Deloitte.

Global Transfer Pricing

Arm's Length Standard

February/March 2014

In this issue:

The OECD's Discussion Draft on Transfer Pricing Documentation and Country-by-Country Reporting: A work in progress

The Organization for Economic Cooperation and Development on January 30 released a discussion draft on transfer pricing documentation and country-by-country reporting as part of its work on base erosion and profit shifting (BEPS). The discussion draft sets out revised guidance on transfer pricing documentation requirements in the form of a new draft Chapter V of the OECD's transfer pricing guidelines, and includes a common template for the reporting of detailed global information to tax authorities on a country-by-country (CbC) basis, focusing on the global allocation of income, economic activity, and taxes paid.

The discussion draft addresses Action 13 in the July 2013 BEPS Action Plan, which promised to "[d]evelop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into account the compliance costs for business." However, many of the proposed requirements need further refinement and balancing to achieve this goal. The proposed rules, if implemented, will likely increase the cost of compliance for multinationals.

Interestingly, the introduction to the discussion draft states that it does not reflect consensus views of either the OECD's Committee on Fiscal Affairs or Working Party 6 undertaking the work. Given the lack of consensus in the document, it is an open issue whether the OECD's recommendations will receive broad acceptance and be implemented by a sufficient number of G20 countries to increase consistency in documentation requirements.

The OECD has invited stakeholders to submit written comments on the draft. Comments are due February 23, 2014, and should be submitted to TransferPricing@oecd.org.
URL: mailto:TransferPricing@oecd.org

For a more detailed examination of the discussion draft and its implications, please see the *Arm's Length Standard* Special Edition, issued February 3, 2014.
URL: http://newsletters.usdbriefs.com/2014/Tax/ALS/140203_1.html

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Netherlands Publishes New Transfer Pricing Decree

The Dutch tax authorities issued a new transfer pricing decree on November 14, 2013 on the application of the arm's length principle and the OECD transfer pricing guidelines. The decree was published on November 26.

Because the OECD transfer pricing guidelines provide an internationally accepted interpretation of the arm's length principle, the guidelines are regarded as an appropriate explanation and clarification of the arm's principle as codified in Article 8b Corporate Income Tax Act 1969. The new decree provides further clarification of the arm's length principle and focuses on aspects where the OECD guidelines leave room for different interpretation, or where there is potential uncertainty from a Dutch perspective.

The decree replaces two prior transfer pricing decrees: the decrees of 30 March 2001 (No. IFZ 2001/295M) and August 21, 2004 (No. IFZ 2004/680M) relating to the arm's length principle, and focuses attention on recent transfer pricing developments.

The new decree includes, among others:

- A more detailed description and clarification of the arm's length principle regarding the relevance of contractual relations, conditions for comparability analyses, the aggregation of transactions, use of a range in comparability analyses, use of multiple-year data, the effects of specific market circumstances in comparability analyses, and requests for lowering of transfer pricing adjustments.
- Adjustments to the Dutch transfer pricing rules necessary because of changes in the OECD's transfer pricing guidelines (as last revised in 2010).
- Use of the various transfer pricing methods described in the OECD's transfer pricing guidelines. These regard a reiteration of the Dutch tax authorities' position that taxpayers in principle have freedom of choice in determining the most appropriate transfer pricing method, as long as it results in an arm's length outcome. Further attention is given to cost reimbursements and applying a budget to actual analysis for cost plus methods.
- A clarification with regard to group services, specifically, a list of "shareholders activities" that are not considered group services and do not need to be charged out, to the extent that they add no economic or commercial value for the benefit of group members, and if and when that group member would normally not be willing to pay for the activities. This purpose of this clarification is to become aligned with the findings of the EU's Joint Transfer Pricing Forum on group services, published in their "Guidelines on Low Value Adding Intragroup Services."
- Captive insurance provisions.
- Guidance on secondary adjustments. The position of the Dutch tax authorities is that a transfer pricing adjustment always results in a secondary transaction that could subsequently lead to a secondary adjustment.
- Guidance on arm's length pricing when valuation is highly uncertain at the time of the transaction, *regarding* the transfer of intangible property and the necessity to include a price adjustment clause.
- Cost contribution arrangements (CCA). The arm's length principle is followed as per the OECD's transfer pricing guidelines, in particular Chapter VIII on CCAs. However, the Netherlands has developed specific viewpoints on the relative contribution of CCA participants and their respective shares in the (anticipated) benefits.

