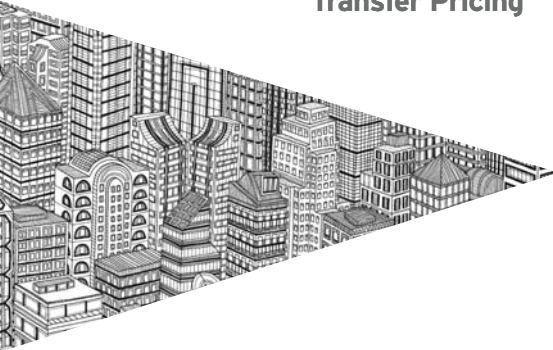


International Tax Alert

News and views from
Transfer Pricing



Macedonian Ministry of Finance issues new corporate taxation guidelines

The Ministry of Finance issued on 15 December 2011 interpretative guidelines on the new corporate income tax law passed last April and discussed in our March 2011 Tax Alert.

As expected, the guidelines focus primarily on transfer pricing. They also provide some useful clarifications in relation to foreign tax credits and describe in detail the applicable withholding tax treaty relief procedure.

Transfer pricing documentation requirements

Pursuant to the tax procedures law (Article 60), the taxpayer is obliged, upon a tax authorities' request, to provide the necessary explanations for tax positions taken. In relation to transfer pricing, which, following the corporate tax overhaul of 2009, has become a main fiscal revenue target, the new guidelines specify that the taxpayer is obliged to present, upon the tax authorities' request, sufficient information and analysis of how the prices of the intercompany transactions have been determined and why they are considered to be consistent with the arm's length standard.

However, the guidelines are silent on the following matters:

- ▶ What the contents of the information and analysis should be in order to be considered as sufficient.
- ▶ The time frame for the taxpayer to provide such information. Note that in the tax procedures law no specific time frame is determined for responding to tax authorities' requests and such time frame is left to the tax authorities to determine on a case-by-case-basis.
- ▶ Whether there applies any transaction value threshold, so that the taxpayer is not required to provide time consuming analysis for small scale intercompany transactions.

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Any information provided to the tax authorities should be translated into Macedonian upon the tax officer's request.

Interest rate for intercompany financing arrangements

The new guidelines stipulate that if the taxpayer does not provide evidence of the arm's length character of the interest rate charged to/from related parties, other than financial institutions, the interest amount will not be taxed to the extent it corresponds to the EURIBOR rate for similar maturity loans increased by one percentage point. For domestic loans, reference will be made to the SKIBOR rate.

Foreign tax credits

According to prior instructions of the tax administration, foreign tax credits are offset against the tax on any tax adjustments declared, when the foreign tax is a withholding tax

on income other than dividends. When the foreign tax is a dividend withholding tax or a permanent establishment profit tax, then it is offset against the Macedonian corporate tax on profit distributions to foreign shareholders and domestic individual shareholders.

The new guidelines stipulate that unutilized balances of foreign tax credits can be carried forward until they are fully utilized.

Furthermore, the guidelines make reference only to foreign tax credits originating from tax treaty countries, despite the fact that no distinction is made in the law between tax treaty and non-treaty countries when it comes to elimination of double taxation. Thus, the reference to tax treaty countries may only cause disputes regarding the possibility to use tax credits from non-treaty countries.

Withholding tax treaty relief procedure

Unlike the current procedure, whereby the nonresident recipient of Macedonian source income has to provide to the Macedonian payer of the income only a tax residence certificate, under the new guidelines the tax treaty relief from withholding tax on a particular payment needs to be previously approved by the Macedonian tax office. To that end, a relevant standard form used for that purpose by the Macedonian tax authorities should be filed. Such form needs to be accompanied by the tax residence certificate. When periodical payments are made under the same contract, the approval received is valid also for the subsequent payments.

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