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Tax Management Transfer Pricing Report

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TEXT:

As taxpayers in Turkey prepare their transfer pricing reports for the April 25 due date, the government is selecting and training personnel from each of its tax offices on various corporate tax issues, including transfer pricing.

Transfer pricing requirements in Turkey are stated under Article 13 of the Corporate Tax Law 5520, "Disguised Profit Distribution via Transfer Pricing." Details on implementation are set forth in the General Communique[acute] on Disguised Profit Distribution via Transfer Pricing No. 1, dated Nov. 18, 2007, and a government decree dated Dec. 6, 2007. n1 The General Communique[acute] No. 1 was updated with General Communique[acute] No. 2 on April 22, 2008. The government in April 2008 also published a decree to expand its advance pricing agreement program, revise requirements for corporate transfer pricing annual reports, and extend the time for filing 2007 fiscal year reports n2

This article provides an update on transfer pricing documentation requirements and advance pricing agreement procedures in Turkey.

The required documentation form for transfer pricing and thin capitalization -- Appendix 2 of General Communique No. 1 -- is published in the Text section of this issue along with Appendices 1 and 3 containing APA and transfer pricing report templates.

Documentation

According to the government decree and General Communique[acute] No. 1, taxpayers have two different documentation requirements: preparing both a transfer pricing form and a yearly transfer pricing report.

According to the new rules, taxpayers are obligated to complete a form entitled "Transfer Pricing, Controlled Foreign Company and Thin Capitalization Form" attached to the company's annual corporate tax return. In this form, taxpayers are required to present all intra-group transactions that took place during the year and indicate the selected transfer pricing methods to test the arm's-length nature of the intra-group transactions. Taxpayers also are required to fill out the sections on controlled foreign company and thin capitalization contained in the form.

Corporate taxpayers also must prepare yearly transfer pricing reports for their related-party transactions. A different requirement applies for large corporation tax office members and other corporations. Members of the Large Corporations Tax Office must issue an annual report listing their international and domestic related-party transactions involving the sale or purchase of goods or services during the calendar year and also must be ready to present information and documents with the report. Companies registered with the Large Corporations Tax Office typically are the largest companies determined by reference to their turnover, payable taxes, and asset size, and typically are located in Istanbul. All banks and insurance companies are members of the Large Corporations Tax Office regardless of their location and size.

Corporate taxpayers other than those registered with the Large Corporations Tax Office are required prepare this annual report listing only their cross-border transactions with related parties.

Corporate taxpayers who have no cross-border, related-party transactions and individual taxpayers are not required to prepare a yearly transfer pricing report, but must prepare transfer pricing documents stated on General Communique[acute] No. 1.

Minimum Requirements

The communique[acute] rules set forth details of the information to be included in the transfer pricing documentation. According to the communique[acute], the required minimum documentation elements include:

- a description of activities of the company, its organizational structure, a definition of the related parties (i.e., tax identification number, addresses, and phone number) and ownership information of these parties;
- all functions are performed and risks taken;
- a pricing lists of the products for the year;
- details of cost of goods;
- the amount and invoice information about all transactions with related and unrelated parties within the year;
- all agreements signed with the related parties;
- financial statements of related parties;
- intra-group pricing policies;
- intra-group accounting standards and policy differences, if they exist;
- ownership of intangible assets;
- the transfer pricing method selected by the company (including the comparability analysis and selected comparables, whether external or internal); and
- calculations and assumptions for reaching the arm's-length price or the arm's-length range, if applicable.

The government decree and the general communique[acute] state that documentation should be prepared by the tax return submission date, which is April 25 for the normal calendar year, and it should be submitted to the tax authority upon request. The decree and general communique[acute] state that if the transfer pricing documentation is prepared in a foreign language, Turkish translations must be submitted to the tax authorities.

Effective Date

As stated above, the transfer pricing report must be prepared by the corporate tax return due date, which is April 25, 2009, for 2008 documentation. Beginning Jan. 1, 2008, all transactions with related parties located in free trade zones (including branches) or transactions with foreign branches must be included in the transfer pricing reports. In addition, corporate taxpayers residing in free trade zones must prepare transfer pricing reports for their domestic related-party transactions. Companies located in free trade zones do not need to prepare transfer pricing reports for

transactions with related parties not located in Turkey. The foreign branches or free trade zone branches do not need to prepare a separate transfer pricing reports.

APAs

According to recent changes on Transfer Pricing General Communiqué No. 1, all corporate taxpayers can apply to the Revenue Administration for an APA beginning Jan. 1 regarding the appropriate method for their controlled cross-border transactions. Before that date, only Large Corporations Tax Office members were eligible to apply an APA. After Jan. 1, transactions with related parties located in free trade zones also may apply for an APA. Corporate taxpayers may apply for APAs for transactions with related parties resident in free trade zones, and corporate taxpayers resident in free trade zones also may apply for APAs for transactions with related parties residing in Turkey.

Unilateral, bilateral, and multilateral APAs are possible. Companies that have signed an APA need not prepare yearly transfer pricing reports for transactions covered by the APA, but must prepare a yearly APA report. For other related-party transactions not covered by an APA, a transfer pricing report should be prepared.

After June 6, 2008, application for renewal of an APA is subject to a fee under Law 5766. The application fee for an APA is increased to 28,000 Turkish Lira (US\$ 18,000), and renewal of an APA is increased to 22,400 TL (approximately US\$ 14,450). This increase is a general rule in Turkey. At the beginning of each year, all fixed fees are increased according to revaluation ratio.

Treasury Loss

As mentioned above, Law 5766 (published June 6, 2008) adds rules concerning APA Duties and a new statement to the TP Article of Corporate Tax Law.

The new statement included in Article 13 states that disguised profit distribution via transfer pricing would be applicable if treasury loss occurs through the domestic intercompany transactions of the corporate taxpayers. The treasury loss is defined as under-declaration or late declaration of all types of taxes as a result of prices or values that are not in line with the arm's-length principle. The new statement is effective from June 6, 2008, and also applies for 2008 returns.

FOOTNOTES:

n1 16 Transfer Pricing Report 760, 2/14/08.

n2 17 Transfer Pricing Report 199, 7/3/08.