- Unbusinesslike profit shifts. The decree illustrates a number of situations whereby so-called "unbusinesslike profit shift" are recognized, and which the Dutch tax authorities aim to take action against. These regard non-arm's-length transactions in relation to the transfer of valuable intangible assets, centralized procurement activities, and reinsurance activities within the group.

The decree discusses various other topics, including:

- The relation with the EU Joint Transfer Pricing Forum;
- Aspects of guarantees for intercompany loan agreements;
- Further clarification regarding documentation requirements, for the Dutch tax authorities apply an "open norm" (that is, they do not provide an exhaustive list of specific requirements); and
- Early-stage consultations with the Dutch tax authorities regarding potential double taxation arising from transfer pricing, including proactive exchanges of information upon the taxpayer's request.

Although for the most part the decree follows the OECD's 2010 transfer pricing guidelines, and as such does not come as a surprise, particular topics have a specific Dutch angle. These include intragroup services, shareholder costs, intercompany guarantees, reinsurance, and financial transactions.

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Greece Issues Procedure for Negotiation of Advance Pricing Agreements

The Greek Ministry of Finance on 31 December 2013 issued a ministerial decision regulating the procedure for the negotiation of advance pricing agreements (APAs), applicable from 1 January 2014.

Early in 2013, the Greek Parliament approved a law – Law 4110/2013 – that rationalized and modernized Greece's transfer pricing rules, and consolidated the legislative framework for transfer pricing documentation. The law also introduced an APA program effective 1 January 2014, which would enable taxpayers to obtain advance approval of their transfer pricing practices. The Greek government has now issued regulations to establish rules for negotiating APAs.

The key points of the new decision are as follows.

Scope of APAs

APAs cover the proper set of criteria that apply to the pricing of cross-border intercompany transactions during a specified period of time. The main issues that are subject to an APA are the following:

- Method of documentation used;
- Comparable data and relevant adjustments;
- Basic assumptions on future conditions; and
- Any other special matter that relates to the pricing of intercompany transactions.

The duration of an APA cannot exceed four years, nor can the agreement apply to a fiscal year preceding the date of the application.

The responsible authority for filing and approval of APA applications is the General Directorate of Tax Audits and Revenue Collection.

Preliminary stage

Taxpayers that seek to enter into APAs have the option of requesting a preliminary consultation, by filing a special application, to discuss with the tax authorities the probability that the APA application will be approved.

Content of APA application

The official APA application should include at a minimum the following data:

- Informative data regarding the applicant;
- Informative data of all related parties involved in the APA;
- Organizational structure of the group that includes all related parties involved in the APA;
- A description of the intercompany transactions for which the APA is requested;
- The proposed method for pricing the aforementioned transactions;
- Critical assumptions on which the application is based and detailed reasoning why the proposed method is the most appropriate one; and
- The time frame for which the requested APA will be applicable.

Moreover, the applicant should include in the application all necessary data for the responsible authority to form an opinion regarding the method that will be used to determine the arm's length intercompany prices, including:

- An analysis of the market trends that are expected to affect the applicant's business activity;
- A description of the business strategy the applicant will follow during the APA's term;
- A functional analysis of the applicant;
- Reasoning that supports the conclusion that the APA is suitable for the specific transactions and detailed information that proves that through the use of the proposed method, the transactions will comply with the arm's length principle;
- A list of any APAs that have been entered into by any of the related parties involved in the APA application, either in Greece or abroad, for the same or similar transactions; and
- Detailed financial data of the last three years for all entities involved in the APA application.

Finally, the APA application should include all critical assumptions based on which the proposed method ensures compliance with the arm's length principle, such as the operational, financial, or legal profile of the applicant, or the specific sector or activity and the general economic environment.

