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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Dominican Republic

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TAX



Dominican Republic



KPMG observation

Transfer pricing in the Dominican Republic was introduced in Law 11–92, by Article 281, Validity of Legal Acts Between Associated Taxpayers, but detailed rules were established in General Standard 04–2011, published on 2 June 2011. Even though the legislation is new, it is similar to rules in other Latin American countries, based on the fact that the tax authority sought advice from different tax authorities in the region. The legislation includes some additional issues that are common in practice but not addressed by the transfer pricing legislation in other countries, such as:

- The use of several years of financial information of the tested party.
- The use of adjustments for accounts receivable, accounts payable, inventory and property plant and equipment.
- When a party enjoys exclusive agent, distributor or dealer status for the sale of goods, services or rights and characters have contracts with 'preferential' terms, these will be considered as related parties.

Based on comments by the tax authority, it seems that they will be very active in the area of transfer pricing, as can be seen from the transfer pricing information requirements.

Basic information

Tax authority name

Dirección General de Impuestos Internos (DGII).

Citation for transfer pricing rules

Law 11–92, Article 281 Validity of Legal Acts Between Associated Taxpayers.

General Standard 04–2011 Transfer Pricing Rules Applicable to Transactions Between Related Parties (the rules).

Law No. 253-12 concerning the Strengthening of the collection ability and Revenue capacity of the State for the Fiscal and Development Sustainability (*hereinafter the Tax Reform*), introduced significant changes to the scope and application of Article 281 of the Dominican Tax Code with reference to "Related Party Transactions."

Effective date of transfer pricing rules

Transfer pricing documentation requirements start for fiscal years ended on 31 March 2011. It is important to note that in the Dominican Republic, taxable years can conclude on any of the following dates:

- 31 March
- 30 June
- 30 September
- 31 December.

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

For the taxable years ended between 31 March 2011 and 30 September 2012, the transfer pricing documentation

requirements were only applicable to local companies where their foreign capital was greater than 50 percent of their total share capital and conducted related party transactions with:

- foreign related parties
- individuals, companies or corporations domiciled in low tax jurisdictions or tax havens
- related parties benefiting from the Free Trade Zone Regime.

As a result of the Tax Reform effective 10 November 2012, taxpayers must document the arm's length nature of their intercompany transactions, regardless of the ownership structure of the organization. Taxpayers must document any commercial or financial operations with:

- A related party.
- Individuals or legal entities domiciled, incorporated or based in countries or territories with preferential, nil or low tax regime or tax havens, regardless of its composition as related parties. Therefore, every transaction made between related parties is subject to a transfer pricing analysis.

Parties are deemed to be related:

- When one directly or indirectly participates in the management, control or capital of the other. (For management: when one party occupies a position of senior management in both companies. For control or capital: having an interest of at least 50 percent of the capital or voting control).
- When one of the parties resident in the country has permanent establishments abroad.
- When a permanent establishment in the country has its headquarters abroad.
- When one of the parties enjoys exclusive agent, distributor or dealer status for the sale of goods, services or rights.
- When one of the parties agrees to contractual terms with 'preferred' conditions.
- When one of the parties assumes responsibility for any loss or expense of the other.
- When one of the parties receives or transfers 50 percent or more of its production to another company.
- When a company or business is a decision unit, or when a company is a 'partner' of another company.

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

Three years from the filing date of the tax return, if the taxpayer filed the return, or 5 years if no tax return was filed.

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)?

All companies must submit the Informative Return for Transactions with Related Parties (DIOR). This must be filed annually electronically, no later than 60 days after the deadline for filing the corporate income tax return.

The deadline for filing the Corporate Income Tax return is 120 days after the fiscal closing date.

What types of transfer pricing information must be disclosed?

Among other information:

- Related parties with which the transactions were performed.
- Type of transaction.
- Amount of the transaction.
- Documentation supporting the transaction, as well as the methodology used to support the arm's length nature of the transaction.
- Number of the invoice or document that contains the transaction with related parties.

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

If a taxpayer does not file the DIOR, or provide the Dominican Tax authorities with a Transfer Pricing study when requested, then a fine of 85,000 Dominican Republic Peso (DOP) to DOP154,740 is applicable (around 2,073 United States dollars (USD) to USD3,774).

Other penalties may apply, such as generated interest and late penalties, for the income generated under intercompany transactions not complying with the arm's length principle.

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?

