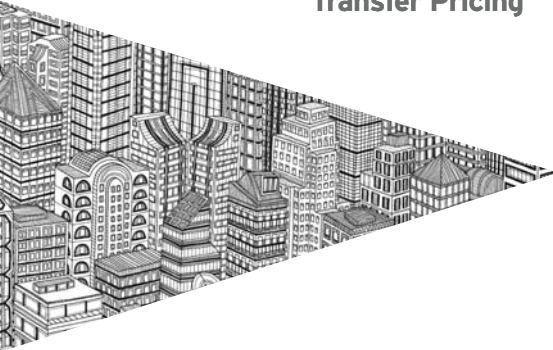


International Tax Alert

News and views from
Transfer Pricing



Angola proposes transfer pricing documentation rules

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A draft legislation package has been issued that includes significant new rules for Angolan taxpayers concerning transfer pricing. This legislation is proposed to be inserted in the Statute of Big Taxpayers, which establishes, among other aspects, declarative and administrative obligations for such taxpayers. These rules will be applicable to Group A Corporate Income Tax taxpayers included on a list to be published by Ministerial Order of the Minister of Finance.

The taxpayers affected by these rules are covered on a draft list, already made available, that identifies the 300 companies that are the biggest taxpayers in Angola. With respect to transfer pricing, the new rules establish the mandatory preparation of a Dossier for each fiscal year that characterizes the relationships and prices established by the taxpayer with the companies with which they have "special relations," whenever the total turnover at date of closing of accounts exceeds 300 million UCF's (approximately USD 280 million).

The proposed legislation calls for the obligation of documentation applicable to tax years and transactions beginning or occurring on or after 1 January 2012. Taxpayers will have to justify arms-length pricing in the cases of commercial transactions of the taxpayer with other "special relations" entities, whether or not these transactions are subject to Industrial Tax. The proposed rules generally cover commercial transactions including any transaction of goods, rights or services, and they also include financial transactions. The Transfer Pricing Dossier would have to be prepared by each company individually and sent to the Tax Administration within six months of the date of closing of the fiscal year.

Under the proposed legislation, the Transfer Pricing Dossier will have to be prepared according to the following structure:

- ▶ Summary
- ▶ Macro-economic environment
- ▶ Presentation of the entity
- ▶ Functional analysis of the entity
- ▶ Identification of the related party operations
- ▶ Economic analysis of the related party operations

Specifically concerning the economic analysis of the related party operations, the Directorate General for Taxes accepts the following methods (the proposals are silent with respect to the potential use of alternative methods):

- ▶ The Comparable Uncontrolled Price Method
- ▶ The Resale Minus Method
- ▶ The Cost Plus Method

The law determines that “special relations” between two entities exist when one is able to exert, directly or indirectly, a significant influence in the management decisions of the other, namely:

- ▶ When the management of a company, including spouses, ascendants and descendants of management personnel, has directly or indirectly a participation of 10% or more in the capital or the rights to vote in the other entity (for these purposes, “management” is as yet undefined in the proposed rules);
- ▶ When the majority of the members of the administration or management of two entities include the same people or, being different people, are related by means of marriage, de facto union or direct kinship (for these purposes, “administration or management” is as yet undefined);
- ▶ When the entities have entered into a subordination contract;
- ▶ When entities are involved in a domination agreement relationship or have reciprocal participations, if they are connected by a subordination contract, connected through an equal partners agreement, or are in another way connected under other terms with similar legal effects according to the Company’s Code;

- ▶ When two or more commercial entities engage in transactions that represent more than 80% of the total volume of operations of one of the entities;
- ▶ When one entity is in a position of financing the other with respect to more than 80% of its credit portfolio.

In general, the rules correspond to the basic principles established in the OECD Transfer Pricing Guidelines, with a key exception that the proposed rules have only three methods. Taxpayers with unique circumstances, facts and/or transactions may have difficulty fitting into one of the allowed methods, and this may give rise to controversy related to the potential use of alternative approaches (i.e., profits-based methods such as the Transaction Net Margin or Profit Split).

Finally, the penalties and other consequences related to this regime will be determined in the new General Tax Code, which has not yet been enacted.

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EYG no. CM2578

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