Outcome of application

If the responsible authority and the taxpayer reach agreement, both parties will sign an APA acceptance letter. Conversely, if the two parties fail to reach an agreement, the APA application is rejected.

A decision on the APA application will be issued within 20 days from a hearing with the applicant, and the taxpayer will be notified of the decision. The examination phase prior to the issuance of the decision on the APA cannot exceed 120 days, unless negotiations with foreign tax authorities are requested, in which case the aforementioned time frame does not apply.

Negotiation with foreign tax authorities

At the taxpayer's request, negotiations with foreign tax authorities may take place in the case of bilateral or multilateral APAs. The relevant consultations will be carried out by the Directorate of Tax Audits within the framework of the APA application, and will be based on the mutual agreement procedure described in the relevant income tax treaty.

Fees

APA applications entail the following fees:

- €1,000 payable with the submission of an application for a preliminary consultation; or
- €5,000 payable with the submission of an APA application.

If a request for consultation with foreign tax authorities is made, a fee of €10,000 must be paid for each of the countries involved in the APA application.

Upon conclusion of the APA, the taxpayer is obligated to submit an annual compliance report. The report should include any information that demonstrates the APA's critical assumptions have been met, and explicitly mention any possible deviation. If the critical assumptions have not been met, the taxpayer should propose potential adjustments to the same.

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France Enacts Additional Documentation Requirements

After a series of discussions and exchanges between the two chambers of the French Parliament, legislation was enacted in December 2013 that adds a new transfer pricing documentation requirement to the French tax regime. This legislation, which is part of a new law on fraud and tax evasion, introduced new Article 223 *quinquies* B into the French Tax Code.

The spirit of the law is to provide the French tax authorities additional tools to select more efficiently companies to be subject to a dedicated transfer pricing audit.

New documentation requirement

Under the new obligation, taxpayers are now required to submit extracts from their full transfer pricing documentation to the tax authorities.

The information that must be submitted includes:

- General information regarding the group and group-related companies:
  - A general description of all business activity, including any changes during the last fiscal year;
  - A list of the taxpayer's principal intangible assets, including patents, brands, commercial names and know-how, related to the French entity; and,
  - A general description of the group's transfer pricing policy and any changes that occurred during the last fiscal year.
- Specific information regarding the French affiliate:
  - A description of the taxpayer's entire activity, including any changes during the last fiscal year;
  - A summary of transactions with other related parties, classified by transaction type and by amount, when the aggregated amount per transaction type exceeds €100 000; and
  - A presentation of the method(s) used to determine the taxpayer's transfer pricing policy (following the arm's length principle), including the main method used and any changes that occurred during the last fiscal year.

Taxpayers must submit this documentation within six months following the submission of their annual tax return.

Companies subject to new requirement

Article 223 *quinquies* B of the French Tax Code applies to any legal entity (including permanent establishments in France) that meet the criteria specified under Article L.13 AA of the Tax Procedure Code, which governs general transfer pricing documentation requirements. Specifically, one of the following conditions must be met:

- The entity has a gross annual turnover or gross assets equal to or exceeding €400 million;
- The entity owns, directly or indirectly, at least 50 percent of companies that meet the €400 million criteria;
- More than 50 percent of the entity's capital or voting rights are owned, directly or indirectly, by French or foreign entities that meet the €400 million criteria; or
- The entity is in a consolidated tax group in France and at least one group company meets any of the above criteria.

The new obligation is effective as of December 8, 2013. Thus, French affiliates of multinational groups that submit their annual tax return on or after December 8, 2013 – i.e., companies whose fiscal year ends in September 2013 – are subject to this additional documentation requirement.

Analysis & recommendations

The additional documentation requirement calls for taxpayers to submit an extract from the transfer pricing documentation that must be prepared according to the current documentation requirements (per article L.13 AA). As such, the new transfer pricing requirement does not replace the existing regulation, but represents an additional obligation for affiliates of multinational groups in France.

It should be noted that under current law the tax authorities are allowed to request the full documentation report as of the first day of a tax audit (theoretically, this could be a few days after submission of the tax return). From a practical standpoint, the company's full documentation report should be prepared in a timely manner, to allow and facilitate extraction of the necessary information to comply with the new documentation requirement.

