



Transfer Pricing News

July 2009

Dispatches from Mexico: Delay of Additional Transfer Pricing Disclosure Requirements

On February 28, the Mexican tax authority, the Servicio de Administración Tributaria (SAT), released new information requirements for the annual statutory tax audit referred to as the Dictamen Fiscal. The original deadline to comply with the new requirements was June 2009.

The SAT recently extended the deadline to file the questionnaire portion of the disclosure to June 2010. The questionnaire is extensive and requires the taxpayer and their auditors to attest the taxpayer has adequate transfer pricing documentation and delves into the methods employed, financial information used and functionality involved in each of the taxpayer's intercompany transactions. Compliance in submitting the questionnaire for 2009 will now be voluntary. The SAT also delayed the requirement for taxpayers to provide the segmented financial information used as the basis of supporting and documenting the taxpayer's transfer pricing study.

While providing a reprieve for taxpayers with operations in Mexico this year, the 2010 deadline will require taxpayers to have robust documentation in order to meet the detailed requirements.

Dispatches from Greece: Greek Disclosure Requirements Clarification

The Greek Ministry of Development recently provided some additional guidance on

its transfer pricing legislation, which was released in December 2008. Greek taxpayers, who are subsidiaries of foreign parent companies with intercompany transactions, must file an annual related-party disclosure form disclosing all intercompany transactions, which must be submitted to the Ministry of Development. The disclosure form also makes it necessary for the taxpayer to disclose the classification of each intercompany transaction, *i.e.*, services, goods, intangibles or loans. The disclosure forms were due in April. Taxpayers must also maintain appropriate documentation files for all intercompany transactions which exceed €200,000.

The recent circular defines related-party transactions as those where the parent company exerts "dominant influence" over the Greek subsidiary's operations. It also states taxpayers should update their documentation when there has been a change in the nature of the operations, the transfer pricing policy or in the availability of the comparable data. Generally, every three years was given as an appropriate time period in which a taxpayer should update their Greek transfer pricing documentation.

Dispatches from the United States: Xilinx Saga Continues

On May 27, the Ninth Circuit of United States Court of Appeals reversed the U.S. Tax Court Decision issued in 2005 in the *Xilinx, Inc. v. Commissioner* tax court case. The reversal stated that stock-based compensation in the form of options must be included in the research and development



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(R&D) cost base of a cost-sharing arrangement (CSA). As a direct result of the Xilinx case, the U.S. CSA regulations were specifically changed in 2003 so stock-based compensation would be included in the cost pool of a CSA.

The Tax Court initially found that unrelated taxpayers in CSA would not share stock-based compensation, whereas the Ninth Circuit did not dispute this fact but contended that the CSA rules at the time require that taxpayers share such costs, thereby trumping the overall principles of the arm's-length standard as promulgated in Treas. Reg. §1.482-1(b)(1). The ruling went on to say that companies claim deductions on stock option-based compensation related to R&D employees, and since the CSA regulations state that "all costs" should be included in any recharges, stock option expenses are an element of costs which should be allocated out through the CSA. Xilinx has requested the Ninth Circuit rehear the case.

The Xilinx case has significant ramifications for companies with CSAs under the former rules and companies which grant stock options in general, as the IRS views that options should be recharged as they are a form of compensation.

Dispatches from India: **Entities in Tax Holidays are Required to Prepare Transfer Pricing Documentation**

According to a recent decision by the Pune Income Tax Appellate Tribunal (*ACIT v. MSS India Pvt. Ltd.*), India's transfer pricing

rules are applicable to entities even if they are in a tax holiday. It must be noted that if the Indian Revenue levies a transfer pricing adjustment on a company with a tax holiday, it will be treated as a concealment of income. The additional income will be subject to tax and penalties and will also be assessed. In these circumstances, taxpayers may also lose their tax holiday status.

For More Information

To learn more about the transfer pricing solutions and/or discuss your company's current transfer pricing position, please contact your BKD advisor or:

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