



Enactment of transfer pricing legislation – Trinidad and Tobago

On 10 October 2011, the Honourable Minister of Finance (the Minister) in the Government of Trinidad and Tobago proposed the introduction of transfer pricing rules based upon the principles embodied in the OECD Transfer Pricing Guidelines. Currently, there are more than 75 countries that have legislated transfer pricing rules and regulations. In the Americas, some of the countries that have adopted rules include: Argentina, Brazil, Canada, Chile, Colombia, Dominican Republic, Ecuador, Mexico, Peru, and Uruguay. At this moment there are no English speaking Caribbean countries with transfer pricing requirements. Should Trinidad and Tobago adopt transfer pricing regulations it would be the first English speaking Caribbean country to do so.

Whilst the measure announced by the Minister has not yet been enacted, the decision to adopt the OECD Transfer Pricing Guidelines is consistent with international best practice as these guidelines have widespread acceptance among tax authorities and multinational enterprises. This Tax Alert discusses the potential impact of transfer pricing in Trinidad and Tobago in the context of the current tax legislative framework and proposes certain important matters for consideration in implementing the measure.



Under the present legislative framework, pricing manipulation may be challenged by the Board of Inland Revenue under the provision of section 67(1) of the Income Tax Act (ITA). This section allows the Board of Inland Revenue to disregard artificial or fictitious transactions. Section 67(1) of the ITA does not contain an express provision mandating arm's-length pricing in related party dealings; however, the Courts have ruled that the term "artificial", includes a transaction between related parties that is not carried out on an arm's-length basis. As a result, the provision has been used in the past to counteract perceived tax avoidance in related party dealings. Further, the arm's length principle is applied in the Petroleum Taxes Act for the purposes of crude oil and natural gas sales and transfers.

The ITA currently arbitrarily restricts the deduction of management charges paid to non-residents to 2% of all out goings and expenses (exclusive of such management charges and capital allowances). In 2006, the definition of "management charges" was expanded to capture various payments made to non-residents that would not naturally fall within the category of management

related services and now includes personal and technical services, as well as the allocation of head office costs. The amendment was aimed at curbing potential abuse arising primarily from transactions between related parties which sought to erode the Trinidad and Tobago tax base but, as presently worded, the legislation can, under certain circumstances, disallow legitimate charges incurred for the purposes of business. This legislation has had a negative impact on multinational companies engaged in business in Trinidad and Tobago.

It is hoped that the introduction of transfer pricing rules would coincide with the removal of the arbitrary 2% management charges restriction, such that unreasonable charges would now be more appropriately disallowed under transfer pricing principles and not the arbitrary formula based rule. This should conversely allow all reasonable charges based on arm's-length principles to be fully tax deductible.

Although the timing of the enactment of transfer pricing legislation remains uncertain, one could reasonably expect that the introduction of a transfer pricing regime in Trinidad and Tobago would require businesses to



review and document their pricing arrangements among related entities. However, in the absence of the enacting legislation, there are a number of important questions that remain unanswered.

The Minister has already indicated that, once enacted, the legislation would follow OECD Model principles. In addition to this clarification, the Minister should consider the introduction of a transition period to allow taxpayers to adhere adequately to the new requirements.

Further, the legislation should also outline the specific documentation required by companies to disclose their related party transactions in similar fashion to Forms 5471/72 in the United States and Form T106 in Canada.

As the documentary burden could be quite onerous, a small business exemption should also be considered along with the introduction of certain safe harbor rules that could provide a reasonable cushion to taxpayers in arranging their affairs. As a related matter, the basis of introducing penalties on adjustments would need to be carefully crafted to ensure that a fair balance is maintained between compliance and equity.

Due to the multi-jurisdictional reach of large corporations, transfer pricing adjustments in Trinidad and Tobago would likely impact related party arrangements reported in various other territories. As such, it is extremely important that a Competent Authority procedure is implemented that would allow an adjustment in one country to be considered in another. This would avoid a taxpayer being subject to double taxation on the basis of the same transaction priced differently in two or more jurisdictions. Trinidad and Tobago has entered into various Double Tax Treaties, including within CARICOM that provide for a resolution of such matters.

As an extremely important closing matter, the application of transfer pricing principles can be complex and requires specific skills and experience. In order for the initiative to be successfully implemented, the Board of Inland Revenue would need to ensure that it is adequately resourced and its staff properly trained, so that this important measure is effectively and efficiently administered.

Learn more

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