As with all taxpayer submissions to the French tax authorities, this additional documentation should be provided in French. In the absence of specific agreement from the tax authorities, providing a document in English would likely be viewed as insufficient to meet the requirement.

In terms of deadlines for submitting the additional documentation, it should be noted that in France companies have a three-month period following the closing of their accounts to submit their annual tax return, or four months when the closing date is December 31. For example:

FYE	Tax return filing deadline	TP documentation extract filing deadline
March 31 year N	June 30 year N	December 31 year N
Dec 31 year N	May 1 year N+1	Nov 1 year N+1

The new law does not impose a penalty directly on taxpayers that default on their obligation to file the transfer pricing documentation extracts, which may tempt some to overlook the new measure. However, taxpayers should not forget that:

1. The spirit and intent of the new requirement is to increase the efficiency of the transfer pricing audit selection process for the tax authorities and, as such, the possibility of a potential tax audit for the selected companies should be considered the genuine penalty for noncompliance with the new requirement; and
2. In case of such an audit, the main penalty linked to the nonsubmission of transfer pricing documentation as defined by article L.13 AA (up to 5 percent of the tax reassessment amount, with a minimum of €30,000 for a standard French tax audit period of three years) would apply.

This article has been prepared by professionals in Taj, French tax and legal firm, member of Deloitte Touche Tohmatsu Limited.

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Vietnam Issues Guidance on APAs

The Vietnamese tax authorities on December 20, 2013, issued a circular that provides detailed guidance on the advance pricing agreement (APA) application process. The circular entered into effect on February 5, 2014.

Circular 201/2013/TT-BTC, referred to as Circular 201, provides detailed guidance on all aspects of APAs, which were introduced into Vietnamese legislation by Law No. 21/2012/QH13 amending and supplementing several articles of the Law on Tax Administration, and Decree No. 83/2013/ND/CP dated July 22 2013. The circular is substantially similar to a draft circular that had been issued for public comment earlier last year.

The notable points of Circular 201 are summarized below.

Taxpayer eligibility to apply for APAs

Entities that produce and trade goods and/or services, and that are defined as taxpayers under the Law on Corporate Income Tax who enter into controlled transactions with associated parties may avail themselves of the possibility of entering into an APA. Applicants must submit the APA application form prior to fulfilling their tax declaration and payment obligations for the first year of the proposed APA's term.

Principles in Applying APAs

Circular 201 provides some basic principles for the negotiation of APAs; one of these principles provides that the Vietnamese tax authorities and taxpayers – or in the case of bilateral or multilateral APAs, the Vietnamese tax authorities and the foreign tax authorities, as well as the taxpayers – will collaborate in discussing and negotiating the implementation of regulations of corporate income tax obligations of controlled transactions in line with the arm's length principle.

Vietnamese Competent Authorities

The Ministry of Finance must approve the framework for the negotiation, conclusion, revision, extension, revocation, and cancellation of APAs.

The General Department of Taxation receives and processes application dossiers, conducts negotiations, and conducts inspections, audits, and monitors the APA's implementation.

The provincial tax departments participate in the negotiating, organizing, and implementing of APAs in line with their management function.

Negotiation of APA

Circular 201 provides that an APA application will go through the following stages:

- Prefilling consultation
- Filing of official APA application
- Appraisal of APA dossier
- Discussion and negotiation of APA's contents
- APA conclusion and circulation.

APA Form Selection

Taxpayers determine the type of APA they are interested in – unilateral, bilateral, or multilateral APAs – at the time of submission of the official APA application. During the APA application process, both the tax authorities and the taxpayer are able to convert an application for a bilateral/multilateral APA into a unilateral APA, and vice versa.

Withdrawal and Termination of APA negotiations

The taxpayer may withdraw from APA negotiations at any point in time prior to the conclusion of the APA. The General Department of Taxation may terminate APA negotiations in certain cases.

APA Compliance

Taxpayers that enter into an APA must submit APA reports on an annual basis. In addition, taxpayers may also be asked to provide ad-hoc reports by the tax authorities in some cases.

