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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Andorra

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TAX



Andorra



KPMG observation

The corporate income tax and transfer pricing rules are applicable to Andorran taxpayers for fiscal years started on or after 1 January 2012. Thus, it is not yet clear how the Andorran tax authorities will address transfer pricing matters, interpret the new regulations or engage in tax audits. The transfer pricing regulations do not establish documentation requirements for Andorran taxpayers, although they refer to the arm's length principle as the standard to price controlled transactions.

Basic information

Tax authority name

Tax Administration (Administració tributària).

Citation for transfer pricing rules

Legislation: Article 16 of the corporate income tax law (CITL) (Law 95/2010, dated 29 December 2010) modified by Law 17/2011, dated 1 December 2011. Regulations developing CITL: Decree, dated 13 June 2012.

Effective date of transfer pricing rules

The transfer pricing rules are applicable to taxpayers on fiscal years started on or after 1 January 2012.

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

Generally, two entities are considered related parties when the same individuals or legal entities, directly or indirectly, manage, hold an equity investment or otherwise control both entities.

The Andorran tax regulations specifically state that the following relationships trigger the consideration of related parties:

- an entity and its shareholders (for non-publicly traded entities, when they hold a participation of 15 percent

or more; for publicly-traded entities, when the participation is equal to or greater than three percent)

- an entity and its board members, as well as the relatives of the board members up to the third-degree
- an entity that holds an indirect participation equal to, or greater than, 25 percent of another entity
- two entities that are part of a group
- an entity and its permanent establishments.

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

Three years following the final date to file the tax return.

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)?

The corporate income tax return does not require the disclosure of controlled transactions, although a schedule requires the identification of the taxpayer's participation and/or ownership of other legal entities as of fiscal year end.

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?

No. However, Article 16.6 of the CITL establishes that interest expenses accrued on intra-group loans may only be considered deductible if the taxpayer proves that they were in line with the arm's length principle.

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

Evidence of the arm's length principle applied to a transaction. This is relevant for Andorran tax authorities but also from the perspective of the counterparty's tax authority.

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

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (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. The regulations refer to the OECD Guidelines regarding transfer pricing methods.

Is there a priority among the acceptable methods?

No.

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

The regulations refer to the OECD Guidelines regarding transfer pricing methods and their selection.

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?

Not applicable.

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

The taxpayer may appeal against the proposed adjustment before the Andorran courts. Dispute resolutions will depend on treaties to be signed in the future.

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

Penalties are only referred to in the General Tax Code and may range from 50 percent to 150 percent of the additional tax base that arises from the adjustment. The percentage of the penalty may be determined by the tax authorities considering the following circumstances of the taxpayer: good faith, economic capacity, prior infringements of tax regulations, obstruction to the tax audit process, spontaneous compliance by the taxpayer, the taxpayer's agreement to the proposed adjustment, relevance of the infringement and adjustment amount.

There is no specific reference on how penalties would be applied in the case of a transfer pricing adjustment and there is no experience. There are reasons to think that unless the adjustment is based on tax evasion, tax authorities might take the view that the adjustment does not levy penalties based on the nature of the transfer pricing adjustment.

To what extent are transfer pricing penalties enforced?

At this time, Andorran tax authorities have only just initiated limited audits of local taxpayers (as far as we know, the audits did not involve related-party transactions).

What defences are available with respect to penalties?

Documentation. Advance Pricing Agreements (APAs) are also available.

What trends are being observed currently?

The Andorran tax authority is in the process of developing its capacity and skill set to adapt to the new tax regime. The Andorran tax authorities have only started performing some limited scope audits, as the corporate income tax was only applicable to fiscal years starting on or after 1 January 2012.

Special considerations

Are secret comparables used by tax authorities?

There is no experience yet but it is anticipated that secret comparables will not be used.

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

There is no experience yet.

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

There is no experience yet.

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

There is no experience yet.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

Yes, 10 percent of the amount.

Are year-end transfer pricing adjustments permitted?

Although there is no experience yet, there is nothing in the legislation that prohibits year-end adjustments.

Other unique attributes?

The Andorran CITL includes special regimes applicable to Andorran entities that engage in certain cross-border, intercompany transactions:

- Regime for entities engaged in the cross-border license of intangible assets and/or provision of cross-border, intercompany services.
- Regime for entities engaged in intercompany financing activities.

Both special regimes require prior approval from the tax authorities, and provide for an 80 percent reduction of the relevant tax base. In both instances, the approval from the tax authorities is required (we expect that this process will be similar to that of rulings in other jurisdictions) and thus, we anticipate that the transfer prices will need to be set at arm's length and tested under one of the OECD transfer pricing methods.

Other recent developments

Not applicable.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal. The tax treaties signed so far refer to the exchange of information. Tax treaties with France and Spain are being negotiated.

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

No experience.

When may a taxpayer submit an adjustment to competent authority?

No experience.

May a taxpayer go to competent authority before paying tax?

No experience.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral and multilateral.

Is there a filing fee for APAs?

There is no experience yet.

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?

The APA regime was introduced by the CITL and the regulations were only published in June 2012. Because the corporate income tax is applicable only since January 2012, the APA program has not been active to date.

Language

In which language or languages can documentation be filed?

Catalan.

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