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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Finland

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TAX



Finland

KPMG observation

The Finnish tax authorities continue to increase their attention in regards to transfer pricing matters. This is reflected in an increasing number of transfer pricing audits in recent years. The tax authorities have also centralized all transfer pricing issues in the Large Taxpayers' Office in Helsinki and increased the number of transfer pricing auditors.

Basic information

Tax authority name

Konserniverokeskus (KOVE, Large Taxpayers' Office).

Citation for transfer pricing rules

Sections 14 a-c, 31, and 32 of the Taxation Procedure Act.

Effective date of transfer pricing rules

The arm's length principle was implemented in 1965. The transfer pricing documentation requirements came into force on 1 January 2007.

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

A company controls another company if it has:

- direct or indirect ownership of more than 50 percent of the share capital
- direct or indirect ownership of more than 50 percent of the voting power
- direct or indirect right to choose over half of the members of the board or members of other corresponding body
- other control.

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

Five years from 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, to be submitted together with the corporate income tax return.

What types of transfer pricing information must be disclosed?

All companies must disclose whether they are obliged to prepare transfer pricing documentation. Entities that are required to prepare transfer pricing documentation under Section 14a of the Taxation Procedure Act are required to file a specific tax form detailing the main functions of the entity, profitability of the entity and the group it belongs to, and its related party transaction volumes during the tax year by transaction type.

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

Small penalty fees are possible. The tax form is mainly for information collection purposes.

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 cross-border transactions, only SMEs (as defined in the Commission Recommendation, 2003/361/EC) are exempted. Full-scope documentation is required for transactions exceeding 500,000 Euros (EUR) per counterparty.

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

Penalty protection, shifting of burden of proof.

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

Preparation deadline: within 6 months of the end of the fiscal year.
Submission deadline: within 60 days when requested by the tax authorities. Additional information such as comparables analysis must be made available within 90 days.

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, with some exceptions. The documentation requirements are based on the Organisation for Economic and Co-operation Development (OECD) Guidelines but the Finnish tax authorities have

published more detailed instructions on the different parts of transfer pricing documentations. If the transactions per counterparty amount to less than EUR500,000 during the tax year, functional analysis and comparables analysis are not required.

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?

In practice, priority among acceptable methods is based on the OECD Guidelines (2010).

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

As specified in the OECD Guidelines.

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?

Within 60 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?

Yes.

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

Yes, a maximum penalty of EUR25,000 per negligence may be imposed on a company failing to show complete transfer pricing documentation. In addition, a tax increase (maximum 30 percent of adjusted income) is possible, according to the regulations on general tax penalties.

To what extent are transfer pricing penalties enforced?

More commonly than in the past. The penalties relating to the submission and quality of transfer pricing documentation have not been used regularly but this is expected to increase. The general tax penalty on adjusted income has been imposed in almost all cases, usually in the range of 5-10 percent of the adjusted income. However, the Supreme Administrative Court held in a decision published in February 2014 that if the taxpayer can show that it has acted in good faith and sought to comply with the arm's length principle with reasonable care, it is not as a rule considered to have met the gross negligence standard as stipulated in the tax assessment procedure act. This means that no tax penalty or only minor (up to EUR800) penalties could be imposed in reassessments per tax year.

What defences are available with respect to penalties?

Documentation, reasonable cause.

What trends are being observed currently?

The number of transfer pricing related tax audits is increasing every year. The focus has been on business restructurings, intangibles and intra-group financing however, other transfer pricing issues also surface in audits. The audits have covered all industries and all kinds of transactions. Naturally, the loss-making group companies are often audited.

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, European comparables are typically accepted.

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

There are no such requirements.

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

Low.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

No.

Are year-end transfer pricing adjustments permitted?

Yes, provided that they result in arm's length pricing. Upward adjustments can be made in the corporate income tax return, downward adjustments if they have been made in the financial statements.

Other unique attributes?

The interest limitation regulations are effective from 1 January 2014 onwards. Net interest expenses paid to affiliate companies are deductible up to 25 percent of the taxpayer's EBITDA (business profits before interest, depreciations and group contributions received, deducted with group contributions granted).

Limitations are not applied if the total sum of net interest expenses does not exceed EUR500,000. Both the external and intra-group net interest expenses are taken into consideration in calculating the threshold, but the limitations do not affect deductibility of interest expenses paid to entities others than affiliated companies. If the equity ratio of Finnish group companies are higher or equal to the equivalent ratio of the entire group, the intra-group net interest expenses are deductible without limitations.

Non-deductible interest payments are carried forward and can be deducted in the following fiscal years without time limits, taking into account the same annual tax EBITDA limitations as in the tax year of interest expenses incurred. Applicability of the limitations does not require a purpose of tax avoidance. The intra-group loans should always meet the requirements of arm's length principle for the interests to be deductible.

Other recent developments

The Finnish tax authorities have centralized all transfer pricing issues in the Large Taxpayers' Office. Additionally, the number of transfer pricing auditors has increased.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

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

Frequently.

When may a taxpayer submit an adjustment to competent authority?

After an adjustment is proposed to the taxpayer.

May a taxpayer go to competent authority before paying tax?

Permitted.

Advance pricing agreements

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

Advance rulings (unilateral APAs). In theory, bilateral and multilateral APAs also are possible according to the tax treaties concluded by Finland. However, there is no formal legislation or guidelines nor case law concerning APAs in place, although it is expected to be released in the near future.

Is there a filing fee for APAs?

Based on the complexity of the case and actual time needed to conclude the advance ruling, the filing fee for advance ruling is EUR1,480 or EUR2,200.

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 experience. The Finnish tax authorities are in favor of APAs and it is recommended especially for intra-group transactions with high values.

Language

In which language or languages can documentation be filed?

According to the Finnish rules, transfer pricing documentation can be prepared in Finnish, Swedish or English. If the documentation is prepared in English, a Finnish or Swedish translation is required only in exceptional cases.

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