Transfer Pricing Survey

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BEPS and the WTS Alliance TP Survey in 79 Countries

The allocation of management fees and head office expenses within a multinational enterprise is considered a form of base erosion, in the OECD Action Plan on Base Erosion and Profit Shifting ("BEPS"). More specifically, in case of transactions which would only very rarely or not occur between third parties. The WTS Alliance transfer pricing ("TP") survey on (management) service charges provides insight in treatment of management fees and head office expenses in 79 countries. From the survey it can be concluded that the tax authorities in almost 80% of the countries already focus on the allocation of management fees and head office expenses during tax audits. Moreover, in many countries such allocations are subject to (withholding) taxes and/or may not be tax deductible. Given that 75% of the 79 countries has specific legislation in place on transfer pricing, the question is to which extent the action plan will bring a change to the treatment of charges for services that have actually been provided: where one country could consider such charge as base erosion, another country may qualify the same charge as base-protecting.

No matter what the outcome of the action plan is, we expect that the differences in local interpretation of the OECD guidelines and differences in local legislation will remain. The fact that only 40% of the countries has a developed Advance Pricing Agreement (APA) program illustrates that the various tax authorities do not have the same level of expertise on transfer pricing. For instance, the survey shows that there are different views on the acceptability of the indirect allocation method, which is an accepted method by the OECD.

Also the views on profit margins differ. Although in 60 countries the cost-plus method is regarded the most appropriate transfer pricing methodology to determine the remuneration for a service, the acceptable profit mark-up for (management) services charges ranges worldwide from 0% to 30%.

In more than 90% of the countries appropriate transfer pricing documentation is at least recommended (in 48 countries it is even required). Therefore, the best defence to avoid double taxation and disputes is to document and substantiate that the charge made represents an actual service provided, provides a benefit for the service recipient and cannot be considered too high. To substantiate the arm's length character of the charge, in more than 75% of the countries a benchmark study is at least recommended, in 18 countries it is even required.

The TP survey provides insight in the approach that can be taken to achieve a system of (management) service charges that should be acceptable in at least two third of the countries. We conclude that the survey shows that there is no worldwide acceptable uniform way to allocate the costs of (management) services. This increases the risk of double taxation and of an additional administrative burden for multinational enterprises. Based on the outcome of the Survey, we see various possibilities to implement a transfer pricing system where the risk of double taxation and discussions is minimized worldwide.

The whole survey can be downloaded at the website of WTS Alliance

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