4 April 2019

Global Tax Alert

News from Transfer Pricing

Morocco's 2019 Finance Bill introduces transfer pricing documentation requirement

Executive summary

Morocco's 2019 Finance Bill, issued on 21 December 2018, introduced the obligation for certain Moroccan taxpayers to prepare specific documentation to justify their transfer pricing policies before tax authorities. The objective of the new requirement is to improve transfer pricing control and audit procedures.

This new provision is intended to align the Moroccan transfer pricing legislation with international practices, and comes after the introduction of an Advance Pricing Agreement (APA) program between tax authorities and companies, which came into effect in 2018.

The introduction of the transfer pricing documentation requirement will increase the compliance and reporting burden for companies, but it also will allow multinational groups to have greater tax certainty due to the implementation of a standardized transfer pricing documentation framework. The specific documentation requirements, however have yet to be specified by the legislators.

Detailed discussion

The 2019 Finance Bill provides the obligation, for companies with related (whether direct or indirect) foreign companies, to provide tax authorities with documentation supporting the arm's-length nature of their transfer pricing policy.

This documentation may be requested by tax authorities during a tax audit.

Scope of this obligation

Prior to the new tax law, the tax administration had the ability to request general information relating to intra-group transactions carried out by Moroccan companies. Under new paragraph 5 of Article 210 of the Moroccan Tax Code (MTC), taxpayers have an obligation to prepare and provide transfer pricing documentation, similar to the documentation obligations already in place in many countries.

This documentation is intended to allow the tax administration to assess the arm's-length nature of intra-group transactions.

Taxpayers subject to this new requirement

The 2019 Finance Bill states that this obligation is applicable for *companies that have direct or indirect relationships with companies located outside Morocco*. The legislator has not specified how this relationship is assessed, from a legal or an economic point of view.

The scope is thus potentially very broad and the following Moroccan taxpayers may be subject to this obligation:

- Moroccan subsidiaries or branches of multinational groups, as well as their permanent establishments in Morocco
- Moroccan companies in which a foreign company has acquired a significant stake in share capital
- Moroccan groups with subsidiaries or branches abroad

Furthermore, there is no minimum threshold of activity (e.g., minimum turnover) required for preparation of transfer pricing documentation.

Format of this documentation

The documentation must be provided electronically to the tax administration.

Transactions subject to documentation

The documentation requirement covers all intra-group cross-border transactions carried out by the taxpayer, without any minimum materiality threshold.

In addition, Article 213-II of the MTC, which deals with transfer pricing in Morocco, covers both domestic and cross-border transactions. It will therefore potentially be necessary to also document domestic intra-group transactions.

Effective date of this obligation

The transfer pricing documentation requirement will apply for tax audits open after 1 January 2020. In practice, controllers will be able to request transfer pricing documentation for the years open for tax control, i.e., the four years preceding the control. For example, for a tax audit in 2020, the tax administration may request transfer pricing documentation for years 2016 to 2019.

Documentation requirements

Provisions of the law

The transfer pricing documentation must contain the following elements:

- Information on all related companies' activities, the overall transfer pricing policy of the group and **the worldwide repartition of profits and activities**.
- Specific information about transactions that the company subject to tax control carries out with related companies.

The detailed content of the documentation will be specified by a decree.

The documentation content requirements are relatively broad, and are in line with the elements usually required in other countries.

However, the repartition of profits and activities on a global scale goes beyond the necessary elements to assess the arm's-length nature of intra-group transactions carried out in a country and is thus surprising.

In addition, Morocco has recently joined the OECD[1] BEPS[2] inclusive framework, which requires member countries to comply with certain minimum standards on transparency and information exchange, including BEPS Action 13 which covers transfer pricing documentation and country-by-country reporting (CbCR).

It is therefore likely that the content of the Moroccan transfer pricing documentation will be aligned with that of the documentation provided for in BEPS Action 13. Morocco is also likely to implement the CbCR declaration.

Required analysis

In terms of transfer pricing analysis, the 2019 Finance Bill is silent on the methods, analyses, or comparable data accepted to justify a transfer pricing policy.

Moroccan transfer pricing principles generally favors profit-based methods.

No minimum materiality level for documentation of intra-group transactions is provided.

In practice, tax auditors control the most significant transactions.

Documentation language

There is no specific language for drafting the transfer pricing documentation. Generally, documentations sent to the tax administration are drafted in French.

Submission of the documentation

The documentation must be provided on the first day of tax audit. There is no annual obligation to prepare or transmit the documentation.

In the case of failure to submit the required documentation, the tax auditor may make a formal request and the taxpayer then has 30 days to submit the documentation. As with other requests for documents and justification, the 30 days delay may be extended until the end of the tax audit.

Furthermore, there are no penalties or fines for late submission of transfer pricing documentation.

Penalties for not providing documentation

The 2019 Finance Bill does not foresee any penalties if companies fail to provide transfer pricing documentation or the documentation is considered incomplete.

However, Article 210 of the MTC provides that documents not provided during the tax audit, including transfer pricing documentation, cannot be presented by the taxpayer for the first time before the local commission of taxation or national commission of tax appeal (Moroccan commissions dedicated to tax reassessments, which are the last step before courts).

Accordingly, failure to provide the transfer pricing documentation during audit would lead the taxpayer to lose the right to defend and justify its transfer pricing policy before tax commissions.

It is therefore strongly recommended to prepare any transfer pricing documentation beforehand, to be able to submit it to tax auditors.

Endnote

1. Organisation for Economic Co-operation and Development.
2. Base Erosion and Profit Shifting.

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

Ernst & Young et Associés Sarl, Casablanca

- Abdelmejid Faiz abdelmejid.faiz@ma.ey.com
- Kamal Himmich kamal.himmich@ma.ey.com
- Badr Lamhamedi badr.lamhamedi@ma.ey.com

EY | Assurance | Tax | Transactions | Advisory

About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Transfer Pricing Group

EYG no. 001066-19Gbl

1508-1600216 NY
ED None

ey.com