

Transfer Pricing Part II: Implementation for Year of Assessment 2015

In May 2015 the new transfer pricing provisions of the Income Tax Act were tabled in the Lower House of Parliament. Some seven months later, those provisions are now part of the tax laws of Jamaica, and they have an effective date of January 1, 2015.

When the *Income Tax (Amendment) (No. 2) Bill, 2015* was tabled, we started our series of Transfer Pricing Bulletins [available on our website](#). In this second instalment in that series, we will focus on the implementation of the new tax measures and address some of the lingering questions about the impact that the January 1, 2015 implementation date will have on affected taxpayers.

What is required for year of assessment (i.e. calendar year) 2015?

This is the year of transition. Starting this year, taxpayers with connected party transactions are required to list those transactions in a Schedule attached to their annual income tax return. This means that the 2015 income tax return of each taxpayer, which is due by March 15, 2016, should include a list of all transactions carried out with connected parties for that year. That Schedule will require a disclosure of the names of the connected parties and the amount of the transfer price (the arm's length consideration) that applied to each transaction.

Where a consideration other than arm's length consideration was provided for connected party transactions, the taxpayer will have to make the necessary adjustments to its income and/or expenses figures to reflect an arm's length consideration for income tax

computation purposes. Any applicable income tax arising from the inclusion of an arm's length consideration in the taxpayer's 2015 income tax computation, should be reported on the income tax return for that year.

There is no statutory requirement to provide transfer pricing documentation to the Commissioner General of Tax Administration Jamaica ("TAJ") for year of assessment 2015, although it is prudent to create and keep contemporaneous records of such transactions where possible.

Based on the provisions of the Income Tax (Transfer Pricing Documentation) Regulations, 2015, transfer pricing documentation for a year of assessment is considered contemporaneous once it is in place at the statutory filing date for the income tax return – March 15. In our view, this suggests that for year of assessment 2015, documents created after the passage of the

transfer pricing measures into law and up to March 15, 2016 should be kept on record. However, there may be no requirement to create documents for transactions which took place prior to the date the transfer pricing measures became law.

What does it mean that prosecutions will not be commenced until 2017?

With effect from year of assessment 2016, if any person fails to certify that the accounts and information which are used to prepare the income tax return include the particulars of all connected party transactions, he is liable to prosecution. The Minister of Finance and Planning has clarified that this effective date is in essence a postponement of such prosecutions to 2017.

We understand this to mean that the filing of the 2016 income tax return, which is due by March 15, 2017, will be the first trigger for such prosecutions.

As it relates to the normal tax assessments for a failure to pay any income tax applicable to connected party transactions, there is now a question as to whether any tax assessments will be made for year of assessment 2015 under the transfer pricing provisions.

What will be required starting year of assessment 2016?

Year of assessment 2016 is the first year for full compliance with the transfer pricing provisions, and is also the first year for complete policing and enforcement by TAJ. This means that, along with the requirement to report all connected party transactions for that year on the

annual income tax return, companies with gross annual revenue of J\$500 million or more in the previous year of assessment will be required to keep transfer pricing documentation and to present same upon request by the Commissioner General of TAJ.

This is also the year for prosecutions to begin for failure to certify that the accounts and information which are used to prepare the income tax return include the particulars of all connected party transactions. Once there is incomplete disclosure on the income tax return, or incomplete certification, or a failure to provide the required certification, the responsible officer of the company could face a maximum penalty of J\$2 million, or a maximum of 12 months imprisonment in default of payment of the monetary penalty.

Does the requirement for documentation apply to all taxpayers?

Based on the provisions of the *Income Tax (Transfer Pricing Documentation) Regulations, 2015* only companies with gross annual revenue of J\$500 million or more in the previous year of assessment are required to keep transfer pricing documentation and to present same upon request by the Commissioner General of TAJ.

This documentation must verify that, for the relevant year of assessment, the transfer price for all connected party transactions is consistent with an arm's length consideration.

What documentation is required to be kept?

The legislation provides an inclusive list of documents, which it rounds out by stating that, any other information that may have a material

impact on the determination of the person's compliance with the arm's length consideration for the connected party transactions, would also be required.

Of course, the transfer pricing documentation must be kept in English, and when requested, must be provided to the Commissioner General of TAJ within 30 working days of the date of issue of a written request by the Commissioner General.

The documents specifically listed in the legislation, which must be contemporaneous with the connected party transactions, are:

- I. an overview of the company's business operations and organizational chart, with details of business units, departments and the organizational structure;
- II. a description of the corporate organizational structure of the group to which the company belongs and the group organizational structure, with details of the roles of each company in the group that relate to connected party transactions;
- III. details of all connected party transactions carried out, along with an analysis of the factors used in identifying comparable independent transactions;
- IV. an explanation of why the particular transfer pricing method used was chosen;
- V. a description of the tests done and the process used to identify the comparable independent transactions

relied on; a description of the comparable independent transactions used; an explanation of why certain comparables were rejected; a comparative analysis of the relevant connected party transactions and the selected comparables; and details of any comparability adjustments that were required;

- VI. details of any industry and economic analysis done by the company to arrive at the transfer price, as well as any budgets and projections relied on;
- VII. details of any advance transfer pricing agreements or other arrangements in other countries that apply to the connected party transactions; and
- VIII. a conclusion about whether the conditions of the connected party transactions were consistent with an arms' length consideration, along with details of any adjustments that were required to guarantee compliance.

This is a very detailed list of documents, which, upon request, must be provided within 30 working days. We have noted that the legislation specified "working days" and so any intervening weekends and public holidays would not be included in calculating the period.

This documentation requirement points to the need for companies to give serious thought to having transfer pricing studies done, so that

the documentation will be in place as a matter of course and not in response to a request by the Commissioner General. It also highlights the need to consider taking advantage of the advance

transfer pricing agreement option presented. We will examine the requirements for an advance transfer pricing agreement in another instalment in this series.

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