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Global Tax Alert

News from Transfer Pricing

Danish Court rulings set precedence for transfer pricing documentation fines

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Executive summary

Two recently published Danish court rulings¹ set a legal precedence for the issuing of fines with respect to late and non-compliant transfer pricing (TP) documentation in Denmark.

Detailed discussion

In the first case, for fiscal years (FYs) 2009, 2010, 2011 and 2012, the taxpayer failed to provide documentation fully compliant with the Danish Regulations on request within the required 60 day deadline. Compliant documentation was subsequently submitted.

Initially this case was decided by a District Court. The District Court found the taxpayer guilty of gross negligence and issued a fine of DKK500,000 (approximately €67,000), equal to DKK125,000 for each of the four covered income years. The Eastern High Court upheld the District Court's ruling, but reduced the total fine to DKK250,000 on the grounds that only one count of negligence was involved, hence the original fine of DKK500,000 would be disproportionate.

In the second case, for the same FYs, the taxpayer failed to submit compliant documentation on request within the 60 day deadline. In addition, the company had failed to provide accurate information regarding transfer pricing in the FY 2009 tax returns.

The District Court found the taxpayer guilty of gross negligence and issued a fine of DKK250,000 corresponding to DKK62,500 per year. The District Court refrained from issuing the maximum level of fines (DKK125,000 per financial year equal to DKK500,000) on the basis of the taxpayer's cooperation with the Danish Tax Administration after submission of the initial documentation.

Implications

Under the current regulations, entities covered by TP documentation rules can be subject to fines of DKK250,000 per each year where documentation is not provided. The DKK250,000 can be reduced to DKK125,000 if compliant documentation is provided after the initial 60-day request. Further, an additional fine of 10% of an income adjustment resulting from the TP audit can be imposed.

The aforementioned court rulings indicate the Courts' intent to enforce the Danish Tax Administration's right to issue fines, albeit with some leniency and taking the specifics of the particular case into account.

Overall these court decisions can be interpreted as a signal to Danish taxpayers of the adverse consequences of not filing timely and fully compliant TP documentation. The significance of ensuring timely preparation of TP documentation is only increased following the introduction of new TP documentation requirements for FY 2016 onwards.² Furthermore, based on the two court decisions, it will be difficult for a taxpayer to convince the courts that non-compliance with the rules does not equate with gross negligence.

Accordingly, it is important to ensure all covered entities' ability to complete and submit compliant TP documentation within the 60 day deadline.

Endnotes

1. The rulings have been issued by the Eastern High Court (SKM2017.227.ØLR) and a District Court (SKM2017.216.BR).
2. See EY Global Tax Alert, [Denmark issues stricter requirements for transfer pricing documentation](#), dated 19 May 2016.

For additional information with respect to this Alert, please contact the following:

Ernst & Young P/S, Copenhagen

▶ Henrik Arhning	+45 51 58 26 49	henrik.arhning@dk.ey.com
▶ Henrik Schüler Hansen	+45 25 29 38 95	henrik.s.hansen@dk.ey.com
▶ Henrik Morthensen	+45 25 29 45 71	henrik.morthensen@dk.ey.com
▶ Jens Wittendorff	+45 51 58 28 20	jens.wittendorff@dk.ey.com
▶ Justin Breau	+45 25 29 39 32	justin.breau@dk.ey.com

Ernst & Young LLP, Scandinavian Tax Desk, New York

▶ Nina S Brodersen	+1 212 773 1727	nina.brodersen1@ey.com
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