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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Greece

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TAX



Greece



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Enterprises must comply with different acts of legislation in relation to their transfer pricing obligations depending on the financial year under review. More specifically:

- for financial years commencing 1 January 2012 onwards (therefore including FY 2013) the transfer pricing provisions of Law 2238/1994 apply.
- for tax years commencing as of 1 January 2014 the new transfer pricing provisions apply on the basis of the New Income Tax Code (Law 4172/2013) (which abolishes from 1 January 2014 Law 2238/1994).

In addition, the provisions of Article 26 of Law 3728/2008 on transfer pricing published by the Ministry of Development have been abolished with effect from 23 January 2013. Therefore, Greece no longer has two transfer pricing regimes (one from the Ministry of Development and one from the Ministry of Finance).

The new transfer pricing provisions extend the scope of transactions that must be documented and the definition of affiliated enterprises to include cases where enterprises have the possibility of exerting substantial influence over one of the associated companies in the group.

Ministerial Decision 1159/2011 (applicable to financial years ending 30 June 2011 onwards) requires entities having the legal form of corporation – Anonymos Eteria (AE) and limited liability company – Eteria Periorismenis Efthynis (EPE) to make transfer pricing documentation available to the certified auditors for the issuance of Annual Tax Certificates under Article 82 of the Income Tax Code. Those affected entities that do not comply will be issued an Annual Tax Certificate “with reservation”, regarding the auditors’ inability to express an opinion on the arm’s length nature of the transaction, and which in turn could result in the tax authorities initiating a tax audit of the respective company’s tax affairs. According to the new Law 4110/2013, branches of foreign companies also come under the obligation for financial years ending after 30 December 2012.

Financial year 2011 was the first year of issuance of the Annual Tax Certificates and it was therefore the first year that transfer pricing documentation files were audited by the certified auditors (for the Annual Tax Certificate). As far as the Ministry of Finance is concerned, no transfer pricing audit precedents exist yet, but in practice the audits shall mainly focus on intra-group transactions within multinational groups, on transactions involving intangibles and related royalty issues, on loss making companies and companies having a substantial volume of international transactions.

Basic information

Tax authority name

Transfer pricing audits will now be carried out by the Tax Office of Large Incorporations. Furthermore, based on the Ministerial Decision 1159/2011, entities having the legal form of Anonymos Eteria (AE) and Eteria

Periorismenis Efthynis (EPE) will have their transfer pricing documentation audited by certified auditors for the issuance of the Annual Tax Certificate.

Citation for transfer pricing rules

Articles 39, 39A, 39B and 39C of Income Tax Law 2238/1994 as amended.

For tax years commencing 1 January 2014, Articles 50 and 51 of Law 4172/2013 and Articles 21, 22 and 56 of Law 4174/2013.

Effective date of transfer pricing rules

The provisions of Law 2238/1994 as amended apply to intra-group transactions which have taken place in

financial periods beginning 1 January 2012 onwards. For the financial year 2013, the transfer pricing documentation file must be prepared and the relevant summary information sheet concerning intra-group transactions must be electronically submitted to the Ministry of Finance within 4 months from the end of the company's year end.

For tax years commencing 1 January 2014 the transfer pricing documentation file is accompanied by the relevant summary information sheet concerning intra-group transactions. The summary information sheet must be electronically submitted to the Ministry of Finance within 4 months from the end of each tax year

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

According to the amended Law 2238/1994, the threshold relationship is substantial control or dependence at a percentage of 33 and is extended to include cases where the possibility of substantial influence over one of the associated companies exists. Specific cases are also described in the relevant legislation.

Law 4172/2013 which applies for tax years commencing 1 January 2014 broadens further the meaning of association introducing the concept of "associated persons". Specific and broader cases are also described in the relevant legislation.

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

Five years from tax year-end. The 5-year period commences at the end of the year in which the annual corporate income tax return was filed with respect to the previous accounting year. Under certain conditions, the statute can be extended to 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)?

Yes, a transfer pricing study (transfer pricing documentation file) must be prepared and provided by the companies to their certified auditors before the issuance of the Annual Tax Certificate (not all companies have an obligation to obtain a tax certificate) and in any case within 4 months from the end of their financial year. The transfer pricing documentation file is accompanied by a summary information sheet. This summary information sheet must be electronically submitted to the General Secretariat of Information Systems of the Ministry of Finance within 4 months of the end of the company's financial year.

