TP documentation requirements - What is new?

TAX:WATCH NO. 2
23-02-2018

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Companies must prepare transfer pricing documentation according to new and tightened rules. Updating old documentation is rarely sufficient.

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As described in the January 2018 issue of tax:watch, the Danish rules on transfer pricing documentation has been tightened.

Insufficient documentation can result in significant fines in the order of at least DKK 250,000.

Transfer pricing documentation must be prepared according to the new rules for income years commencing on 1 January 2017 or later.

What is new?

The most significant change in the transfer pricing documentation requirements is the obligation for companies concerned to prepare a master file and a local file.

The master file must include joint documentation for the entire group.

The local file must include country-specific documentation for the activities in the relevant country - in this case for Denmark.

The master file must contain comprehensive information about the main drivers of business profit, a description of the group's supply chain, funding sources and transfer pricing policies in relation to research and development activities and in relation to financial arrangements.

Further, the master file must contain a list of the group's intangible assets.

The local file must contain company-specific information about local management as well as a more detailed description of the company and any transfers of intangible assets.

This part of the documentation also includes accounts and data and allocation schedules that show how the accounting data can be reconciled with the financial statements.

Reduced requirements for smaller groups

For smaller groups, the documentation requirements are limited to certain controlled transactions.

This primarily applies to transactions with natural or legal persons or permanent establishments resident in a jurisdiction outside the EU/EEA, which has not concluded a double tax treaty with Denmark.

In this connection, a smaller group is defined as a group with less than 250 employees and either an annual balance of less than DKK 125 millions or an annual turnover of less than DKK 250 millions.

A small Danish group is therefore not covered by the exemption, if it is part of a large multinational group.

Background on transfer pricing

The tax rules require affiliated companies to transact with each other on the same terms and conditions that they apply to unrelated parties. This is known as the “arm’s-length principle”.

In order to comply with this requirement, it is necessary to have established internal rules for settlements etc. - transfer pricing – within the group.

In many instances, companies engaging in transactions with controlled or controlling parties - ie. "controlled transactions" - must prepare and keep written documentation of how prices and terms are set for the controlled transactions.

The documentation must be adequate to provide a basis for assessing whether prices and terms are determined in accordance with what could be achieved on "arm's length conditions", ie., if the transactions were completed between independent parties.

Not only Denmark employs tax rules on transfer pricing. Similar rules exist in most countries.

Transfer pricing rules are meant to counter erosion of a country’s tax base due to multinational groups’ shifting of profits to low-tax jurisdictions by means of controlled transactions that are not on arm’s-length terms.

Increased tax deduction for research and development

A proposed gradual introduction of an increased tax deduction for businesses’ research and development investments will be precipitated.

By Anders Kiærskou, aek@bdo.dk

An agreement last year between the government and several other political parties proposed to gradually introduce an increased tax deduction for businesses’ research and development investments.

According to the current rules, businesses have the opportunity to carry out an accelerated depreciation of research and development investments in order for 100 pct. of the expenses incurred in the income year to be deducted for tax purposes.

The intention was to increase the current tax deduction for research and development investments from 100 pct. to 110 pct. over several years.

Originally, the intention was for the increased tax deduction to be gradually phased-in from 2019 to 2026.

However, according to a recent agreement between the government and several other political parties, the phase-in will commence already in 2018 to be fully implemented in 2026.

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