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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Philippines

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TAX



Philippines



KPMG observation

While the tax office has not yet taken concrete steps to enforce the transfer pricing regulations, there is an indication that they will follow the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines. This will allow taxpayers to be consistent with the transfer pricing strategies of the group of companies they belong to.

Basic information

Tax authority name

Bureau of Internal Revenue (BIR).

Citation for transfer pricing rules

Section 50 of the National Internal Revenue Code (Tax Code): Revenue Regulations No. 02-2013, dated 23 January 2013 (RR No. 02-2013).

Effective date of transfer pricing rules

9 February 2013.

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

Direct or indirect participation in the management, control or capital or being under direct or indirect common management, control or capital.

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

There is no existing law or specific statute of limitations on transfer pricing assessment. However the statute of limitations under the Tax Code is generally 3 years from the date of filing of the return or from the date the return should have been filed. Under certain conditions, however, the statute of limitations may be 10 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)?

No.

What types of transfer pricing information must be disclosed?

Under Revenue Regulations No. 02-2014, dated 24 January 2014, the top 20 stockholders of a corporation, including their capital contribution and percentage of ownership, must be provided in the new forms of the annual corporate income tax returns starting with taxable year ended 31 December 2013.

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

Administrative penalties.

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.

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

The taxpayers to be able to:

1. defend their transfer pricing analysis
2. prevent transfer pricing adjustments arising from tax examinations, and
3. support their applications for MAP

However, separate guidelines will have to be issued for the applications of Mutual Agreement Procedures (MAPs).

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

RR No. 02-2013 requires the study to be contemporaneous. The BIR does not require the documentation to be submitted upon filing of the tax returns. However, the documentation should be submitted to the BIR upon 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?

None.

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

Yes, RR No. 02-2013 adopts the most appropriate method.

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?

RR No. 02-2013 does not specify this. However, following rules under a regular tax audit, documents supporting the taxpayers' defenses are usually submitted within 15 to 30 days of the request, subject to extension if allowed.

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

RR No. 02-2013 remains silent on transfer pricing-specific dispute resolution options and procedures. However, there are remedies available to taxpayers in the context of regular audits (for taxes of all types), such as protests, appeals and going to the courts. It is expected that these remedies will apply in the case of transfer pricing audits.

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

It is expected that penalties can be assessed in the case of transfer pricing adjustments. The penalties are expected to be the same as those imposed under regular tax audits (25 percent/50 percent surcharge; 20 percent deficiency interest; 20 percent delinquency interest; compromise penalties).

To what extent are transfer pricing penalties enforced?

Not yet known since the implementation of RR No. 02-2013 is in the early stages.

What defences are available with respect to penalties?

Not yet known since the implementation of RR No. 02-2013 is in the early stages.

What trends are being observed currently?

Before the introduction of the recent transfer pricing regulations, the tax office is known to have transfer pricing-related findings in conducting regular audits. Hence, the timely submission of documentation may be useful to contest deficiency tax findings. The documentation may also be a defense against possible benchmarking performed by the tax office based on industry averages.

Special considerations

Are secret comparables used by tax authorities?

Not yet known since the implementation of RR No. 02-2013 is in the early stages.

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

No. RR No. 02-2013 is silent on the matter.

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

No.

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

High, but the interaction so far is not in relation to transfer pricing.

Are management fees deductible?

Yes, provided the management fees are ordinary and necessary expenses and are properly substantiated.

Are management fees subject to withholding?

Yes, subject to Philippine situs rules and application of double tax agreements.

Are year-end transfer pricing adjustments permitted?

RR No. 02-2013 is silent on the matter.

Other unique attributes?

None.

Other recent developments

Based on recent issuances, the BIR has recognized the need to have accurate information/statistics on taxpayers. Recent issuances pertain to proper classification of taxpayers and disclosing in the annual income tax returns the top 20 stockholders and the applicable Philippine Standard Industrial Classification Codes.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal.

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

The BIR has no experience in this area.

When may a taxpayer submit an adjustment to competent authority?

Currently, there are no rules.

May a taxpayer go to competent authority before paying tax?

Currently, there are no rules.

Advance pricing agreements

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

Under RR No. 02-2013, the BIR still has to issue separate guidelines on the application of APA.

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?

English.

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