Tax News

Spain's Annual Guidelines of 2023 Tax and Customs Control Plan: main measures concerning transfer pricing

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Let's Talk

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The general guidelines of the Annual Tax and Customs Control Plan for 2023 have recently been published, through the Resolution of January 6, to the General Directorate of the State Tax Administration Agency ("AEAT").

The Tax and Customs Control Plan defines the main strategic lines of the AEAT in the selection of taxpayers, sectors, transactions and activities considered priorities for the prevention and control of tax and customs fraud, which are part of the so-called Strategic Plan 2020-2023.

As in previous years, **transfer pricing continues to be a priority area for tax audit actions**. In this sense, the AEAT has intensified in recent years its activity of management and control over the fiscal risks that derive from the incorrect determination of transfer prices in multinational groups.

Thus, within this scope, the main areas of attention in investigation and verification procedures of the AEAT in matters of transfer pricing are listed below:

- **360º Strategy**
  In line with the 2022 Control Plan, and based on the experience and maturity acquired in transfer pricing and transnational operations in recent years, the AEAT currently deploys its activity in all procedures that may affect operations linked within the framework of a common strategy, called **the 360º transfer pricing strategy**, which, for a specific taxpayer, **interrelates the different procedures, making effective use of the information held by the Tax Administration**. The ultimate goal of this strategy is to avoid controversies that may arise in this matter, ensuring long-term tax compliance of multinationals operating in Spain with regard to their transfer pricing policy.

- **Recurring issues**
  For yet another year, those **related-party transactions classified as high tax risk are identified**, on which efforts and resources will continue to be focused for their verification. The Plan refers specifically to:

  – Corporate restructuring.
  – The valuation of intra-group transfers or assignments of different assets (especially intangible assets).
  – The deduction of items that can significantly erode the tax base, such as payments for royalties derived from the assignment of intangibles or for services provided within the group.
  – Related transactions of a financial nature.
  – The existence of repeated losses.

- **International collaboration with other tax administrations**

  International collaboration between administrations will continue to be decisive in verification actions. Thus, the AEAT continues to support the promotion of the following procedures regarding related-party transactions:

  – **Tax audits carried out simultaneously with other tax Administrations.** In this sense, the transposition of Directive (EU) 2021/514 of the Council to the Spanish legal system will give a boost to the figure of joint inspections (Joint Audits), stimulating those that are carried out at the initiative of the AEAT through the systematic inclusion of its assessment in the initial stages of the inspection checks, the strengthening of the organization dedicated to its management and coordination and the necessary training of the participating actuaries.

  – **Advanced Pricing Agreements:** they are shown as an instrument to give certainty to international legal-tax relations, thus guaranteeing taxation in accordance with the principle of free competition and also avoiding costly inspection actions.

  – **Mutual Agreement Procedures**: they continue to appear as an efficient mechanism for conflict resolution between two tax administrations when the actions of one, or both, may produce double taxation that does not comply with the Tax Agreements signed between Spain and other states.

  Participation in the multilateral risk assessment program carried out within the framework of the **ICAP program** (International Compliance Assurance Program) and the equivalent European initiative **ETACA** (European Trust and Cooperation Approach) will also continue, as well as the examination of the reports of transparency provided for in the Code of Good Tax Practices submitted by companies adhering to it. Finally, it will also highlight the search for regulatory agreements related to **Pillar I**.

  In relation to the **sources of information and risk analysis** used by the AEAT in the framework of the investigation and actions to verify tax and customs fraud, the **exchange of information will continue on the Country by Country report** that is part of the OECD/G20 Project to avoid the base erosion and profit shifting.

- **Other related areas of action**

  – Verification of the **correct declaration of the withholdings on account of the Non-Resident Income Tax** to which they are obliged, in particular, large companies that pay dividends, interest and royalties to non-residents without a permanent establishment in Spain. The AEAT will verify whether or not the person receiving said income has the status of beneficial owner in order to verify that there is no abusive use of European regulations that seek to facilitate the free movement of capital within the territory of the EU.

- **Identification of structures and behavioural patterns that unduly benefit from the low taxation of certain territories, tax regimes or structures,** and that are or can be replicated or standardized for use by a plurality of taxpayers.

- **Compensation of NOLs** from previous years and **compliance with the legal requirements for the integration of entities within a tax consolidation group**.

- The fact that the possible location in one or another territory by the entity representing the group may artificially condition the development of the powers of the Tax Administration will also be analysed.

- **Coordination with the foral administrations** will be intensified in relation to operations related to direct taxation.

In short, transfer pricing continues to be in the loop for tax administrations. Thus, in the current economic context, a greater intensity of the AEAT's activity aimed at preventing non-compliance and promoting the verification of tax fraud can be expected, driven by the growing information available, the consolidation of international information exchange mechanisms the increasingly sophisticated risk analysis tools available to the AEAT, such as the calculation engine ("Sociedades Web" for groups) and the multi-period processor.

For all these reasons, it becomes very important for taxpayers to anticipate possible tax verifications and analyze: (i) if they are in any of the risk groups; (ii) review their transfer pricing policies to confirm that they are fully aligned with the arm's length principle; (iii) if there is complete, robust, aligned and updated documentation (transfer pricing documentation, contracts, accounting, annual accounts, tax models, etc.) that allows justifying the arm's length nature of its related-party transactions and be the first line of defense in the event of a tax audit.