61.
Qatar

Introduction

Two tax regimes

The State of Qatar is unusual in that it has two tax regimes, both of which include transfer pricing provisions. A brief summary of the provisions of the Qatar State Tax Law is provided at the end of this chapter, but the following comments in sections [00]01-[00]08 all relate to the Qatar Financial Centre (QFC) tax regime.

QFC tax law with specific transfer pricing provisions

The government of Qatar established an onshore financial centre, the QFC, in 2005, mainly aimed at regulated organisations operating in the financial services sector. However, the QFC law also permits certain other non-regulated activities to be carried out, such as accounting services, legal services, providing group treasury functions and acting as a holding company.

The new QFC tax law was published in the official Gazette in 2010. The law had originally been expected to come into force with effect from 1 May 2008, but a temporary tax holiday was in place until 31 December 2009. The QFC tax law applies retrospectively from 1 January 2010. Under the new tax regime all QFC-registered companies are subject to corporate income tax at a flat rate of 10% on their local-source profits. Additionally, the new law introduces new concepts including a self-assessment regime, an advance ruling scheme and transfer pricing legislation.

Statutory rules

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Transfer pricing legislation

Transfer pricing in QFC tax law is covered under Part 8, Articles (47-59). Part 8 provides rules for the treatment for tax purposes of income affected by transactions between ‘associated persons’. Where transactions between associated persons are not on an arm’s-length basis, and this results in a reduction in the amount of the chargeable profits of one of those associated persons, the QFC tax authority has the power to compute the taxable profits of an entity as if the arm’s-length basis had been used for the transactions. An appeal can be lodged with the Regulatory Tribunal against such decisions.

Associated persons

As per the QFC tax law, ‘persons’ are ‘associated’ with each other if:

- one controls the other, either directly or indirectly, or
- both are controlled by the same person(s).

Control in relation to a company means that a person is able to ensure that the affairs of the first company are conducted in accordance with their wishes. This control

may be exercised through the holding of shares or the possession of voting rights in the company, or by virtue of any powers conferred by the articles of association of the company.

Transfer pricing methods

The QFC tax law does not refer to any methods. However, it is practically understood that the following methods mentioned in the OECD Guidelines are acceptable for Qatar transfer pricing application:

Traditional transaction methods:

- Comparable uncontrolled price (CUP) method.
- Resale price (RP) method.
- Cost plus (CP) method.

Transactional profit methods:

- Profit split (PS) method.
- Transactional net margin method (TNMM).

Other regulations

The QFC tax return form includes a disclosure requirement for any adjustment with respect to transfer pricing. Specifically, it requires the authorised signatory of the return to confirm that:

- "no adjustment is required to local-source taxable profits or tax loss under Part 8 of the Tax Regulations (transfer pricing)" or, if an adjustment is required, to confirm that:
- "attached computations fully reflect adjustments required."

Legal cases

The QFC tax law is relatively new and, as far as we are aware, there have so far been no specific transfer pricing cases in the QFC courts.

Burden of proof

The QFC tax law places the burden of proof on the taxpayer to produce sufficient transfer pricing documentation (and other supporting documents, including potentially intercompany agreements, schedules, and invoices) to support its declaration on the tax return.

Tax audit procedures

Since the QFC tax law is relatively new, there has been limited practical experience of transfer pricing audits. However, the QFC tax department has inquired into transactions between associated persons and has requested documents to support tax return declarations.

Penalties

Financial sanctions relating to returns, which are provided under the general tax provisions in Article (107), can be up to 100% of the tax understated. The specific penalty provisions state that:

"A QFC Entity which:

(a) fraudulently or negligently files a return which is incorrect, or

(b) discovers that a return filed by it, neither fraudulently or negligently, is incorrect and does not remedy the error without unreasonable delay, is liable to a tax-related financial sanction of an amount not exceeding the tax understated".

Tax treaty network
According to the legislation, double-tax relief is available under any double-tax agreement concluded between Qatar and another country. In the absence of a tax treaty, double-tax relief may be claimed by way of credit or on election by expense relief.

Advance pricing agreements (APAs)
As part of the QFC's determination to give certainty to companies regarding their taxable positions, an advance ruling scheme has been incorporated into the new regime. It has been confirmed with the QFC authorities that this can be used for advance pricing agreements and advance rulings have already been given with respect to the cost-plus method.

Anticipated developments
The QFC Tax Department recently commissioned the production of transfer pricing guidelines. These are expected to be issued in late 2012. The QFC is also expected to address more details on transfer pricing in its practice notes which are released from time to time.

Qatar State Tax Law
The Qatar State Tax Law (Law No. 21 of 2009) does not contain a specific provision on transfer pricing; however, it includes a general anti-avoidance provision. Under this provision, if it is deemed that the taxpayer has entered into arrangements or has carried out operations or transactions one of the main purposes of which is to avoid the payment of taxes due, the Tax Administration can take all or some of the following actions:

- Apply the arm's-length value to the transaction, resulting in a different value than established by the taxpayer.
- Re-characterise the transaction if the nature of the transaction does not reflect its reality.
- Adjust the amount of the tax due by the taxpayer or any other person involved in the arrangements, operations or transactions.

Transfer pricing methods
The finalised executive regulations for the tax law were published on 9 June 2011. They state that the market price in the case of arm's-length transactions should be determined in accordance with the Unrelated Comparable Price method. This method is essentially the same as the Comparable Uncontrolled Price (CUP) method as defined in the OECD's guidelines on transfer pricing. Where the taxpayer wishes to use an alternative method they are required to submit an application 'to apply any other pricing method approved by the OECD'.

Related parties

The executive regulations include a definition of related parties which appears to be very broad:

- Natural persons are related where one party is a spouse, in-law or next of kin of the other party up to the fourth degree.
- A natural person and a legal person are related if the natural person owns individually or with another person or related persons, directly or indirectly, 50% or more of the capital, voting rights or income rights in the legal person.
- Legal persons are related where one of them owns individually or with another person or related persons, directly or indirectly, 50% or more of the capital, voting rights or income rights in the other legal person. Legal persons are also related where another person owns, directly or indirectly, 50% or more of the capital, voting rights or income rights in both parties.