ANNUAL REVIEW

Transfer pricing

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Algeria

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Rafik Boussa is the managing partner of Grant Thornton Algeria. He oversees the firm's tax practice in Algeria. He graduated from the Ecole supérieure de Banque in Algiers and he also attended the senior leadership programme at Said Business School at Oxford University. He has been selected as one of the Top 100 young African leaders by the Paris-based think tank Choiseul.

Q. What do you consider to be the most significant transfer pricing changes or developments to have taken place in Algeria over the past 12 months or so?

BOUSSA: Transfer pricing (TP) regulations have been applied to transactions between related companies since financial year 2010. Since that time, the Algerian tax authority has released many updates regarding TP, particularly over the last 12 months. Articles 8, 10, 43 and 44 of the financial law 2017, detail the obligations for the taxpayer and the sanctions available to the authority in the event of non-compliance. Some of the major features applicable to companies operating in Algeria include the obligation to provide TP documentation, not only to large companies registered with the *Direction des Grandes Entreprises* (DGE) but also to any other eligible company, regardless of size. There is also the obligation to implement a cost accounting approach and the increase of sanctions from 500,000 DZD to 2m DZD in instances where the taxpayer has failed to submit the TP documentation by the 30 April deadline. In addition, in the case of a tax audit, the tax inspector can extend the audit period by more than six months, rather than one month, if there is a presumption of an indirect transfer of profit.

Q. In your opinion, do companies pay enough attention to the challenges and complexities of maintaining compliant transfer pricing polices?

BOUSSA: There is an increase in awareness among large companies. However, many smaller companies are not familiar with their TP obligations. Despite the increased focus of TP, many of the challenges and complexities of maintaining a compliant TP policy remain, especially with the obligation that companies must have implemented the cost accounting approach. Many companies are not yet fully compliant with the new TP obligations. Also, many companies think that submitting a basic Master File will be sufficient.

Q. To what extent have the tax authorities in Algeria placed greater importance on the issue of transfer pricing in recent years, and increased their monitoring and enforcement activities?

BOUSSA: The Finance legislation, 2010, supplementing the Finance Law, further increased TP scrutiny. The law clarifies the Algerian tax authority's idea of documentation expected from taxpayers in order to substantiate their company's TP policy. By virtue of Article 141 bis 2013 of the *Code des Impôts Directs et Tax Assimilees* (CID), when an enterprise operating in Algeria, or out of Algeria, is directly or indirectly involved in the management, control or capital of another enterprise operating in or out of Algeria, or the same persons participate directly or indirectly in the management, control or capital of an enterprise operating in or out of Algeria, and in both cases the commercial and financial relationship of the two enterprises differ from those between independent enterprises, profits which would have accrued to the enterprise operating in Algeria, but have not so accrued, are included in the profits of that enterprise and are taxed accordingly. The rules apply to Article 9 of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention. In Algeria, failing to respond to a notice for submission of TP documentation may trigger a penalty of 25 percent over the taxable amount, calculated based on the reassessment resulting from the tax audit. Thus, insufficient documentation to substantiate the transfer price carries a penalty of 25 percent. The tax authorities may also consider insufficient documentation as an attempt at fraud

or tax avoidance by the taxpayer. Late filing, failure to file or filing incorrect tax returns will also be penalised.

Q. Have you seen an increase in transfer pricing disputes between companies and tax authorities in Algeria?

BOUSSA: Previously, the tax administration has focused on the obligation to submit annual TP documentation. Implementation of this surveillance system is a priority of the tax administration. The legislation is now complete to allow the tax administration to have TP data and thus, at any time, to audit any taxpayer. It is also important to remember that the administration has the right to audit four years prior to the current year. This period can be extended by up to two years for fraudulent taxpayers. We are not aware of any major dispute arising between a taxpayer and the Algerian tax administration regarding TP documentation.

Q. How should companies respond if they become the subject of a tax audit or investigation? What documentation needs to be made available in this event?

BOUSSA: In the case of a tax audit, the Algerian tax law gives the taxpayer the right to be assisted by a tax adviser. Companies should be able to provide documentation that includes the company's organisational structure and stipulates the nature of the relationship between the Algerian company and the foreign company, a description of the group's TP policy and the kind of transactions that take place between the related entities, the methodology used to determine intercompany transfer price, the activities performed by the companies located outside Algeria, as connected through industrial, commercial or financial transactions, the tax treatment reserved for these types of operations, copies of annual audit reports, audited financial statements related to the reported fiscal year, a list of key owned intangible assets such as licences, trademarks, trade names and know-how, and financial information about overheads and administrative costs, as well as research and development costs. All documents have to be in Arabic, though documentation in French is also accepted.

Q. What kinds of challenges arise in calculating appropriate transfer prices, both for tangible and intangible assets? How crucial is it to have consistent supporting documentation?

“In Algeria, as well as many other African countries, it is difficult for both companies and the tax authority to obtain a complete comparable data set to apply the arm’s length principle.”

BOUSSA: For tangible and intangible assets, parties should rely on the arm’s length principle. In Algeria, as well as many other African countries, it is difficult for both companies and the tax authority to obtain a complete comparable data set to apply the arm’s length principle. The company must be able to describe the process of determining its prices, such as market analysis, functional analysis, economic situation, contractual clauses and so on. Article 141 of the Direct Tax Code requires all transactions relating to intangible assets and other services to be documented by justifying that such expenses correspond to actual transactions and are not abnormal or exaggerated.

Q. In general, what advice would you give to companies on reviewing and amending their transfer pricing policies and structures?

BOUSSA: Compliance is the best tax planning. Taxpayers should take the initiative to seek professional insight from experienced TP professionals to identify potential areas of TP risk and to assess any gaps. Collaborating with an international tax firm with a local presence will make a world of difference when it comes to bringing value, and where non-compliance costs can result in a rejection of the books, with heavy penalties and reputational loss likely.

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