On Point

Ghana Tax News in a snapshot

This edition of ***On Point*** focuses on ***Transfer pricing***. An increasingly topical issue in the Ghanaian tax and business environment.

February 2012

Overview

The Ministry of Finance and Economic Planning (MOFEP) in collaboration with the Ghana Revenue Authority (GRA) has released for consultation, proposed transfer pricing Regulations to govern intra-group pricing of goods, services and other transactions by Multinational Enterprises (MNEs) which operate in Ghana.

On 15 February 2012, the Transfer Pricing Working Group (TPWG), which was formed to review Ghana's existing transfer pricing laws and work on associated regulations, held a forum to inform stakeholders of their progress, engage in dialogue and invite feedback.

Timing

The TPWG indicated that the proposed Regulations would be tabled before Parliament within a week of the stakeholders' forum and would be expected to be gazetted by end of the first quarter of this year.

This leaves precious little time for entities to adequately prepare for the implementation of the new Regulations. In the light of the current changes in the GRA, e.g. re-registration of taxpayers etc, the administrative burden on entities operating in Ghana is becoming increasingly onerous (see section on information and documentation requirements) and the speed of implementation with little consultation with affected stakeholders is a key concern.

The GRA is also currently drafting a Practice Note which is expected to be released to taxpayers in the near future.

Further, the GRA is expected to amend the format of the current corporate income tax return to include a proforma template which will be used to collect transfer pricing information. The GRA communicated that the template should be ready when the new Regulations become applicable (i.e. expected to be ready by the end of the first quarter of 2012).

Transfer Pricing in the Internal Revenue Act 2000, (Act 592) as amended (IRA)

The IRA makes provision for transfer pricing as an anti-avoidance measure. In this regard, where transactions take place between persons who are associates, the Commissioner-General has the right to adjust chargeable income or tax payable as is necessary where it is deemed that the transactions did not take place at arm's length.

Notwithstanding the above, transfer pricing has not historically been an area of focus for the GRA. In practice, there have not been many instances where adjustments have been imposed by the Commissioner-General of the GRA on the basis that transactions have not been taken at arm's length.

Given the current boom in Ghana's economy (according to the IMF, Ghana's economy in 2012 is expected to grow by more than 8%), light is increasingly being thrown on the activities of multinationals which carry on business in Ghana and the transactions they undertake with their associates.

The TPWG in their proposal document note that the transfer pricing conditions in the IRA are considered to be of limited practical application. Further, they note (amongst others) that the current transfer pricing provisions do not provide a conceptual framework in connection with which acceptable transfer pricing methods are based.

It is with this background that the TPWG proposes the adoption of arms length pricing principles so as to arrive at a reliable and internationally recognised way of determining income which should be attributable to MNEs in Ghana.

Overview of the proposed regulations

Scope and application

The proposed transfer pricing Regulations are expected to apply to transactions between connected persons both locally and internationally. This includes permanent establishment (branch) operations as well as employment relationships.

Further, the transfer pricing Regulations are expected to apply to the sale, lease, purchase of goods, tangible and intangible property, management, technical and/or other intra-group services, rental and financial arrangements as well as commercial transactions and any other transactions which may affect the profit or loss of an entity.

Arms length principle

The proposed Regulations require that transactions between connected persons are conducted at arm's length, which may not necessarily be a single price, but a range of prices which would have been arrived at following in-depth analysis and the application of stringent transfer pricing methodology.

The TPWG proposes that the arms length principle is based on OECD and United Nations Model Tax Conventions, which are underpinned by the principle of comparability to transactions between independent persons for the same or similar transactions.

A key departure nonetheless from the OECD approach is the proposal to widen the scope of Ghana's transfer pricing provisions by using 'connected persons' instead of associated enterprises, so as to include individuals, corporate and unincorporated bodies.

Transfer Pricing methods

The following internationally accepted transfer pricing methodologies have been proposed by the TPWG:

- Comparable Uncontrolled Price method
- Resale Price method
- Cost Plus method
- Profit Split method
- Transactional Net Margin method
- Any methods that may be prescribed by the Commissioner-General from time to time.

Where a taxpayer wishes to use any other method, and are able to provide adequate proof that none of the above methods are suitably applicable, they may apply in writing to the Commissioner-General for approval.

