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WTS presents survey on transfer pricing

Tax treatment of management service fees in 79 countries

Rotterdam/Munich, November 18, 2013 - The allocation of management fees within a multinational enterprise ("MNE") is considered a form of base erosion, in the OECD Action Plan on Base Erosion and Profit Shifting ("BEPS"). A current survey of consulting group WTS has examined such allocations. The survey shows that many countries already have implemented regulations controlling the tax treatment of management service fees. However, such regulations often vary from country to country. As such, the preparation of a suitable transfer pricing documentation is recommended in order to avoid a possible double taxation for MNEs.

Focus on management fees

Transfer prices are calculated inter alia for internal cost allocation purposes. Cross-border chargings within the group also include management services like administrative, technical and commercial services which are often rendered by a mother company to its foreign subsidiary/subsidiaries. Management services are an easy target for the tax authorities within the scope of tax audits, since the suitability of the charging of such services has often not been documented sufficiently and as such cannot be verified.

The current WTS survey provides insight in treatment of management service fees in 79 countries. From the survey it can be concluded that in almost 80 percent of those countries the authorities have already set a clear focus on the charging of such services within the scope of tax audits. Moreover, in many countries such allocations are subject to (withholding) taxes and/or may not be tax deductible. Given that 75 percent of the 79 countries has specific legislation in place on transfer pricing, the question is to which extent the action plan will bring a change to the treatment of charges for services that have actually been provided.

"Most countries already have specific regulations on the tax treatment of transfer prices - this also includes management services. However, the allocation of management service costs have a substantial conflict potential: Where one country could consider the management service charge as base erosion, another country may qualify the same charge as base-protecting", explains Jan Boekel, WTS Netherlands and author of the survey.

Different interpretations of the OECD transfer pricing directive remain

No matter what the outcome of the action plan (which has been presented in the middle of 2013) is, we expect that the differences in local interpretation of the OECD guidelines and differences in local legislation will remain. The fact that only 40 percent of the countries has a developed Advance Pricing Agreement (APA) program illustrates that the various tax authorities do not have the same level of expertise on transfer pricing. There are also different opinions on the applicability of the transfer pricing methods, which serve for the calculation and documentation of the transfer prices.

"By means of the action plan, the OECD intends to unify the tax treatment of transfer prices and to add more transparency for the tax authorities. However, one must assume that the suggested



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guidelines are still going to be interpreted differently by the individual countries. As such, the potential danger of double taxation for the companies remains", comments Maik Heggmaier, Head of Transfer Pricing at WTS Germany.

Avoidance of tax risks and litigation by means of an adequate documentation

An adequate transfer pricing documentation is the best way to avoid any double taxation or litigation. According to the survey, such documentation is recommended in more than 90 percent of the countries; in 48 countries it is even required. The documentation must verify that the charge made represents an actual service provided, provides a benefit for the service recipient and cannot be considered too high. To substantiate the arm's length character of the charge, in more than 75 percent of the countries a benchmark study is at least recommended, in 18 countries it is even required.

In summary we can notice that there is no uniform, globally accepted way for the allocation of management service fees. Within the scope of the survey, WTS provides insight in the approach that can be taken to achieve a system of management service charges that should be acceptable in at least two third of the participating countries.

The WTS survey can be downloaded here:

http://www.wts-alliance.com/en/content/news_2339.php

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Our clients include multinational groups, national and international medium-sized companies, non-profit organizations and private clients.

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