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Global Tax Alert

News from Transfer Pricing

Ghana commences transfer pricing audits

Ghana Revenue Authority reveals that over 250 transfer pricing audits have been initiated

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Executive summary

The Transfer Pricing Unit (TPU) of the Ghana Revenue Authority was set up in 2013 in response to the enactment of the Transfer Pricing Regulations 2012 (L.I. 2188), which came into force on 14 September 2012. These regulations introduced mandatory requirements for the preparation of transfer pricing documentation reports and the annual filing of transfer pricing returns.

According to recent reports, the TPU has now initiated over 250 transfer pricing audits as part of its first audit cycle. This Alert summarizes some of the key considerations related to these audits.

Detailed discussion

Capacity building

Managing resource constraints is a key challenge for tax audit teams in emerging market countries, such as Ghana. Since its inception in 2013, the TPU of the Ghana Revenue Authority (GRA) has received assistance in capacity building from the Organisation for Economic Co-operation and Development (OECD) and foreign tax administrations. This has included extensive training in transfer pricing for personnel within the GRA and the judiciary in Ghana.

Risk assessment

The introduction of mandatory filing of transfer pricing returns provides the GRA with an important tool to enable them to assess which taxpayers pose the greatest risk of not meeting the arm's length standard with respect to the pricing of their intercompany transactions. The information it receives enables the GRA to focus resources on cases more likely to lead to a transfer pricing adjustment. The returns provide the GRA information that includes:

- Overview of the types of related party transactions undertaken
- Values of those related party transactions
- Location of the related parties to those transactions
- Methods (if any) used to support the arm's length nature of the transactions

Mitigating the risk of a transfer pricing audit

The Head of the Transfer Pricing Unit said he expects full implementation of the transfer pricing legislation will ultimately raise tax revenue for Ghana.

Therefore, given this focus on transfer pricing, it is important for companies with operations in Ghana to be aware of the factors that may trigger a transfer pricing audit. These risk factors are listed in the table below.

Table 1: Key transfer pricing risk factors

‣ Do you have cross border intercompany transactions to or from Ghana?	Yes	No
‣ Does your entity in Ghana have intercompany transactions with low tax jurisdictions?	Yes	No
‣ Are the intercompany transactions to or from Ghana large or complex?	Yes	No
‣ Are there other dealings that are not charged?	Yes	No
‣ Have you had a business restructuring of your Ghana operations?	Yes	No
‣ Do you have secondments of senior management to or from Ghana?	Yes	No
‣ Do you have local entities or PE's in Ghana with operating losses for 2 years or more?	Yes	No
‣ Does the Ghana entity pay royalty fees for use of intangible assets	Yes	No
‣ Did you fail to submit a TP return with your corporate income tax return?	Yes	No
‣ Have you not yet prepared local transfer pricing documentation for the financial year?	Yes	No

If any of the responses to the above questions are in the affirmative, there is a higher risk of being selected for audit. Nevertheless, it is recommended that multinational enterprises operating in Ghana consider the following:

- Consistency should be maintained among any transfer pricing documentation provided globally to tax administrations. Ghana is one of over 60 signatories to the OECD convention[1] enabling mutual exchange of information among signatories. As of July 2014, Ghana received, and cooperated with, at least 10 requests for information from foreign tax administrations.[2] Inconsistent information will raise the risk of further investigation.
- Transfer pricing returns should be filed within four months of the company's financial year end in line with statutory requirements.
- A robust local transfer pricing documentation report should be prepared in order to provide a first line of defense of the company's transfer pricing from a Ghanaian transfer pricing perspective.
- Ideally, the company's documentation should be prepared before the transfer pricing return is submitted. This is to enhance consistency in the information that is provided to the tax authority.

Endnotes

1. Ghana ratified the OECD Convention on Mutual Administrative Assistance in Tax Matters on 29 May 2013.
2. OECD 2014, *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Ghana 2014*, OECD Publishing: Paris.

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