By virtue of the fact that the documentation file is prepared after the end of each financial year, there is no need for updates for changes carried out within the same financial year.

For tax year 2014 onwards, an obligation is stipulated that the transfer pricing documentation file must be updated where there are changes in the market conditions that influence the information and data provided in the transfer pricing documentation file.

What types of transfer pricing information must be disclosed?

The summary information sheet must contain information regarding the functional identity of the company, i.e. the group it belongs to, the functions it performs and the risks it assumes, as well as a list of the intra-group transactions that require documentation which have taken place within the respective financial year. It must also include a brief description of the transfer pricing method followed.

The transfer pricing documentation file consists of the "basic documentation file" and the "Greek documentation file". The exact information that must be included in the transfer pricing documentation file as well as the summary information sheet is determined in Circular (i.e. POL 1179/2013) which has been issued by the Ministry of Finance.

In general the basic documentation file is common for all group entities and contains typical information for all the associated companies and the branches of the group. The Greek documentation

file, which accompanies the basic documentation file, contains additional information regarding the Greek entities of the group, the permanent establishments of the foreign entity in Greece or the permanent establishments of the Greek entity abroad.

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

Where the summary information sheet and/or the transfer pricing documentation file are not submitted to the competent audit authority, a one-off penalty at the rate of 1 percent of the company's recorded gross revenues is imposed. The penalty imposed should not be less than 10,000 Euros (EUR) and should not exceed EUR100,000.

Penalties also apply in relation to the late submission of the summary information sheet and/or the transfer pricing documentation file. More specifically, a one-off penalty at the rate of 0.1 percent of the company's recorded gross revenues is imposed in the case of late submission. The penalty imposed should not be less than EUR1,000 and should not exceed the amount of EUR10,000. When the late submission of the summary information sheet is caused by a force majeure (burden of proof is borne by the enterprise) and the summary information sheet is submitted within 10 days of that event, no penalty is imposed.

Law 4174/2013 applying for tax years commencing as of 1 January 2014 onwards stipulates the same penalties as above. Moreover, the one-off penalty at the rate of 1 percent of the company's recorded gross revenues is imposed in the case of submission of an inaccurate/incomplete summary information sheet (this penalty should not be less than EUR10,000 and should not exceed the amount of EUR100,000).

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 transactions.

The preparation of a transfer pricing file is required and penalties are imposed in the case of failure to submit within the time stipulations provided by legislation.

Under Law 2238/1994, intercompany transactions of the company exceeding EUR20,000 per category and per counterparty should be documented for Greek Transfer Pricing purposes if (a) the gross revenues of the Company and its associated enterprises do not exceed the amount of EUR5 million and the intercompany transactions of the Company exceed the amount of EUR100,000 or if (b) the gross revenues of the Company and its associated enterprises exceed the amount of EUR5 million and the intercompany transactions of the Company exceed the amount of EUR200,000.

For tax years commencing 1 January 2014 and according to Law 4174/2013 Greek companies must maintain a transfer pricing documentation file for their intra-group transactions with one or more associated enterprises which exceed the amount of:

- either EUR100,000 in total, if the gross revenues of the company in question for the respective tax year does not exceed the amount of EUR5 million;
- or EUR200,000 if the gross revenue of the company in question for the respective tax year exceeds the amount of EUR5 million.

Law 4174/2013 as currently in force does not stipulate a minimum amount for the transactions that must be documented if the above thresholds are met.

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 of preparing the transfer pricing file are the avoidance of penalties for non-submission, the shifting of the burden of proof from the company to the

supervising authority and the mitigation of the risk of the tax authority making adjustments.

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 documentation file must be submitted to the competent tax authority in case of a tax audit within 30 days of request. However, please note that apart from the obligation towards the competent tax authority, the law stipulates that the transfer pricing file is required to be completed within 4 months from the closing date of the company's financial year. If the company has an obligation for the issuance of a tax certificate, then it should be audited by the certified auditors of the Company at an earlier stage, i.e. before the issuance of the Annual Tax Certificate.

A sample of at least 9 percent of the companies under audit by certified auditors and audit firms will be selected to be further audited by the tax authorities based on criteria set by the Ministry of Finance in accordance with the provisions of Article 80 of Law 3842/2010.

