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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Panama

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TAX



Panama



KPMG observation

Panama has recently enacted transfer pricing legislation in order to comply with international standards and to meet the necessary requirements so that the country is excluded from the Organisation for Economic Co-operation and Development (OECD) tax haven list. Following the signing of a tax treaty with France, Panama reached the 12 agreements necessary to meet the international standard of transparency and exchange of information.

On 7 June 2011, Panama was removed from the OECD's list of countries that were classified as tax havens and is now on the list of jurisdictions that the OECD considers have substantially implemented the standards for exchange of information.

It is important to mention that on 28 August 2012, by means of Law No. 52 of 2012, Panama approved legislation widening the scope of its transfer pricing provisions, to include all taxpayers that carry out transactions with related parties abroad entering into force for the fiscal year 2012. This amendment modified the previous scope of application of Law 33, which applied only to the taxpayers that conducted transactions with related parties that were fiscal residents in countries which qualify as Treaty Partners from the perspective of the Republic of Panama (i.e. countries which entered into Tax Treaties with the Republic of Panama) and therefore may attempt to benefit from more favourable tax rules provided in any relevant tax treaty.

On 7 August 2013 Panama's Finance Ministry (Ministerio de Economía y Finanzas) issued a decree with new rules for transfer pricing documentation and studies. The new Panama transfer pricing documentation rules are intended to comply with OECD Guidelines. According to the transfer pricing legislation adopted in the Republic of Panama, the OECD Guidelines are to be considered as technical reference on the interpretation of its provisions.

Basic information

Tax authority name

Autoridad Nacional de Ingresos Públicos (ANIP).

Citation for transfer pricing rules

Law No. 33, published in the Official Gazette No. 25,566-A of 30 June 2010, Articles 762-A through 762-N in the Panamanian Fiscal Code. Modified by Law No. 52 published in the Official Gazette No. 27,108 of 28 August 2012, Articles 7 through 14, and Executive Decree No. 958 published in the official gazette No. 27,347 of 7 August 2013.

Effective date of transfer pricing rules

Transfer pricing rules have been in place since 1 July 2010 but were mandatory only for certain taxpayers (i.e. those benefiting from the application of a tax treaty). The current scope of application to all intra-group operations with foreign based related parties is effective as of fiscal year 2012.

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

Direct or indirect ownership of capital, administration or control. No specific threshold for the entities to be considered related parties (i.e., even if there is a 1 percent ownership of the shares, the entities are considered related).

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

Three years from the filing date of the income 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)?

Yes. The taxpayer must submit a transfer pricing return (i.e. Form 930) during the 6 months following the fiscal year end.

What types of transfer pricing information must be disclosed?

The information must include data related to the name of the related parties with which the transactions were entered, country of residency of such related parties, type of transactions, whether the transactions were income or expenses; nature and amounts of the transactions with related parties. Likewise, information regarding the transfer pricing analysis must be disclosed, such as, whether grouped or individual analysis was performed, transfer pricing method selected, entity selected as tested party (i.e., the taxpayer or the related party) type of margin used in the analysis (i.e., gross or operating), and percentage of profit, loss or rate obtained in the transaction.

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

In the Article 8 of Law 52 (modified Article 762-I of Law 33) it is established the sanction of one percent of the total of the operations carried out with related parties in the event that the taxpayer failed to submit Form 930.

The Law 114 enacted late on December 10, 2013 modified the article 762-I of the Fiscal Code establishing the maximum amount for this penalty at 1 million of Balboas.

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 transactions that have an effect on the taxable income (i.e. incomes, costs and/or expenses).

According to the Fiscal Code, the sanction is established for failure to submit Form 930, as mentioned previously. Even though there is no specific penalty for not preparing supporting transfer pricing documentation, the tax authorities might deny the deduction of expenses resulting from the intra-group transactions with foreign related parties.

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

Reduce the risk of a disallowance of the deduction for tax purposes of the transactions performed with related parties. The burden of proof is also shifted to the 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?

The transfer pricing information must be prepared contemporaneously with the tax return and must be submitted within 45 days following the request from the ANIP.

When a transfer pricing study is prepared, should its content follow Chapter V of the 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.

Is there a priority among the acceptable methods?

The priority is among the transactional methods and if the taxpayer cannot apply those methods due to the characteristics of the operations or lack of information, the profit-based methods should be applied.

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

Yes, the method that allows to obtain the most reliable result taking into consideration the nature of the transactions.

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?

45 days.

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 review before the ANIP. Subsequently, taxpayers may appeal before the Tax Court. Finally, taxpayers are allowed to submit the case for judicial review before the Supreme Court of Justice (Third Chamber).

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

Yes, there is a late payment interest of 1 percent per month until final settlement.

To what extent are transfer pricing penalties enforced?

There is globally a strengthening in the application of tax penalties in general. The transfer pricing specific penalty regime was introduced in 2010, therefore it is too early to comment on whether penalties are being enforced, but it is expected they will be.

What defences are available with respect to penalties?

Not applicable.

What trends are being observed currently?

There is no experience locally yet.

Special considerations

Are secret comparables used by tax authorities?

Currently, there is no sufficient experience on how the Tax Administration will handle the secret comparable issue.

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

No. The transfer pricing decree expressly states that in searching for external comparables, taxpayers can use reliable commercial databases created by public information companies. If these commercial databases contain no information on Panamanian companies or with respect to comparable transactions within Panama, taxpayers can use information available to companies in other countries.

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

No specific requirements have been officially made.

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

Low.

Are management fees deductible?

Yes, when evidence can be provided that the services were actually rendered. If no support can be provided, then the tax authority will consider them as non-deductible.

Are management fees subject to withholding?

Yes. However, tax treaties may reduce or eliminate the withholding tax upon certain conditions.

Are year-end transfer pricing adjustments permitted?

The transfer pricing rules do not mention this type of adjustment and there is no experience to date with the tax authority.

Other unique attributes?

None.

Other recent developments

As previously mentioned, the scope of the transfer pricing regulations in Panama is widening.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal.

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 formal rules. Depends on the time frame allowed by the tax treaty.

May a taxpayer go to competent authority before paying tax?

Permitted after the assessment. There is no requirement to pay the assessment before going to the competent authority.

Advance pricing agreements

What APA options are available, if any?

None.

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?

Panamanian tax authorities require all documentation they request to be in Spanish language.

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Designed by Evalueserve.

Publication name: Global Transfer Pricing Review

Publication number: 131196

Publication date: June 2014