



cutting through complexity

Global Transfer Pricing Review

Philippines

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TAX



Philippines



KPMG observation

While the Philippine tax office has not yet taken concrete steps to enforce the transfer pricing regulations, there is an indication that they will follow the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines. This will allow taxpayers to be consistent with the transfer pricing strategies of the group of companies they belong to.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements		●
Protection from penalties		●
Reduce risk of adjustment	●	
Shifts burden of proof	●	

Basic information

Tax authority name

Bureau of Internal Revenue (BIR).

Citation for transfer pricing rules

Section 50 of the National Internal Revenue Code (Tax Code): Revenue Regulations No. 02-2013, dated 23 January 2013 (RR No. 02-2013).

Effective date of transfer pricing rules

9 February 2013.

What is the relationship threshold for transfer pricing rules to apply between parties?

Direct or indirect participation in the management, control or capital or being under direct or indirect common management, control or capital.

What is the statute of limitations on assessment of transfer pricing adjustments?

There is no existing law or specific statute of limitations on transfer pricing assessment. However the statute of limitations under the Tax Code is generally three years from the date of filing of the return or from the date the return should have been filed. Under certain conditions, however, the statute of limitations may be 10 years.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No.

What types of transfer pricing information must be disclosed?

Under Revenue Regulations No. 02-2014, dated 24 January 2014, the top 20 stockholders of a corporation, including their capital contribution and percentage of ownership, must be provided in the new forms of the annual corporate income tax returns starting with taxable year-ended 31 December 2013.

What are the consequences of failure to submit disclosures?

Administrative penalties.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

Yes, English.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes. RR No. 02-2013 enumerates the details of what should be the contents of an adequate documentation. The details include, but are not limited to, the following:

1. organizational structure
2. nature of the business/industry and market conditions
3. controlled transactions
4. assumptions, strategies, and policies
5. cost contributions assumptions, strategies, and policy arrangements
6. comparability, functional and risk analysis
7. selection of the transfer pricing method
8. application of the transfer pricing method
9. background documents; and
10. index to documents.

However, the details may vary, depending on what is crucial to demonstrate the efforts exerted to determine the arm's length pricing, given the nature or complexity of the related party transactions, appropriateness of the method used in determining the arm's length pricing, or other factors.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

No.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

RR No. 02-2013 does not specify this. However, following rules under a regular tax audit, documents supporting the taxpayers' defenses are usually submitted within 15 to 30 days of the request, subject to extension if allowed.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

RR No. 02-2013 remains silent on transfer pricing specific dispute resolution options and procedures. However, there are remedies available to taxpayers in the context of regular audits (for taxes of all types), such as protests, appeals and going to the courts. It is expected that these remedies will apply in the case of transfer pricing audits.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

It is expected that penalties can be assessed in the case of transfer pricing adjustments. The penalties are expected to be the same as those imposed under regular tax audits (25 percent/50 percent surcharge; 20 percent deficiency interest; 20 percent delinquency interest; compromise penalties).

To what extent are transfer pricing penalties enforced?

Not yet known since the implementation of RR No. 02-2013 is in the early stages.

What defenses are available with respect to penalties?

Not yet known since the implementation of RR No. 02-2013 is in the early stages.

What trends are being observed currently?

Before the introduction of the recent transfer pricing regulations, the tax office is known to have transfer pricing related findings in conducting regular audits. Hence, the timely submission of documentation may be useful to contest deficiency tax findings. The documentation may also be a defense against possible benchmarking performed by the tax office based on industry averages.

Special considerations

Are secret comparables used by tax authorities?

Not yet known since the implementation of RR No. 02-2013 is in the early stages.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No, RR No. 02-2013 is silent on the matter.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, sometimes.

Does the tax authority have other preferences in benchmarking? If so, please describe.

In exceptional circumstances where there may not be comparable transactions or sufficient data to apply the TP methods, the tax office may use the following approaches:

- a) extension of the TP methods. The comparable may be with enterprises in another industry segment or group of segments
- b) use of a combination or mixture of the TP methods or other methods or approaches.

What level of interaction do tax authorities have with customs authorities?

High, but the interaction so far is not in relation to transfer pricing.

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes, provided the management fees may still be shown to be ordinary and necessary expenses and are properly substantiated.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes, provided the royalty fees may still be shown to be ordinary and necessary expenses and are properly substantiated.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes, RR No. 02-2013 is silent on the matter.

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?

The BIR has no experience in this area.

When may a taxpayer submit an adjustment to competent authority?

Currently, no rules exist in this area.

May a taxpayer go to competent authority before paying tax?

Currently, no rules exist in this area.

Advance pricing agreements

What APA options are available, if any?

None.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Not applicable.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable.

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