Information Confidentiality

The tax authorities and the taxpayer are responsible for keeping information and data confidential during the APA application process, as regulated under the Law on Tax Administration.

In the case of termination of an APA negotiation, withdrawal/cancellation of an APA application, or revocation of an APA, the information and data provided by the taxpayer in the APA dossier or in the annual compliance reports will not be used as evidence or documentation during a tax inspection, tax audit, or tax imposition against the taxpayer.

Taxable income adjustment during APA implementation

The circular specifies that the taxpayer is required to make taxable income adjustments in accordance with the provisions of the APA.

With respect to controlled transactions that are outside the scope of the APA, and are not at arm's length but are identical or similar to those transactions covered in the APA, taxpayers are able to apply the methods for setting transfer prices set out in the APA to make adjustments to those transactions.

APA Term

Circular 201 stipulates in detail the periods of effectiveness, extension, modification, cancellation, and revocation of an APA as follows:

- APAs may have a maximum effective period of five years. The effective date cannot be prior to the submission date of the APA application.
- APAs may be renewed for up to five years in some cases at the taxpayer's request.
- APAs may be modified in some cases, at either the taxpayer's or the tax authorities' request.
- APA may be cancelled in some cases that are initiated by any parties involved in the APA's implementation (taxpayers, the Vietnamese tax authorities, or the foreign counterpart tax authorities).
- APAs may be revoked in some cases resulting from the taxpayer's fault or upon request by the foreign counterpart tax authorities.

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Colombia Issues Transfer Pricing Regulations

The Colombian government on December 27, 2013, issued regulations under the transfer pricing provisions that had been amended by the most recent tax reform in early 2013.

Regulatory Decree 3030 of December 2013 regulates Articles 260-1 to 260-11 and Article 319-2 of the Colombian Tax Code, which comprise Colombia's transfer pricing regime. The following is a brief summary of the decree.

Formal Transfer Pricing Obligations

Colombia's tax regulations require taxpayers to file an annual informative transfer pricing return. Taxpayers are also required to conduct annually a transfer pricing study, and to submit it to the tax authorities, for all transactions that exceed a specific amount expressed in tax value units (UVTs from the Spanish acronym).

One of the principal changes Decree 3030 introduced relates to Articles 260-5, 260-9, and Paragraph 2 of Article 260-7 of the Tax Code. Article 2 of the decree establishes the cases in which taxpayers must file an informative transfer pricing return and to prepare and file the corresponding supporting documentation. The following table summarizes those instances:

General Conditions for taxpayers of income and complementary tax		
Counterpart to the transaction:	General Caps of Taxpayer	No obligation to submit Supporting Documentation
Related parties located abroad	Gross equity equal to or higher than 100,000 UVT, or gross income equal to or higher than 61,000 UVT	Accumulated amount of transactions less than 61,000 UVT
Related parties located in Free Trade Zone		When the amount by type of transaction is lower than 32,000 UVT
Natural or legal persons located in tax havens	No equity or income threshold	For tax havens: Total amount of transactions lower than 10,000 UVT

Permanent Establishments		
Counterpart to the transaction	General Caps of PE	No obligation to submit Supporting Documentation
Related parties located abroad	Gross equity equal to or higher than 100,000 UVT, or gross income equal to or higher than 61,000 UVT	Total amount of transactions lower than 61,000 UVT
Related parties located in Free Trade Zone		When the amount by type of transaction is lower than 32,000 UVT
Natural or legal persons located in tax havens	There is no equity or income threshold	For tax havens: Total sum of transactions lower than 10,000 UVT

Permanent Establishments, taxpayers of income and complementary tax		
Transaction	General Caps of PE	No obligation to submit Supporting Documentation
Nonresident natural persons or legal foreign persons, in favor of the PE	Gross equity equal to or higher than 100,000 UVT, or gross income equal to or higher than 61,000 UVT	Accumulated amount of transactions lower than 61,000 UVT
Related parties located in Free Trade Zone with other nonresident natural persons or foreign legal persons, in favor of the PE		When the amount by type of transaction is lower than 32,000 UVT
Nonresident natural persons or legal foreign persons in tax havens nonresident natural persons or foreign legal persons, in favor of the PE	There is no equity or income threshold	For Tax Havens: Total sum of transactions lower than 10,000 UVT

