Introduction

The arm’s-length principle has been set forth in Moldovan tax law since 1998. Transfer pricing regulations, however, are currently at an initial development stage.

According to the 2013 – 2015 Medium Term Tax Policy of the Moldovan Government, formal transfer pricing documentation requirements are expected to be introduced in the Moldovan tax law starting from 2014.

Statutory rules

As a general rule, under Moldovan tax provisions, transactions concluded between related persons are taken into consideration only if the interdependence of these persons does not influence the outcome of the transaction. The arm’s-length principle applies to transactions with both resident and non-resident related parties.

With reference to the transactions carried out by Moldovan companies with related parties, Moldovan tax law provides the following specific provisions:

• No deduction is allowed for losses incurred on the sale or exchange of property, performance of work or supply of services between related parties, carried out either directly or through intermediaries (regardless of whether the transaction price corresponds to the market value).
• No deduction is allowed for expenses incurred in relation to related parties if they do not correspond to the justified market price and do not represent necessary and ordinary business expenses.

Besides transactions with related parties, taxpayers have to follow the market value for the following operations performed with third parties in non-monetary form:

• Alienation of capital assets.
• Granting donations.
• Non-qualified reorganisation of the company.
• Distribution of company profits.

Definition of related parties

In accordance with Moldovan tax law, a company is considered the taxpayer’s related party if one of the following conditions exists:

• The company controls the taxpayer.
• The company is controlled by the taxpayer.
• Both the company and the taxpayer are under common control of a third party.
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From a tax perspective, control is the ownership (either directly or through one or more related persons) of 50% or more in value of the capital or voting power of one of the companies. For this purpose, an individual will be treated as owning all equity interest that is owned directly or indirectly by members of his or her family.

Two individuals are related parties if they are spouses or relatives up to the fourth degree.

**Transfer pricing methods**
Moldovan tax law does not list any specific transfer pricing methods.

**Legal cases**
We are aware of a legal case brought in front of the Supreme Court of Justice, when Moldovan Tax Authorities (MTA) challenged the deductibility of expenses by claiming a violation of the arm’s-length principle. In this specific case, MTA performed a TP adjustment by applying the comparable uncontrolled price method. However, the taxpayer argued that he was not a related party to the service provider during the period when the service agreement was valid. The Court held the taxpayer’s position and the taxpayer was allowed to deduct the respective services expenses.

**Burden of proof**
Currently, Moldova has no formal transfer pricing documentation requirements. Nevertheless, domestic tax law provides that taxpayers have the burden of proof over the arm’s-length value of transactions with related parties.

**Tax audit procedures**
Transfer pricing audits are expected to follow the general procedure applicable to tax audits.

Taxpayer liabilities can be subject to a tax inspection only within the statute of limitation period – four years from the last date established for the submission of the corporate income tax (CIT) return.

However, no tax inspection can be performed on the accuracy of calculation and payment of CIT liabilities for fiscal periods up to 1 January 2007, except for cases where voluntary requests are made by the taxpayer (e.g. for refund purposes).

Under the Moldovan tax law, the Moldovan tax authorities (MTA) can perform scheduled inspections only once a calendar year for the same taxes and duties which refer to the same fiscal periods.

Legal entities must be notified of the inspection in writing at least three working days before the scheduled inspection. The duration of a tax inspection cannot exceed two calendar months. In exceptional cases, MTA’s management can decide to extend the period by no more than three calendar months or to stop the inspection.

The results of the tax inspection are recorded in the minutes of the tax inspection. Based on these minutes, MTA issue a decision on the specific case, which can be appealed according to the procedure described below.
Revised assessments and the appeals procedure
If the MTA determines that the taxable income declared in the CIT return is underreported, it may assess additional fines.

Decisions issued by MTA, as well as actions performed by its officials, can be appealed by taxpayers via the submission of a preliminary petition within 30 days.

Preliminary petitions are examined within 30 days of being submitted and decisions issued thereof can be contested at the Main State Inspectorate of the Ministry of Finance or appealed in the competent court of law within 30 days. No state duties are paid for appeals against MTA decisions.

