared but not submitted.

What types of transfer pricing information must be disclosed?

An annual statement (form FR0528) should include the following information:

- identification details of a taxpayer and associated parties
- number of transactions
- type of transactions performed with each associated party (sale/purchase of tangible fixed assets, sale/purchase

of intangibles, sale/purchase of raw materials, goods, production items, and provision/acquisition of financial services, provision/acquisition of other services, sale/purchase of shares and/or derivatives, lease of real estate and other property, as well as any other transactions).

The statement must specify income received/expenses incurred for each type of transaction. Also, the accrued interest on loans and the amount of loans granted by related parties must be specified.

A transfer pricing study must be prepared every year (if the criteria are met) but submitted to tax authorities only upon request.

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

Administrative penalties for non-submission may be imposed. In practice, one does not observe penalties being imposed.

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 all transactions. A requirement to prepare a written transfer pricing study is applicable to companies if at least one of the criteria listed below is met:

- sales income of the entity before the taxable year when the transaction was actually carried out exceeded 10 million Lithuania litas (LTL) (approximately 2.9 million Euros (EUR))
- financial companies, credit institutions or insurance companies
- foreign entities engaged in activities in Lithuania through a permanent establishment if the sales income of the permanent establishment during the taxable period, proceeding the taxable period during which the transaction was performed, exceeded 10 million Lithuanian litas (approximately EUR2.9 million).

If one of these criteria is met, a transfer pricing study should include all transactions with associated parties.

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

The following benefits can be identified:

- shifting of the burden of proof. Tax authorities will accept the methods used by the taxpayer unless it is proven that the methods are inappropriate
- mitigating the risk that the tax authority will propose adjustments based on secret comparables (the tax authorities are entitled to use comparables/information not available to the taxpayer if the taxpayer has provided incorrect information)
- penalty protection
- meets the tax authority's expectations.

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 states that the taxpayer should be in possession of transfer pricing documentation. There are no guidelines on when the transfer pricing documentation should be prepared. Documentation must be submitted within 30 days of a written request from the tax authorities.

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?

Yes. There is a priority rule in Lithuanian legislation: the taxpayer has to choose the comparable uncontrolled price (CUP) method. If the information available is not sufficient, the resale price method or the cost-plus method will be chosen before the application of the profit-based methods.

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?

The statutory requirement is to present transfer pricing documentation within 30 days of the request.

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

The procedure of ordinary dispute resolution should be followed, i.e. the taxpayer may file a claim with the central tax authorities or with the Commission of Tax Disputes.

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

Generally, the tax penalties imposed range from 10 to 50 percent of the outstanding tax amount.

To what extent are transfer pricing penalties enforced?

Often.

What defences are available with respect to penalties?

The penalties can be reduced by up to 10 percent of the outstanding corporate income tax if the taxpayer properly communicates with the tax authorities and presents all requested documents/explanations.

What trends are being observed currently?

The number of tax audits (by the tax authority) related to transfer pricing issues is increasing. As well, the number of disputes and proposed tax adjustments has increased. Transfer pricing audits are particularly likely for loss making companies, companies following reorganization and companies having substantial volume in international transactions. The transactions subject to an increased scrutiny are: financial transactions, royalty payments and intra-group services (particularly management services).

Special considerations

Are secret comparables used by tax authorities?

Yes, the tax authorities can use comparables which are not disclosed to the taxpayer.

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

No.

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

No.

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

High.

Are management fees deductible?

Generally, yes.

Are management fees subject to withholding?

No.

Are year-end transfer pricing adjustments permitted?

Yes. Year-end adjustments should preferably be reflected in the financial statements. It is, however, also possible to make the year-end adjustments in the tax return. Adjustments may have both customs and VAT implications. Year-end adjustments must be substantiated.

Other unique attributes?

None.

Other recent developments

As of 1 January 2012, it is possible to apply for an Advance Pricing Agreement (APA). Some changes to the transfer pricing rules have been initiated but not yet approved.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. Currently, Lithuania has 50 double tax treaties.

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

No experience (in transfer pricing cases).

When may a taxpayer submit an adjustment to competent authority?

Generally, in the current year and for 5 previous taxable years.

May a taxpayer go to competent authority before paying tax?

Not permitted. The tax due would have to be paid on the due date even though the case has been referred to competent authority.

Advance pricing agreements

What APA options are available, if any?

Unilateral and bilateral.

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 information yet.

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

No information yet.

Language

In which language or languages can documentation be filed?

Documentation can be prepared in any language but it must be translated into Lithuanian at the request of the tax authorities.

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