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. According to the transfer pricing provisions, the tax authority's audit will take into consideration the OECD Guidelines. It is further specifically stipulated that a transfer pricing documentation file consists of the "basic documentation file" and the "Greek documentation file". The exact information which must be included is stipulated in the respective Ministerial Circular (POL 1179/2013).

In general the basic documentation file is common for all the group entities and contains typical information for

all the associated companies and branches of the group, while the Greek documentation file, which accompanies the basic documentation file, contains additional information regarding the Greek entities of the group, the permanent establishments of the foreign entity in Greece or the permanent establishments of the Greek entity abroad.

Law 4174/2013 which applies for tax years commencing 1 January 2014 onwards stipulates that the content of the documentation file will be determined by a Ministerial Circular which is expected to be issued. However, it is expected that the content of the documentation file will take into consideration the OECD Guidelines and will not differentiate from the one stipulated in POL 1179/2013.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No, specific requirement is provided in the legislation but in practice advisors are used.

Transfer pricing methods

Are transfer pricing methods outlined in Chapter II of the OECD Guidelines acceptable?

The transfer pricing methods to be used are determined by virtue of Ministerial Circular POL 1179/2013 issued by the Ministry of Finance on 18 July 2013. These are the transfer pricing methods outlined in Chapter II of the OECD Guidelines.

Is there a priority among the acceptable methods?

Ministerial Circular POL 1179/2013 stipulates that there is a priority of the traditional transfer pricing methods (e.g. Comparable Uncontrolled Price (CUP) method, resale price method and cost plus method) over the transactional transfer pricing methods (transactional

net margin method and profit split method). In cases where there is insufficient or no data for the use of the traditional transfer pricing methods, taxpayers may use the transactional transfer pricing methods provided that justification for their selection is included in the transfer pricing documentation file.

In regards to the acceptable methods, we do not expect major changes to be introduced by virtue of the expected Ministerial Circular that will be used under the new transfer pricing regime of Law 4172/2013 (applying to tax years commencing from 1 January 2014 onwards).

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 documentation file must be submitted to the competent tax authority in case of a tax audit within 30 days of request. However, please note that apart from the obligation towards the competent tax authority, the transfer pricing file is required to be completed before the issuance of the Annual Tax Certificate and in any case within 4 months from the closing date of the company’s financial year. Failure to submit the documentation file is subject to a one-off penalty at the rate of 1 percent of the company’s recorded gross revenues. The penalty imposed should not be less than EUR10,000 and should not exceed the amount of EUR100,000, as discussed earlier.

Under Law 4174/2013 (applying to tax years commencing from 1 January 2014 onwards) the deadline for making the documentation file available to the tax authority in case of a tax audit as well as the penalties imposed for failure to

submit the documentation file to the tax authorities remain the same. Similarly, apart from the obligation towards the tax authority in the context of an ordinary tax audit, the transfer pricing file is required to be completed prior to the issuance of the Annual Tax Certificate by the taxpayer’s certified auditors (if the taxpayer is subject to such certificate). However, contrary to the previous regime, Law 4172/2013 as currently in force does not provide that the transfer pricing file must be completed within 4 months from the closing date of the taxpayer’s tax year (such deadline is provided only for the electronic submission to the Ministry of Finance of the Summary Information Sheet of intercompany transactions).

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

No, upon the issuance of a tax assessment note the taxpayer may file a request for re-examination at the Department of Internal Re-Examinations of the General Secretariat of Public Revenues. The taxpayer has a right of appeal against the administrative decision before the administrative courts.

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

Article 39 of Law 2238/1994 provides that where transactions between associated companies (as these are determined in paragraph 2 of Article 39 of Law 2238/1994) are carried out under financial conditions different than those that would have been agreed upon between unrelated parties, the profits that should have arisen to the Greek company (but indeed did not arise due to the different financial conditions), are added to the net profits, or decrease the losses, of the company. The additional profits arising are added to the gross revenues of the company and taken into consideration for the calculation of taxes, fees and levies.

Where the enterprise does not comply with the arm’s length principle, the provisions of Law 2523/1997 (Administrative and Penal Sanctions) apply (e.g. an additional tax is imposed/ applied on the tax avoided due to inaccuracy of the income tax return submitted by the taxpayer).

