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Global Tax Alert

News from Transfer Pricing

Ghana: Transfer pricing update for first quarter 2020

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Audit training for transfer pricing resources

The Ghana Revenue Authority (GRA) has signed a Memorandum of Understanding (MoU) with the Netherlands Tax and Customs Administration (NTCA) to increase the technical capacity of its personnel to undertake risk-based transfer pricing (TP) audits. The MoU, which was signed on 14 February 2020, spans 18 months starting from March 2020.

During the period of the MoU, NTCA and GRA TP officials will work together to conduct transfer pricing audits on multinational companies which have been risk-profiled for audits. The goal is to combine practical on-the-job training with skills transfer for the officers of the TP unit. Another stated goal is to increase revenue mobilization from multinationals through the transfer pricing audits. The sectors expressly mentioned by the GRA Commissioner-General for special focus are petroleum, telecom and banking.

This MoU follows the recent significant investment in hiring skilled personnel for the GRA TP unit, including the hiring of a senior resource from one of the Big Four firms to head the TP unit in December 2019.

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Implications

The substance of transactions, rather than the form, lies at the crux of transfer pricing. This substance determines the pricing of the intra-group transactions in compliance with the arm's-length standard. Furthermore, the TP rules require maintenance of contemporaneous documentation by the taxpayer to demonstrate its compliance with the arm's-length standard. Multinationals and other taxpayers with related party transactions are advised to take note of the GRA's initiatives and adequately prepare for increased enforcement actions by the TP unit of the GRA.

Audit focus on representative office structures

Recent audit trends indicate that the GRA has increased its review of branch and representative office structures being implemented by some multinational companies in Ghana.

Typical implementation of such structures include the Ghanaian branch performing marketing services on behalf of the nonresident Parent. These services include product exhibitions and product demonstrations. However, when the customer makes a purchase, they are directed to place the order directly with the nonresident Parent. Under this arrangement, the Ghanaian representative office is usually treated as a cost center with no profits as revenue is equal to costs which are fully reimbursed by the nonresident Parent. Such structures are generally used in the pharmaceutical sector but have also been seen in other manufactured goods sectors.

The remuneration structures for these representative offices have been challenged from a TP perspective by the GRA. The GRA considers the characterization of these offices as cost centers as not reflecting the substance of the services they provide and the zero profits as not reflecting arm's-length trading.

Implications

The TP rules require compliance with the arm's-length principle. Multinationals with representative/marketing office structures should evaluate them and ensure that the remuneration of the Ghanaian branches reflects the substance of the services provided. Furthermore, multinationals must ensure that they maintain proper documentation in accordance with the requirements of the regulations.

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