In the case of financing transactions, the provisions found under item (a) of Paragraph 1 of Article 260-4 of the Tax Code are reaffirmed, as follows:

- To determine if a transaction exceeds the above-mentioned caps, the "amount of the principal" that is loaned between the taxpayer and its related parties located abroad, related parties located in free trade zones or in transactions with nonresident natural persons or foreign legal persons located in tax havens will be taken into account; and
- The deduction for interest expense will be [disallowed when the comparability criteria defined in the Tax Code are not met. Consequently, if those requirements are not fulfilled, those transactions may not be considered financial loans, but rather equity contributions, and the related interest may be treated as dividends.

Supporting Documentation

The supporting documentation taxpayers must prepare includes the following:

1. An executive summary of the transfer pricing supporting documentation;
2. A functional analysis that includes functions performed, assets used, and risks borne;
3. A market analysis; and
4. An economic analysis.

Business cycles of the tested party

The information corresponding to the taxpayer under analysis must always correspond to that of the year under analysis. Nevertheless, in exceptional cases, data from more than one period may be used, provided the economic, financial, technical, or other reasons for this exception are relevant, duly justified, and are included in the supporting documentation.

Financial Information of Comparables

The supporting documentation must indicate explicitly the day, month, and year when the analysis was carried out, as well as the date of update of the database used. The possibility of using foreign related parties as tested parties is accepted, but in a limited manner. This is of vital importance when reviewing the provisions of Article 260-5 of the Tax Code related to the fact that the information used in the study must be certified by the statutory auditor. In this respect, it is important to emphasize the following points:

- The regulations clarify that the information that must be certified is that of the tested party;
- Decree 3030 introduces an additional term when it states that the study must be "audited and/or certified," an obligation that is not contained in the Tax Code;
- When the tested party is not under an obligation to have a statutory auditor, the certification may be signed by an accountant;
- When the tested party is a third party located abroad, the certification may be signed by whoever acts as statutory auditor, accountant, or external auditor; in any event, the certification must be attached to the supporting documentation.

Despite the issuance of Decree 3030, there is still a significant vacuum regarding what this rule seeks to accomplish, and the information that may be obtained through it.

The decree establishes that, as a general rule, the financial information of the comparables used in the analysis must correspond to the fiscal year under analysis for the tested party; however, information from previous periods may be used as an exception. But the exception may become the rule, given that the deadline for filing income tax returns is in April, and the required information may not be available.

Arm's Length Range

Taxpayers must report in their supporting documentation the technical reasons for the selection of the arm's length range or an adjusted range through other statistical tools, such as the interquartile range.

Transactions with Tax Havens

Colombian taxpayers who make payments to parties located in tax havens must keep the relevant evidence related to those transactions, including detailed descriptions of the functions developed, risks assumed, and assets used by the party located in the tax haven in order to deduct those payments for income tax purposes, unless the taxpayer is able to demonstrate that the party located in the tax haven is not a related party.

Segmentation of Financial Statements

The financial and accounting information used in the analysis must be:

- Prepared according to Colombia's generally accepted accounting principles;
- Audited and/or certified by a statutory auditor; and
- Attached to the corresponding supporting documentation.

In addition, the working papers that report how the segmentation was prepared, its reasonableness, and the technical, economic, and financial procedures whereby the assignment of costs and expenses was made, must be available to the taxpayer, because the tax authorities may request them during an audit.

The segmentation of financial statements must be supported by a "Segmentation Manual," a document that shall prove in a conclusive manner that the segmentation is the result of a detailed analysis of assets, functions, and risks associated to each transaction subject to analysis.

Contributions to Foreign Corporations and Entities

Contributions in kind by Colombian taxpayers to entities domiciled abroad represent a disposal for tax purposes, and therefore will be deemed deductible for income tax purposes, according to the general rules for disposal of assets, and additionally will be subject to Colombia's transfer pricing regime.