Law 4172/2013 which applies for tax years commencing 1 January 2014 onwards does not include any provisions in this respect.

To what extent are transfer pricing penalties enforced?

Regarding the transfer pricing regime which applied until 31 December 2011, certain penalties have been imposed by the Ministry of Development. Respective audits from the Ministry of Finance have not been finalized and there has not been a precedent set.

What defences are available with respect to penalties?

It is imperative to have the stipulated transfer pricing file in place in order to avoid penalties. If documentation evidences that transactions are not arm’s length, then justification must be provided. It remains to be seen what the position of the tax authorities will be once audits are completed.

What trends are being observed currently?

Regarding the transfer pricing regime in force until 31 December 2011, the Ministry of Development has imposed certain fines. From the companies selected for audit by the Ministry of Development, the authorities appear to be focusing on entities trading in consumer goods as well as pharmaceuticals. As far as the Ministry of Finance is concerned, no transfer pricing audit precedents exist yet, but in practice the audits mainly focus on intra-group transactions within multinational groups, on transactions involving intangibles and related royalty issues, on loss making companies and companies having a substantial volume of international transactions.

In addition to the above, Law 4172/2013 (which applies for tax years commencing 1 January 2014) introduced the application of the arm's length principle to business restructurings either local or cross-border. More specifically, Law 4172/2013 provides that business restructurings consisting of a transfer of operations, assets, risks and/or business opportunities between related parties as well as any transfer or granting of a right to use goodwill or intangible assets effected in the context of such business restructurings must be performed at a price that is in compliance with the arm's length principle.

Special considerations

Are secret comparables used by tax authorities?

Although there is no precedence in this respect in practice tax authorities may use secret comparables. This remains to be determined.

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

This is yet to be determined under the new rules. However, for the transfer pricing regime in force until 31 December 2011, in practice pan-European benchmarking studies were used.

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

No.

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

High.

Are management fees deductible?

Yes, if in compliance with the arm's length principle and other general tax requirements.

Are management fees subject to withholding?

Yes, subject to tax treaty provisions.

Are year-end transfer pricing adjustments permitted?

No, specific stipulation exists and in practice there can be year-end transfer pricing adjustments if they are sufficiently stipulated in writing (e.g. agreements, transfer pricing documentation). They are usually highly scrutinized.

Other unique attributes?

None

Other recent developments

Law 4172/2013 introduced the application of the arm's length principle to business restructurings either local or cross-border. More specifically, Law 4172/2013 provides that business restructurings consisting of a transfer of operations, assets, risks and or business opportunities between related parties as well as any transfer or granting of a right to use goodwill or intangible assets effected in the context of such business restructurings must be performed at a price that is in compliance with the arm's length principle.

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?

Greece has limited experience with mutual agreement procedures (MAP).

When may a taxpayer submit an adjustment to competent authority?

Taxpayers may submit a supplementary income tax return with an adjustment any time before a tax audit of the year in question. Any procedures under a tax treaty must take place within a 3 year period. However, please note that the right to initiate procedures before the competent administrative bodies is within a 30-day period.

May a taxpayer go to competent authority before paying tax?

There are no formal rules.

Advance pricing agreements

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

For the first time, APAs are introduced by virtue of the new transfer pricing provisions of Law 4174/2013 and apply to tax years commencing from 1 January 2014 onwards. More specifically, by virtue of the new provisions, enterprises may enter into APAs relating to the pricing of specific future transactions with associated companies.

Is there a filing fee for APAs?

Yes. The applicable fees (payable by the applicant) throughout the APA procedure are determined by Ministerial Circular POL. 1284/2013, as follows:

- Fee of EUR1,000 at the time of the submission of the Preliminary Consultation Application.

- Fee of EUR5,000 at the time of the submission of the APA application, or of the APA revision application.
- Fee of EUR10,000 in the case of a request for collaboration with foreign tax authorities.

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 precedent yet, since APAs apply for tax years commencing from 1 January 2014.

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

This is yet to be determined

Language

In which language or languages can documentation be filed?

According to the Ministerial Circular POL. 1179/2013 the Basic Documentation File (containing information regarding the Group) may be prepared in English but it must be translated in Greek upon request by the tax authorities. The Greek Documentation File (containing information regarding the Company) should be prepared in Greek.

KPMG in Greece

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