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Crowe Transfer Pricing
Wednesday

Bangladesh Transfer Pricing Recent Developments



8/2/2023

Overview

- The Income Tax Ordinance, 1984 (“ITO, 1984”) prescribes the transfer pricing regulations for transactions between associate enterprises.
- The transfer pricing provisions (CHAPTER XIA of the ITO, 1984) were inserted in the ITO, 1984 through Finance Act, 2012 and have been made effective from 1 July 2014 vide SRO No. 161/law/income tax/2014 dated 26 June 2014. Thus, the transfer pricing provisions are applicable for Assessment Years (“AY”) 2015-2016 as clarified in the statement issued by the National Board of Revenue (“NBR”).

Recent developments:

- The NBR has established a Transfer Pricing Cell to audit transactions by firms.
- This cell has been working to educate tax officers and taxpayers on the newly introduced transfer pricing regulations as well as to create awareness among the stakeholders.
- In recent years, the Deputy Commissioner of Taxes (“DCT”) has issued letters to taxpayers asking them to provide certain information of international transactions, which may be used as a basis for transfer pricing audits or deciding on the next course of action.
- Recently, there are also incidents where the DCT issued letters to the taxpayers requesting for transfer pricing documentations and called for hearings to enforce transfer pricing compliance.

Arm's Length Price:

- The amount of any income or expenditure, e.g. sales of goods, provision of services, payment of royalties, etc. arising from international transactions between associate enterprises (i.e. transfer prices) shall be determined having regard to the arm's length price. [Sec-107B]
- The arm's length price in relation to an international transaction shall be determined by applying the most appropriate method out of the five (5) methods as prescribed in Section 107C are: (a) comparable uncontrolled price method; (b) resale price method; (c) cost plus method; (d) profit split method; and (e) transactional net margin method.
- The arm's length price determined under ITO, 1984 shall not result in total income to be lower than the total income that would have arisen between independent parties for similar international transaction.

Documentations and reporting requirements:

- **Statement of international transactions:** Every person who has entered into an international transaction shall furnish, along with the return of income, a statement of international transactions in the prescribed form [Sec-107EE]
- **Maintenance and keeping of information, documents and records:** Every person who has entered into an international transaction where the aggregate value, as recorded in the books of accounts, in the income year exceeds Three Crore Taka (BDT) (i.e. BDT 30 million or equivalent to USD 280,000 based on the prevailing exchange rate) shall keep and maintain information, documents and records (known as “transfer pricing documentation”) prescribed in Rule 73. This documentation is not required to be submitted to the DCT, unless required to furnish by notice in writing. [Sec-107E]
- **Report from an accountant:** The DCT may, by notice in writing, require that a person who has entered into international transaction(s) the aggregate value of which, as recorded in the books of accounts, exceeds BDT 30 million during an income year shall furnish a report from a Chartered Accountant or a Cost and Management Accountant regarding all or of a part of the information,

documents and records (transfer pricing documentation). [Sec-107F]

Expectation from the tax authority on documentation compliance:

- Section 107E of the ITO, 1984 and Rule 73 of the Income-tax Rules, 1984 require specified information, documents and records to be maintained by every person who has entered into international transactions of aggregate value exceeding BDT 30 million with related parties.
- These information, documents and records shall be maintained for eight (8) years from the end of the relevant assessment year.
- The list of information required in a transfer pricing documentation are summarised in the table below:

Rule	Information required to be included in the transfer pricing documentation
73(a)	Ownership profile of the multinational group in which the assessee enterprise is a member.
73(b)	Business profile of the group including the line of business, industry dynamics, and market and economic environment in which the group operates, and the business model and strategies of past, present and future.
73(c)	Brief business profiles of each of the member of the group.
73(d)	Information on the business relationship (purchase and sells of goods, provision of services, use of assets and intangibles etc.) among the members of the groups.
73(e)	Consolidated financial statement of the group.
73(f)	Profile of the assessee enterprise and each of the associated enterprises operating in Bangladesh, including tax and VAT registration number, IRC & ERC numbers, address, locations of activity centers etc.
73(g)	Business profile of the assessee enterprise and each of the associated enterprises operating in Bangladesh including the line of business, industry dynamics, and market and economic environment in which the assessee enterprise operates, and the business model and strategies of past, present and future of the assessee enterprise.
73(h)	Brief description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated enterprises involved in the international transaction.
73(i)	Financial statements of the assessee enterprise and each of the associated enterprises operating in Bangladesh.
73(j)	Information on economic and market analyses, forecasts, budgets or any other financial estimates prepared by the assessee enterprise and each of the associated enterprises operating in Bangladesh either for whole business or for any segment or line of product.
73(k)	Details of all transactions with the associated enterprises.
73(l)	Contracts, terms and agreements of the transactions with associated enterprises.
73(m)	Segment financial statements with respect to the transactions with associated enterprises.
73(n)	The manner of choosing tested party including the rationale for the choice.

Rule	Information required to be included in the transfer pricing documentation
73(o)	Details of comparables including the manner in which the comparables have been screened and the adjustment made to achieve comparability.
73(p)	Details of comparability analysis
73(q)	The list of databases utilized.
73(r)	Information on transfer pricing method chosen considered for determining the arm's length price including the justification stating why the method is considered most appropriate.
73(s)	Records showing the calculations and workings regarding the determination of the arm's length price/margin including the explanation of any assumption.
73(t)	Any assumption, policy and price negotiations which may have an effect on the determination of the arm's length price.
73(u)	Information on any adjustment made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes
73(v)	Any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

Implications of not complying with TP regulations:

- The NBR is empowered to impose the following penalties for non-compliance of transfer pricing regulations:

107G. Penalty for failure to keep, maintain or furnish information, documents or records (transfer pricing documentation) to the Deputy Commissioner of Taxes u/s 107E	May impose penalty not exceeding one percent of the value of each international transaction.
107H. Penalty for failure to comply with the notice or requisition	May impose penalty not exceeding one percent of the value of each international transaction.
107HH. Penalty for failure to submit statement of international transactions u/s 107EE	May impose penalty not exceeding two per cent (2%) of the value of each international transaction.
107I. Penalty for failure to furnish report of accountant u/s 107F	May impose penalty of a sum not exceeding three lakh taka .

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