Information requirements

Bearing in mind the timeframe for expected implementation of the new regulations, the information requirements summarised by the TPWG were detailed as follows:

- TP documentation must be submitted at the time of filing annual returns.

- Sufficient information and analysis to verify that transactions with connected persons are in accordance with arms length principles.

The TPWG communicated that in accordance with the transfer pricing regulations, the documents should include amongst others the following:

- Background information and global organisational structure of the person;

- Description of the nature of the business which relates to the relevant transactions;

- The selection of the transfer pricing method – assumptions and justifications for utilisation;
- Application of the method; and
- Assumptions, strategies and policies applied and information analysis relied on to arrive at the arms length pricing.

The TPWG outlined their detailed information requirements; the information requirement list would be would be communicated to stakeholders in due course.

Overview of the implications of the proposed regulations

A summary of our concerns, some of which were raised by stakeholders at the forum are summarised below (in no particular order):

- **Timing of implementation:** as earlier indicated, the timing of the proposed Regulations is a cause for concern as there is little time being allowed for entities to prepare. The documentation requirements are onerous and time is required to ensure that necessary processes are in place to allow businesses to comply.
- **GRA resources I:** The GRA is currently undergoing a period of overhaul, including re-classification of taxpayers, movement of their files and transfers/re-training of GRA staff. The overlay of transfer pricing in such a short time would be an additional constraint in arriving at an efficient GRA. Has a transfer pricing team been established and have they been adequately trained to handle the large volume of information that would be expected to be submitted?
- **GRA resources II:** arriving at an arm's length basis requires amongst others, detailed analysis of an entity's business, the nature of their transactions, key staff employed and the key risks dealt with. This information is generally obtained from a widely available database in connection with which comparables may be obtained. From what sources would the GRA obtain their comparable information, so as to engage with stakeholders as to the adequacy of their pricing? Would this database be made available to stakeholders?
- **Interaction with the Ghana Investment Promotion Centre (GIPC):** Currently, entities in Ghana when making payments to their non-resident associates are constrained by limits approved by the GIPC. Does the advent of the transfer pricing Regulations mean that GIPC limits would no longer be enforceable? Would entities still be required to register their agreements with the GIPC?
- **Valuation of imported goods for customs purposes and direct tax**

  Customs duties are imposed on goods based on their Cost, Insurance and Freight (CIF) values . In the event that the value of the goods is deemed excessive by the GRA for Transfer Pricing purposes and the amounts stated are reduced, will the taxpayer receive a refund for the overpaid customs duties as a result of this adjustment?
- **Comparability:** How do the proposed transfer pricing Regulations apply to hedging arrangements? Where a company resident in Ghana hedges a commercial transaction with a related entity, what guidance is there to allow the counterparties to prove the arms length nature of hedges, simply on the basis that they are dealing with a connected party?
- **Tax Havens:** the proposed egulations provide that transactions with persons located in tax havens, regardless of whether or not they areconnected, fall within the scope of transfer pricing. This provision appears to be contrary to underlying transfer pricing principles which are applicable to transactions between associates (connected persons).
- **Employment relationships:** the proposed Regulations include employment relationships within their scope. How does the GRA propose to use arms length comparables to employer, employee relationships? On what data would their analysis be based?

Conclusion

Overall, the introduction of detailed transfer pricing Regulations in the Ghanaian tax and business environment is welcome and is extremely laudable. Having a clear framework for taxes would provide a sound framework for inward investment into Ghana.

The caution nonetheless is that such laudable initiatives should be carefully introduced and detailed consultation with affected stakeholders taken. This should allow preparedness for compliance with the new Regulations and should help affected stakeholders plan appropriately.

It is hoped that further consultations are held and stakeholder concerns are taken into account prior to the finalization of the Regulations.

Available publications

Copies of the following publications are available to be sent to you upon request:

- 2011 Ghana Tax Facts and Figures
- 2012 Ghana Budget Highlights
- Top Ten Tax issues in Ghana's Oil and Gas Sector
- Oil and Gas Matters Newsletter
- Ghana Tax Compliance Due Dates 2012
- Quick Guide to Setting up in Ghana.
- PwC Ghana's Oil and Gas capability statement
- PwC Ghana's Mining capability statement

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