Additional tax and penalties
Starting with 2012, the 0% CIT rate was replaced with a 12% rate.

Current tax law does not provide for any specific fines for the violation of transfer pricing regulations. However, failure to comply with transfer pricing rules may result in underreporting of CIT liabilities, which consequently triggers a fine of 30% (100% for tax evasion) of the diminished CIT liabilities.

Use and availability of comparable information
Under Moldovan law, the primary sources of information on market prices are public and statistics authorities and bodies regulating price formation.

If information from these sources is not available, the alternative sources include:

- Information on market prices published or made public through the mass-media.
- Official data or data made public on quotations (transactions registered) set at the nearest stock exchange to the seller’s (purchaser’s) headquarters. When no transactions have been registered at this stock exchange or the sales (purchases) took place at a different stock exchange, the information on quotations set at the last stock exchange should be used, as well as information on quotations set for state securities and state bonds.

In addition, according to the tax law:

- taxpayers also have the right to present data on market prices from other sources to the MTA, and
- the MTA have the right to use such information only if there are reasons to consider it trustworthy.

Risk transactions or industries
No specific industry or transactions are considered to have a higher level of risk than any other. Nevertheless, MTA tend to investigate the deductibility of the expenses related to consultancy services rendered by non-resident related parties. Therefore, sufficient back-up documentation should be made available to confirm that the services were actually rendered for the benefit of the local entity.
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**Limitation of double taxation and competent authority proceedings**
The avoidance of double taxation principle is not mentioned under the Moldovan tax law.

Nevertheless, taxpayers might benefit from more favourable tax regimes which are provided in the double tax treaties (DTTs) concluded by Moldova with other countries. As of 1 January 2012, Moldova has 45 DTTs in force, which are based on the Organisation for Economic Co-operations and Development (OECD) Model Tax Convention on Income and on Capital.

The ‘Associated Enterprises’ article of the DTTs allows MTA to adjust taxpayer’s taxable income if the transaction with its related party was not at arm’s-length value.

Note that the Commentaries to the OECD Model Tax Convention on Income and on Capital should be used by the MTA and taxpayers as a guidance on the interpretation of DTTs and, correspondingly, also for the purposes of the tax administration.

**Advance pricing agreements (APA)**
No APA or binding tax rulings are provided under the 2012 Moldovan tax law.

**Liaison with customs authorities**
To date, the Moldovan tax and customs authorities do not cooperate jointly on transfer-pricing-related issues.

The majority of customs value investigations to date were related to the adjustment of the customs value according to Article 8 of the WTO Customs Valuation Agreement, as well as to the adjustment of the transaction values according to the reference prices registered for goods traded under commercial relations between contracting parties in foreign trade and for identical and/or similar goods, which have been previously valued.

Adjustments of customs values with royalties, licence fees and transport expenses were among the most often performed by Moldovan customs authorities, so far.

However, subject to the implementation in Moldova of more rigorous transfer pricing regulations, we expect that eventual further transfer pricing adjustments could lead to investigations and adjustments in customs as a result of the exchange of information between tax and customs authorities or as a result of their reflection in the business transactions.

**OECD issues**
Moldova is currently not an OECD member country and the domestic law does not provide for any reference to the possibility of applying the OECD Transfer Pricing Guidelines.

**Joint investigations**
Based on the information available, no records indicate that MTA has been involved in joint investigations on transfer pricing issues.
**Thin capitalisation**
According to Moldovan tax law, there are no thin capitalisation rules (i.e. debt-to-equity ratios).

Nevertheless, interest expenses incurred by the taxpayer for the benefit of individuals and legal entities (except financial institutions, micro-financing organisations and leasing companies) are deductible within the limit of the weighted average interest rate applied for loans granted by the banking sector to legal entities for a period of up to 12 months and over 12 months, in the section of MDL and foreign currency (values are set by the National Bank of Moldova and published on its official website). The exceeding amount of interest expense should be treated as CIT non-deductible, regardless of whether it is paid to a related party or not.