



New publication charts tighter enforcement of transfer pricing regulations worldwide

- *More “Red Flag” transactions used as reasons to investigate*
- *Complex multi-jurisdictional issues can lead to increased potential conflict with tax authorities*

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Tax authorities looking to enforce transfer pricing regulations are increasing the range of company transactions they will use as a trigger for more detailed investigations, according to insights provided by leading advisors from KPMG’s Global Transfer Pricing Services (“GTPS”) practice.

Among the “Red Flags” now seen by tax authorities worldwide as reasons to investigate further are:

- unusually high profits or losses in a group company
- corporate restructurings involving closures or reductions in operations
- significant inter-company management fees
- dealings with a group company in a tax haven and
- location in a low cost country.

(see table below)

These are among the instances of tightening regulations listed in “A Meeting of Minds – Resolving Transfer Pricing Controversies”, a publication from KPMG’s GTPS practice focusing on transfer pricing controversy issues, strategies and resolution alternatives, and incorporating contributions from 39 authors from 22 countries.

“Companies operating internationally are discovering that their transfer pricing position may face challenges from one tax authority, even when that position is well-supported and accepted by other tax authorities operating under the umbrella of the OECD Guidelines.” said the head of KPMG’s Global Transfer Pricing practice, Steve Fortier, a partner in the U.S. firm.

KPMG member firms recommend companies should take a systematic approach to setting and documenting inter-company transactions, identifying those that may be likely to attract a tax authority’s interest, preparing the necessary documentation,

including a well-argued transfer pricing policy document, and deciding what their objectives might be.

“A company’s priority might be to limit conflicts with its tax authorities, to improve predictability in financial statements, to manage the effective tax rate, or to meet cash flow targets,” said Steve Fortier. “The company will likely try to balance a number of these objectives. The important thing is to have a clear and well-supported rationale for the decisions that are taken, so that the authorities can see this is an organization able and willing to defend its policies.”

As tax authorities across the Central and Eastern Europe also become more aware and sophisticated in the area of transfer pricing, proper transfer pricing documentation is an increasingly important tool to support transfer pricing policies applied by companies in the region. “While in some countries the documentation may simply be a useful tool to support a company’s position against the tax authorities, in others it may be an absolute requirement according to local tax laws. Slovakia decided to make transfer pricing documentation compulsory as of 1 January 2009; therefore, in order to ensure compliance, Slovak companies should start preparing the documentation without delay.” said Branislav Durajka, a Tax Partner in KPMG Slovakia.

ENDS

Note to editors

“A Meeting of Minds - resolving transfer pricing controversies” is a collection of articles from leading transfer pricing professionals from KPMG member firms around the world. It will be of particular interest to tax and finance corporate executives of multinational companies.

Below is a table of “Red Flag Transactions” taken from the document. It lists some of the more common transactions that tax authorities may see as reasons to investigate further.

Possible Red Flag Transactions	
	Persistent losses or low operating profits
	Sharp changes in profitability from prior year(s)
	Different prices/markups charged between: (i) Related and Unrelated Parties for similar transactions (ii) Various related parties for similar transactions
	Lack of (sufficient) documentation
	Absence of or non-adherence to inter-company agreements
	High royalties with licensee exhibiting low profits or operating losses
	Royalties charged for soft intangibles, that is, intangibles that are not legally protected, such as business process/systems/methods
	Significant inter-company management fees
	Transactions with group company in tax haven
	Significant asset impairment charges, restructuring charges, inventory write-offs
	Significant year-end adjustment to inter-company prices
	Actual behavior not consistent with documented TP policy
	Closing costs (especially when company was making profits)
	Separation of functions and risks that does not make sense from a business perspective

Source: "A Meeting of Minds - resolving transfer pricing controversies", KPMG International, 2008

The full document is available here [<http://www.kpmg.com/SiteCollectionDocuments/Meeting-of-minds-Full2.pdf>]

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