

January 2009

Regulations regarding the imposition of transfer pricing rules pursuant to Law 3728/2008

This is part of our continuous effort to keep you updated on current tax developments.

Further to our Newsflash of 28 November 2008, we would like to bring to your attention the Ministerial Decision published in Government Gazette, issue (FEK) No B' 2709/31.12.2008 which regulates the following issues in connection with the imposition of transfer pricing rules.

Field of application

The exemptions from the obligation to submit the Documentation Files stipulated by Law 3728/2008 (i.e. for contracts between affiliated companies for less than EUR 200 000 annually as well as for companies which operate in Greece and do not have an annual turnover higher than EUR 1 000 000 for 2 consecutive years) are expanded to cover the following cases:

- Agreements concluded by enterprises with individuals who do not carry out business activities
- Transactions concerning shares or partnership units

- Transfers of ownership and other rights in rem on real estate property
- Greek and foreign companies governed by the provisions of article 27 of Law 3427/2005 (ex office of commercial and industrial enterprise of Compulsory Law 89/1967).

Content of the Documentation Files

For the purposes of assessing compliance with the arm's length principle, enterprises are required to provide the following documentation files to the competent authorities of the Ministry of Development within 30 days of receipt of a relevant request. The aforementioned files consist of the "Basic Documentation File" for groups of companies with a Greek parent company and the "Greek Documentation File" for groups of companies with a foreign parent company as well as for foreign companies operating in Greece under any type or form (e.g. branch).

Documentation files are exclusively drafted in the Greek language. Any documents written in languages other

than Greek must be translated into Greek.

Basic Documentation File

This file includes the following information:

- Information concerning the Group

The Ministerial Decision sets out specific details which should be made available in respect of the group which include a description of the organizational, legal and operational structure of the Group and its financial data, its activities, the business strategy, its intra-Group transfer pricing policy, presentation of its intra-Group transactions, functions and risks undertaken by affiliated companies, etc.

- Information concerning the Company

There must be a detailed description of the audited transactions, a comparative analysis, a description of the transfer pricing method selected, provision of relevant information

regarding the comparables, and description of other data or circumstances, which are considered to be necessary by the company being audited.

Greek Documentation File

This file contains almost the same information as the information included in the "Basic Documentation File" with two differentiations as regards information concerning the group:

- It does not include a description of the tangible assets used by the Group for the purposes of conducting the activities undertaken by affiliated companies
- It does not include either a specific description of the transactions (i.e. nature of transactions, flow of invoices and values of transactions) carried out among the affiliated companies provided one of them is a Greek entity, nor a description of the affiliated companies or their permanent establishments that relate to the above transactions or agreements (which description includes the line of business, the years of operations, the annual turnover, the number of employees, etc.). However, it appears that the abovementioned information for the affiliated parties is included in the information concerning the company.

In conclusion, on the basis that the respective Documentation Files will have been prepared by foreign parent companies and filed with their competent authorities, the preparation of the Greek Documentation Files will be

on the same basis and will be adjusted in order to be in compliance with Greek legislation.

Transfer Pricing Methods

The transfer pricing methods are the following:

- Comparable Uncontrolled Price Method
- Resale Price Method
- Cost Plus Method

The "Comparable Uncontrolled Price Method" shall be used in principle for the purposes of documenting the prices of intra-group transactions. In case the above method cannot be implemented and provided that such justification is included in the documentation files, the other two methods ("Resale Price Method" and "Cost Plus Method") may be used.

Where none of the above traditional transfer pricing methods can be implemented and such justification is included in the documentation files, other (non-traditional) transfer pricing methods such as the "Transactional Net Margin Method" and the "Profit Split Method" may be used.

Information from databases

In case databases are used for the collection of comparables, an accurate description of such databases is required, and the criteria and steps for the selection and use of the specific comparable data should be reported and explained.

Transfer pricing determination from a wide range of acceptable values

Where, from the implementation of the Intra-group transfer pricing method and the use of comparable data, a range of values or profits arises, a narrowing of the ranges shall be performed by excluding the lowest quarter (25%) of the values and the highest quarter (25%) of the values.

List of intra-group transactions

Companies which are obliged to comply must submit to the Department of Market Supervision Authority of the General Secretariat of Commerce of the Ministry of Development, within 4 months and 15 days from their fiscal-year end, a list detailing each intra-group transaction, effected within the fiscal year, and more specifically, the purpose of each agreement, details of their counterpart, the form and date of conclusion of each agreement, the value of the transaction and all intra-group deliveries of goods invoiced by third parties. A sample list of intra-group transactions is provided in the Ministerial Decision.

The right to appeal against the imposition of penalties and fines

An appeal can be brought against the decisions of the competent authorities regarding the imposition of penalties and fines by filing an appeal to the Ministry of Development within 5 working days from the date of notification of the decision to the enterprise which committed the

violation. In case of rejection of the appeal, the audited company is entitled to appeal against the negative decision by filing a further appeal to the competent Administrative Court of First Instance within 60 days from notification of the decision to the company which committed the violation. The appeal to the Administrative Court is legally acceptable provided that 20% of the relevant penalties assessed on the company is paid.

Submission and examination of the provided data

Until the Market Supervision Authority of the General Secretariat of Commerce of the Ministry of Development begins to operate, the submission and audit of the aforementioned data will be performed by the Departments for: a) Prices of Foods and Beverages, b) Prices of Industrial products and Medicine and c) Prices of Provision of Services.

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KPMG has extensive knowledge on the above issues and may advise on issues relating to inter company transactions between affiliated companies and help you with the preparation of the files and the submission of information. Specific issues and problems can be addressed at a forthcoming seminar KPMG will organize.

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This Newsflash aims to provide the reader with general information on the above mentioned matters. No action should be taken without first obtaining qualified professional advice specifically relating to the factual circumstances of each case.

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