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GLOBAL TRANSFER PRICING SERVICES

Global Transfer Pricing Review

Venezuela

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TAX



Venezuela

KPMG observation

The Venezuelan Tax Administration has introduced several new procedures and rules. Specifically, thin capitalization rules now limit the deduction of interest payments to related parties where the debt/equity ratio is equal to or less than one-to-one, and new procedures are in force to calculate the interquartile range and transfer pricing adjustments to be included in the tax return.

Basic information

Tax authority name

Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT).

Citation for transfer pricing rules

Venezuelan Income Tax Law.

Effective date of transfer pricing rules

1 January 2000.

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

A related party shall be any company participating directly or indirectly in the direction, control or capital of another company, or when the same companies participate directly or indirectly in the direction, control or capital of both companies.

The rules apply to the operations performed through intermediaries that do not qualify as related persons, residing in the Bolivarian Republic of Venezuela, whereby the latter operates with another party abroad qualifying as a related party.

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

The Venezuelan Tax Code establishes a four year statute of limitations. If no tax return is filed the statute of limitations becomes 6 years. The term for lapsing will be calculated from 1 January of the calendar year following that in which the taxable event occurred.

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, an informative transfer pricing return (FORM PT99, discussed below) must be submitted 6 months after year-end.

What types of transfer pricing information must be disclosed?

General information to be included in the transfer pricing return (FORM PT99) includes:

- transaction definition (code indicated in the form)
- transaction date
- currency of the transaction
- exchange rate

- transaction amount
- country code of the related party (code indicated in the form)
- name of the related party
- transfer pricing method used
- gain or losses obtained in the transaction performed
- profit and loss statements segmented by related and non-related parties.

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

Taxpayers are subject to penalties where they have failed to prepare the transfer pricing analysis or submit the transfer pricing return. In addition, this situation could trigger a tax audit.

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. The Venezuelan Tax Law requires the preparation of a transfer pricing study for all transactions performed with related parties on an annual basis. In case of failure, the taxpayer would be penalized. The penalty applicable would be approximately 8,500 United States dollars (USD). Interest and other kinds of penalties could also apply.

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

In addition to penalty protection, preparing and maintaining a transfer pricing study mitigates the risk of a tax authority audit and unilateral adjustment made by the Tax Administration.

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 Tax Law does not establish a specific date for the completion of the transfer pricing study. However the requirement in practice is to have the entire documentation prepared contemporaneously with the filing of the transfer pricing return (6 months after year-end).

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.

Is there a priority among the acceptable methods?

The taxpayer must consider the comparable uncontrolled price (CUP) method as the first option.

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

The Tax Administration shall evaluate whether the method applied by the taxpayer is the most appropriate in accordance with the characteristics and economic activity of the transaction.

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?

Normally when the SENIAT requests transfer pricing documentation, taxpayers must submit the information requested within three working days.

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

The taxpayer has two options available to solve a dispute: a tax administrative appeal (Tax Administration) or tax litigation appeal (Court).

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

If an adjustment is sustained the taxpayer is subject to fine from 25 to 200 percent of the unpaid tax plus interest.

To what extent are transfer pricing penalties enforced?

Frequently.

What defences are available with respect to penalties?

During an audit review there is the possibility to negotiate with the Tax Administration. In this situation the quality of the documentation and analysis supporting the transactions and comparables rejected is important.

Another defence is the tax administrative appeal or tax litigation appeal, where other factors would be taken into consideration.

What trends are being observed currently?

The Tax Administration has placed special emphasis on transactions such as royalties, technical assistance, management fees and interest rates applicable to loans.

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.

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

The Tax Administration uses a commercial database for comparables, although its use is not a requirement. Taxpayers can use the database of their preference.

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

High.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

Yes.

Are year-end transfer pricing adjustments permitted?

Yes. An adjustment should be included when the transactions performed between related parties are not arm's length. The transfer pricing adjustment, if required, must be included as a non-deductible item in the income tax return. Likewise, the transfer pricing adjustment is for tax purposes only, therefore, it is not recorded in the financial statements.

Other unique attributes?

The Tax Law has introduced a thin capitalization rule. This rule limits the deduction of interest payments to related parties. The maximum debt/equity ratio will be one-to-one.

Other recent developments

The Tax Administration issued a decree introducing procedures to calculate the interquartile range. It also established that any transfer pricing adjustment must be calculated to the median or 50th percentile.

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 yet.

When may a taxpayer submit an adjustment to competent authority?

No formal rules exist in this area.

May a taxpayer go to competent authority before paying tax?

No formal rules exist in this area.

Advance pricing agreements

What Advance Pricing Agreement (APA) options are available, if any?

Unilateral.

Is there a filing fee for APAs?

Yes, however the Tax Law does not establish a specific amount.

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?

The APA program has not been successful in Venezuela mainly because the APA option established in the Law is a unilateral one and the procedures to access this program are unclear.

Language

In which language or languages can documentation be filed?

Spanish. The documentation and information relating to the calculation of transfer pricing must also be kept by the taxpayer during the term established by the Law, duly translated into Spanish.

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