Furthermore, contributions of intangibles to foreign corporations or other entities, regardless of their amount, must be reported in the taxpayer's transfer pricing informative return.

Intragroup Services

When Colombian taxpayers are the recipients of intragroup services provided by foreign related parties, the taxpayers must:

1. Report the economic or commercial benefit the services generate to the recipient;
2. Demonstrate that the service is needed, and that if the taxpayer did not hire its related party to perform the service, it would have to hire a third party to do so, or perform the service itself;
3. Determine what would have been the arm's length remuneration agreed between third parties for the same service; and
4. Identify the method used to determine the amount to be billed for the service.

Although these rules were already included in the provisions of Article 107 of the Tax Code, Decree 3030 reinforces the importance of demonstrating the substance of the service received, in addition to the formal subjects such as contracts and their registration, the tax withholding and the transfer pricing study itself.

Cost Sharing Agreements

Taxpayers that enter into cost sharing agreements must do the following in their supporting documentation:

1. Describe and report the annual costs and expenses incurred in the performance of the activity subject of the agreement;
2. Identify the direct and/or indirect benefits of the agreement (general and particular aspects);
3. Indicate if any payment was made other than the contributions related to the agreement;
4. Describe the method used to estimate the share of participation in the benefits that are expected to be obtained from the agreement, taking into account the attribution, criteria, circumstances, and adjustments of the agreement; and
5. Describe the procedure for adherence to or withdrawal from the agreement.

Business Reorganizations

If the taxpayer underwent a business reorganization, its supporting documentation must:

1. Identify the purpose of the reorganization, the transaction's contractual terms, and the manner in which it was carried out;
2. Identify assets, functions, risks, rights, and obligations, before and after the reorganization process;
3. Describe the distribution of potential risks and benefits for the parties, derived from the transfer of risks;
4. Describe potential benefits for the each entity involved in the business restructuring process;
5. Describe the synergies expected from the reorganization and the economic, financial, and other type of analyses that were taken into account for those projections; and
6. Describe the compensation or payments for the business restructuring process and the methodology applied to its quantification.

Advance Pricing Agreements

Decree 30303 provides that any documentation and information provided in the course of negotiations for the execution of advance pricing agreements may be used only in connection with that procedure, unless the agreement is revoked or terminated because of a breach.in the agreement. Furthermore, tax authority officials that participate in that procedure must maintain the legal secrecy contemplated in the Tax Code.

Penalties

If Colombian taxpayers do not amend any omissions in their supporting documentation and/or informative transfer pricing return before the review assessment's notification, all deductions related to the omitted transactions may be disallowed for income tax purposes.

Decree 3030 grants the possibility of self-assessing penalties for inconsistencies or omissions, as well as the penalty corresponding to late filing of the informative return. If self-assessment is made prior to the notification of the summons to file a return or the bill of charges, the inconsistency, omission, or late filing will not be taken into account for purposes of the application of the penalty for repeated infraction.

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Deloitte to Host IRS Director of Transfer Pricing Operations

Deloitte Tax LLP on February 12 will webcast a conversation with Sam Maruca, the IRS's top transfer pricing official, discussing current transfer pricing issues.

The IRS Transfer Pricing Practice has been active in its role of strategically and systematically administering transfer pricing enforcement. What should U.S. multinationals know? The topics will include:

- Current organization of and developments within the IRS Transfer Pricing Practice.
- How does the Transfer Pricing Practice fulfill its role of strategically administering IRS transfer pricing enforcement?
- A comparison of transfer pricing enforcement between the normal IRS examination process and the Compliance Assurance Process (CAP) program.
- How can taxpayers interact with the Transfer Pricing Practice?

Join us for this complimentary webcast, *Transfer Pricing Examination Insights from IRS Director of Transfer Pricing Operations* on February 12, 2014 at 2:00 PM ET.
URL: http://www.deloitte.com/view/en_US/us/Insights/Browse-by-Content-Type/dbriefs-webcasts/45240a6918103410VgnVCM1000003256f70aRCRD.htm?id=us:em:na:als:eng:tax:021014

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