The preparation of a transfer pricing study is required for every transaction concluded between associated parties. However, after the enactment of Decree No. 78-14, certain associated parties are exempt from preparing a transfer pricing study. Taxpayers that comply with the following requirements do not need to prepare a transfer pricing study:

- If the intercompany transactions with associated parties do not exceed DOP10 million; and such entities have no transactions with entities located in tax havens or under preferential tax regimes.
- If local intercompany transactions held between entities residing in the Dominican Republic) do not result in a tax deferral or reduction of the taxable income. For this case, the taxpayer should perform a detailed analysis, in order to determine if there are any indications of tax deferral or reduction of the taxable income.

The aforementioned exemption does not exclude the requirement to file the transfer pricing tax return (DIOR).

Please be advised that the amendments of Law 253-12 includes as associated parties clients or providers with exclusive agreements. If an entity receives or provides 50 percent or more of the company's production, then it is considered as associated party. Additionally, all the companies located in specific special border-line zones in the Dominican Republic are protected by Law No. 28-01, and are not subject to transfer pricing policies; companies belonging to the Free Zone sector are also not subject to transfer pricing policies.

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

The burden of proof is shifted to the tax authority when a company has transfer pricing documentation.

Also, having documentation will reduce the risk of a disallowance of the deduction for tax purposes of the transactions performed with related parties.

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 Dominican tax authorities do not require the filing of a Transfer Pricing study, and a specific date is not provided to present such documentation. However, tax authorities may request such documents in a tax audit, and a transfer pricing study, if applicable, should be in place.

In the event of a tax audit, there are no specific deadlines to submit the transfer pricing study. However, the Dominican Tax Authorities usually allow 5-30 days following a request.

On the other hand, the filing of the special transfer pricing tax return (DIOR) is required 180 days after the end of the Company's annual tax period.

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. However, a transaction-by-transaction analysis must be conducted.

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. Comparable Uncontrolled Price (CUP) method should be applied first, and then resale price method, cost plus method, and then the comparable profit split method and the transactional net margin method. After the Tax reform effective 10 November 2012 the residual profit split method is no longer 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?

The law does not indicate a time frame.

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

Yes, taxpayers can submit the resolution to an administrative area within the DGII, in order to object to the procedures. Also, taxpayers may appeal to tax court.

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

Yes. However, since the transfer pricing regulations are new in the Dominican Republic, there is no practical experience on how the authorities will act or interpret its application.

However, general tax penalties, interest and surcharges will apply (interest 1.73 percent monthly and surcharges 10 percent the first month, then 4 percent on each subsequent month) on the adjustment.

To what extent are transfer pricing penalties enforced?

No experience to date, since legislation only came into force in June 2011.

What defenses are available with respect to penalties?

Same as for tax adjustments, for example, documentation, negotiations.

What trends are being observed currently?

No experience to date, since legislation only came into force in June 2011.

Special considerations

Are secret comparables used by tax authorities?

No.

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

No experience to date, since legislation only came into force in June 2011. However, due to the limited number of local comparables DGII has indicated foreign comparables will be accepted.

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

No experience to date, since legislation only came into force in June 2011.

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

High level, but not seen for transfer pricing, since the legislation came into force in June 2011.

Are management fees deductible?

Yes, when the withholding tax is applied.

Are management fees subject to withholding?

Yes, when management fees are paid to a foreign entity.

Are year-end transfer pricing adjustments permitted?

Yes

Other unique attributes?

None.

Other recent developments

Transfer pricing rules were established in General Standard 04–2011, published on 2 June 2011.

Tax Reform effective 10 November 2012 includes specific changes in the previous transfer pricing regulations.

Tax treaty/double tax resolution**What is the extent of the double tax treaty network?**

Minimal, only with Canada.

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?**

Unilateral. Before the Tax reform only applied for those in the hotel industry. After the Tax Reform by the 253-12 Law, all taxpayers may request from the Fiscal Administration (DGII) an advance pricing agreement for intercompany transactions, whether commercial or financial transactions, provided that such agreements have been pre-established and for a specified period of time. Accordingly, the pre-existing limitations with regards to the APAs for the hotel industry no longer apply.

In order to process an APA request from the DGII, the interested company should previously perform a transfer pricing study, demonstrating the values that independent parties would have established in similar transactions, taking into account comparability factors.

In any case, the DGII would have the last word regarding the acceptance or not of an APA. In case the DGII does not accept to the APA requested by the taxpayer, said taxpayer could not request another APA in a two year period after the APA was denied. If the APA is accepted, the APA term will be the year it is requested and the subsequent three years.

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.

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

No current information due to the fact the transfer pricing regulations have been recently established.

Language**In which language or languages can documentation be filed?**

Spanish.

KPMG in the Dominican Republic**Santo Domingo****Manuel Marrero**

Tel: +1 809 566 9161

Email: manuelmarrero@kpmg.com

As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.

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