

Jamaica Tax Alert

Transfer Pricing

Jamaica Introduces Transfer Pricing Rules

The Anti-avoidance provisions in the Income Tax Act in Jamaica were amended by the Houses of Parliament in early December 2015 to introduce transfer pricing rules applicable to transactions between connected persons commencing with the 2015 year of assessment and these changes are expected to be gazetted into law shortly. In 2011, the Cabinet in Jamaica approved the introduction of transfer pricing rules but the Bill was not tabled in the Jamaican Parliament until 2015.

The key considerations of these new transfer pricing rules are expected to be the following:

- ▶ The new transfer pricing rules will apply to transactions conducted by taxpayers resident in Jamaica with connected persons that are resident abroad.
 - ▶ The new rules which are based on the Organization for Economic Co-operation and Development (OECD) standards provide the definition of the arm's length principle for transactions between connected persons; regulate the criteria taxpayers must follow to perform a comparability analysis; and establish the transfer pricing methodology to apply when assessing the arm's length principle.
 - ▶ Based on the new transfer pricing rules only taxpayers whose gross annual revenue equals or exceeds J\$500 million are required to maintain transfer pricing documentation at the time of their transactions to prove arm's length pricing.
- ▶ An annual transfer pricing information schedule called the "Related Party Transaction Schedule" will be required to be filed with the taxpayer's Annual Income Tax return with the first deadline for submission of this schedule being 15 March 2016.
 - ▶ Advance Pricing Agreements ("APA") can be negotiated with the Tax Administration Jamaica ("TAJ") to determine an agreed arm's length price before transactions are entered into.
 - ▶ The law will be in effect upon publication in the Official Gazette but will apply to the year of assessment 2015 and onwards.
 - ▶ Where a taxpayer, when filing a return, fails to certify that transactions have been carried out with connected parties or provides an incomplete certificate or return, penalty provisions will apply, but the Minister of Finance announced that the penalty provisions applicable to these offences will be effective starting from the year of assessment 2016.

Connected Person definition

The Income Tax Act defines a connected person and this definition includes a reference to Person A and includes the following:

- ▶ any person acting together with A to secure or exercise control of a body corporate;
- ▶ any person acting on the directions of A to secure or exercise control of a body corporate;
- ▶ bodies corporate of which A has control;
- ▶ bodies corporate of which A and persons connected with him or her together have control;
- ▶ bodies corporate under the control of the same person who has control of A;
- ▶ bodies corporate under the control of persons connected with the person who has control of A,

In addition the transfer pricing rules intend to treat as a connected transaction those transactions that are carried out with persons resident in a jurisdiction where no income tax is payable or the income tax rate in the jurisdiction is less than one half of the rate of tax that would be applicable to the transaction if the person were resident in Jamaica.

Transfer pricing methodology

The regulations will require application of the most appropriate transfer pricing method. The specified methods include:

- ▶ Comparable uncontrolled price method
- ▶ Resale price method
- ▶ Cost plus method
- ▶ Transactional net margin method
- ▶ Transactional Profit Split Method

In addition, the new rules allow another method other than a transfer pricing method to be applied with permission from the TAJ where none of the transfer pricing methods can reasonably be applied to determine arm's length pricing for the connected party transaction and the other method yield results consistent with that which would be achieved by persons participating in a comparable independent transaction.

What are the implications of the new regulations?

The TAJ will be empowered to adjust prices when taxpayers do not comply with the arm's length principle commencing with the year of assessment 2015.

Transfer pricing documentation obligations will be mandatory for taxpayers conducting cross-border and local transactions under the connected party definition if they have gross revenue of J\$500 million or more. The regulations will set out a general framework required for the supporting documentation.

A Transfer Pricing Information Return will be an annual obligation for taxpayers and the regulations also include provisions for APAs.

What should companies be doing now?

Companies doing business in Jamaica should review and inventory all their existing intercompany transactions and transactions with tax free or tax reduced jurisdictions with relation to Jamaica and assess transactions that fall under the new transfer pricing rules to determine whether they are within the scope of the rules and whether they comply with the arm's length principle.

They should also assess what new intercompany transactions are being anticipated in the future for which transfer pricing support will be required.

Companies should have the required transfer pricing documentation to support their connected party transactions.

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