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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Angola

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TAX



Angola

KPMG observation

Within the ongoing tax reform in Angola, the Presidential Decree no. 147/13 was published in the National Gazette in October 2013, introducing into the Angolan tax framework the Major Taxpayers Statute, which includes both the tax group relief regime and the transfer pricing regime.

The new transfer pricing rules are applicable to all domestic and cross-border commercial and financial transactions established between the taxpayer and its related entities beginning or occurring on or after 1 January 2013.

Transfer pricing documentation is required in Angola for taxpayers with an annual turnover (defined by the sum of sales and provision of services) equal to or greater than 7 billion Angola Kwanza (AOA) (70 million United States dollars (USD)), as well as for those which are included in the Major Taxpayers List, according to Order no. 472/14, published in the National Gazette last February 28. Additionally, all the financial, oil and gas, diamond and telecommunication companies are subject to transfer pricing obligations in Angola.

The transfer pricing documentation must be prepared and submitted to the National Directory of Taxes by the end of the sixth month after the fiscal years' closing date.

Basic information

Tax authority name

Direcção Nacional de Impostos (DNI).

Citation for transfer pricing rules

Presidential Decree (Decreto Presidencial) no. 147/13 of 1 October 2013 and Order (Despacho) no. 472/14 of 28 February 2014.

Effective date of transfer pricing rules

1 January 2013.

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

For Angolan transfer pricing purposes, there is a special relationship when one entity has the power to exercise, directly or indirectly, a significant influence in the management of the other.

According to the Angolan legislation, any of the following conditions define a special relationship:

- when the directors or management of a company, as well as

their spouses, ascendants or descendants, hold directly or indirectly a participation not less than 10 percent of the capital, or the voting rights in the other entity

- when the majority of the members on the Board of Directors or management are the same persons or, being different persons, are related by marriage, non-marital partnership or direct kinship
- when the entities are bound by a subordination contract
- when the entities are in a relationship of domination or reciprocal participation relationships, as well as bound by subordination or parity group contracts or any equivalent effect under the Commercial Companies Law (Lei das Sociedades Comerciais)
- when there are commercial relations between two entities representing more than 80 percent of one of the entities' total volume of transactions

- when one entity finances the other in over 80 percent of its credit portfolio.

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

Generally, 5 years from the last day of the tax year-end.

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)?

Yes.

What types of transfer pricing information must be disclosed?

The transfer pricing documentation must be prepared and submitted to DNI and should contain the following structure:

- summary
- macroeconomic overview

- company description
- functional analysis
- identification of related-party transactions
- economic analyses of related-party transactions.

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

The Angolan Tax Reform is underway and, for this reason, there are no specific transfer pricing penalties in case of failure to present transfer pricing documentation within the timeframe. In this case, the general tax penalties will be applied.

General tax penalties applied for providing incorrect or incomplete information in tax disclosures or other relevant documents for tax purposes can vary between 50 percent and 200 percent of the unpaid tax.

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 taxpayers. The preparation and submission of transfer pricing documentation to the National Directory of Taxes by the end of the sixth month after the fiscal years' closing date is required for Angolan taxpayers with an annual turnover greater than or equal to AOA7 billion (USD70 million), for those which are included in the Major Taxpayers List, as well as for all the financial, oil and gas, diamond and telecommunication companies.

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

The benefits are as follows:

- penalty protection
- shifting burden of proof
- reduced tax exposures
- reduced risk of adjustment

- efficient tool in order to document the costs incurred and to ensure their tax deductibility
- data or studies might may be complementary to the foreign exchange control requirements next to the National Angola Bank or other regulators
- support the company in the realignment of its activities, risks and assets.

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

Transfer pricing documentation must be prepared and submitted to the National Directory of Taxes by the end of the sixth month after the fiscal years' closing date.

In Angola the fiscal years' closing date corresponds to the civil year, which means that the transfer pricing documentation must be submitted by 30 June.

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, with some exceptions.

The transfer pricing regime in Angola only foresees the possibility of application of the following traditional transactional methods to determine the arm's length principle, namely, (i) Comparable Uncontrolled Price Method; (ii) Resale Price Method, and (iii) Cost-Plus Method.

Is there a priority among the acceptable methods?

Not applicable.

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?

Usually 15 days after request.

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

No.

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

Transfer pricing adjustments are regulated by the general tax penalty regime. If an adjustment is sustained, general penalties may be assessed, which can vary between 50 percent and 200 percent of unpaid taxes. In addition, compensatory interest will be accrued at a 2.5 percent monthly rate for late payment.

To what extent are transfer pricing penalties enforced?

With the recent introduction of the transfer pricing regime in Angola, it is expected the beginning of transfer pricing audits and, consequently, an enforcement of transfer pricing penalties.

What defences are available with respect to penalties?

Documentation is the basis for penalty protection. A taxpayer is expected to capture all justification in the transfer pricing documentation in order to demonstrate the arm's length nature of prices agreed on intra-group transactions. Nevertheless, there is no practical experience yet.

What trends are being observed currently?

Since the transfer pricing regime in Angola is new, the National Directory of Taxes is investing significantly in the development of technical skills and other resources to ensure enforcement of the new rules.

Moreover, the publication of the Major Taxpayers List is one of the indicators that the National Directory of Taxes wants to focus its efforts in specific groups of companies, namely those included in financial, oil and gas, diamond and telecommunication sectors.

Special considerations

Are secret comparables used by tax authorities?

No evidence.

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

No. Comparable data of Angolan companies is not publicly available.

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

No evidence.

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

Limited.

Are management fees deductible?

Yes, according to article 25 of the Industrial Tax Code. Nevertheless, whenever DNI considers the management fees are in excess, discretionary adjustments can take place.

Are management fees subject to withholding?

Yes, at 5.25 percent general rate. For companies operating in the oil and gas, the withholding tax rate is equal to 5.75 percent.

Are year-end transfer pricing adjustments permitted?

No evidence.

Other unique attributes?

None.

Other recent developments

With the tax reform ongoing in Angola, the government is starting to focus its efforts on training its team on transfer pricing issues in order to properly face the new challenges on this matter.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

None.

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

Not applicable.

When may a taxpayer submit an adjustment to competent authority?

Not applicable.

May a taxpayer go to competent authority before paying tax?

Not applicable.

Advance pricing agreements

What advance pricing agreement (APA) options are available, if any?

No APAs or advance rulings of any kind are available.

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?

All the information to be submitted to DNI should be prepared in Portuguese language.

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