COORDINATED TRANSFER PRICING CONTROLS: RECOMMENDATIONS FROM EU JOINT TRANSFER PRICING FORUM

The EU Joint Transfer Pricing Forum recently published its report "A coordinated approach to transfer pricing controls within the EU" aimed to provide recommendations on coordinated transfer pricing audits in the European Union.

Coordinated transfer pricing controls are transfer pricing audits of two or more related entities of the same multinational group which are tax resident in different Member States. The controls are carried out by the tax administration of the Member State where each entity is tax resident in a coordinated manner and within the applicable legal framework (i.e. national rules and EU law).

The report highlights that coordinated transfer pricing audits would reduce the administrative burden and costs of unilateral audits that lead to court procedures, Multilateral Agreement Procedures and other dispute settlement mechanisms.

LED Taxand summarises here below the 10 key recommendations of the EU JTPF.

1) **Cooperation between tax authorities.** Exchange of information and cooperation between tax authorities throughout the auditing process could contribute to an audit that is effective (concluding the control without the need for further procedural steps, e.g. a Multilateral Agreement Procedure) and efficient (achieving this aim with a minimum of resources and time).

2) **Cooperation between tax authorities and taxpayers.** The taxpayer should be actively involved in the auditing activities. At the same time, the taxpayer should be transparent and share in a timely manner the relevant information with each of the tax administrations involved.

3) **Presence of visiting foreign officials.** Member States are encouraged to implement legislation that permits the active presence of visiting foreign officials. Italy already implemented it in article 31-bis Presidential Decree 600/1973.

4) **Corresponding downward adjustments.** Member States are encouraged to implement legislation which would allow them to perform corresponding downward adjustments as a result of a coordinated transfer pricing control. Italy already implemented it in article 31-quater Presidential Decree 600/1973.

5) **Closer cooperation in transfer pricing controls.** Member States should use, in appropriate cases, the possibilities under Directive 2011/16/EU such as the right to perform simultaneous controls (article 12) and be present in administrative enquires of other countries (article 11), for the purpose of achieving a high degree of coordination during a transfer pricing control. In this respect, the report highlights that the Joint Audit programme Germany/Italy has been presented during the EU JTPF meeting of 26 June 2018.

6) **Organisational matters.** Member States should ensure that stakeholders are aware of the possibilities and functioning of the available tools for taking a coordinated approach to transfer pricing controls. In order to facilitate the communication between stakeholders, tax administrations are encouraged to establish a contact point and publish a functional e-mail box to contact in matters related to coordinated transfer pricing controls. To enable a cooperative approach, Member States are encouraged, to the extent possible, to be flexible as regards the choice of the audit periods, the timing and the way the audit is performed.

7) **Request of a coordinated transfer pricing control.** Member States are not obliged to participate in a coordinated transfer pricing control but when they receive a request to this end, they should answer as soon as possible and at the latest, within 2 months from the date of receipt of the request. In case of refusal, tax administrations should explain their position.

8) **Audit plan.** An audit plan should be agreed and signed for each coordinated transfer pricing control. The audit plan would normally identify the following points: (i) scope of the audit (taxpayers and tax periods to audit); (ii) transactions/dealings to audit; (iii) time milestones; (iv) documents to be prepared; (v) communication and working language; (vi) rules for carrying out "auditors-in-presence" activity (vii) identifications of the rights and obligations of tax auditors acting abroad.

9) **Memorandum of Understanding.** It is recommended that Member States agree a Memorandum of Understanding (MoU), in case they wish to establish sustained coordinated transfer pricing controls programme. Annex 2 to the report contains a non-binding template for concluding such a MoU.

10) **Concluding report.** The findings of an audit should be incorporated in a concluding report. To the extent possible, tax administrations should endeavour to arrive at a common interpretation of how the arm's length principle applies to the findings of a specific audit based on an analysis of the facts and circumstances. Such an agreed outcome would give the highest guarantee that the audit does not result in double taxation.

LED Taxand together with the other members of the Taxand international network can assist multinational groups during coordinated transfer pricing controls.

If further information is required, please refer to your LED Taxand contact or
to gpetraroli@led-taxand.it or fcardone@led-taxand.it

LED TAXAND

LED Taxand Studio Legale Tributario | Via Dante, 16 – 20121 Milan
tel: +39 02494864 – Fax: +39 0249486486
email: studiomi@led-taxand.it – PEC: led-taxand@legalmail.it – www.led-taxand.it