

TAX ALERT

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Spanish Transfer Pricing Support Documentation Requirements:

On November 18, Royal Decree number 1793/2008 (RD) was published in the Official Gazette that provides for the establishment of regulatory obligations with respect to the requirement to provide support documentation in Spain of related-party or controlled transactions, with general application to companies (and Permanent Establishments) and furthermore to parties directly or indirectly related to them (such as directors, shareholders, subsidiaries, group entities, group companies, etc.).

Such RD has established the requirements for corporate taxpayers to document its economic relationships with related-parties from a TP perspective in order to justify that arms' length conditions are applied and observed, in compliance with the relevant legal obligation provided for in Act number 36/2006 of November 29, 2006, which modified the tax treatment requirements for related-party transactions with respect to tax periods as of December 1, 2006.

With the amendments introduced by the said RD in Corporate Income Tax Regulations (together with RD (1794/2008) which was also published on November 18 and related to Mutual Agreement Procedures), we now have a complete TP regulation aligned with the Code of Conduct on transfer pricing documentation for associated companies in the European Union –EU TPD- and the OECD's recommendations.

The support documentation that we are concerned with here enters into force, from a technical or legal standpoint, three months after the publication of the RD (as of February 19, 2009) and obliges companies to prepare and keep the appropriate TP support documentation to justify the prices applied to related-party transactions and to present such documentation upon the request of the Tax Authorities.

In line with OECD Guidelines and EU TPD standards, certain simplifications or reductions of such obligations are foreseen having regard to the complexity and volume of the transactions in order to minimise the administrative burden on taxpayers (i.e. related-party transactions performed between entities belonging to a Spanish consolidated tax group are exonerated from these obligations).

However, generally speaking, complete TP documentation will be required, specifying the RD an exhaustive description of the information to be included, from a quantitative and qualitative perspective, concerning the entity, the group (when applicable) and other related parties, for the purpose of facilitating the Spanish Tax Authorities' review of the prices applied and compliance with accepted valuation methods to verify in detail that arms' length conditions exist.

Simultaneously, a strict penalty regime also enters into force for taxpayers that fail to provide TP support documentation or when the documentation filed is incomplete or erroneous. However, when related-party transactions are appropriately documented but where controversy exists in respect of the criteria applied by the taxpayer, no penalty will be imposed by the Authorities.

Finally, from an accounting perspective, there is an information obligation concerning related-party transactions and valuation methods applied in annual reports (Note 23 to the annual accounts) for tax periods in which the new accounting regime is applicable (as of January 1, 2008).

It is possible to conclude that the new tax regime, as briefly outlined here, is an additional tax obligation for Spanish taxpayers but also an opportunity to review existing TP documentation or to prepare the same should it not already exist, taking into account the valuation criteria to be applied in the future and its consistency with that historically applied, thereby minimising the related potential tax and accounting uncertainties.

Should you require any additional information, please contact one of the following international tax specialists:

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