

Transfer pricing Spain

Documentation requirements

Royal Decree 1793/2008 has established the regulations for the application of the transfer pricing rules that came into force on 1 December, 2006 (Article 16 of the Corporation Tax Law).

What is the objective of the legislation?

That the conditions for operations between related parties, connected economically or members of the same group, are established by reference to the conditions that would have been agreed for similar transactions between or with independent parties, understood to be normal market values, so that the members of groups obtain appropriate levels of profitability that will, in turn, prove acceptable for the Spanish Revenue.



Who is affected by the legislation?

The application of the OECD parameters varies between each EU member State. In Spain, the legislation applies for operations between related parties. Related party transactions are understood to include, among others (Article 16.3 of the Corporation Tax Law) those operations between:

- an entity and its shareholders or partners
- an entity and its administrators or directors
- an entity and the spouses of or persons linked to the shareholders, partners, directors or administrators by relationship, direct or collateral, by consanguinity or marriage, up to the third degree
- two entities belonging to the same group
- two entities where one holds an indirect interest in the other of at least 25% of the share capital or the net equity.

How is market value determined?

Market value will be determined by comparative analysis. The circumstances surrounding related party transactions will be compared with those between independent entities or persons that are comparable. The most appropriate transfer pricing methodology will be applied.

The comparability analysis and the information concerning comparable transactions are the factors that determine the most appropriate valuation methodology. Based upon these variables, the methodologies allowed may compare the price of the service or the goods/services, or the profit margin earned by one of the parties to the operation. The methods of Comparable Uncontrolled Price, Resale Price, Cost Plus, Profit Split and Net Margin are accepted.

What are the formal compliance obligations?

The taxpayers carrying out related party transactions have to prepare the documentation that supports the application of the “arm’s length” principle. This must take into account the complexity and the volume of the operations, so that the Spanish Revenue can verify that these have been valued at normal market values, as required by article 16 of the Corporation Tax Law.

There are two sets of documents that have to be prepared:

- the documentation concerning the group to which the taxpayer belongs. This documentation should include, among other matters, the following: a general description of the organisational structure of the group; the type, amounts and flow of the transactions carried out; a general description of the functions, benefits and risks for each of the parties that intervene in the transaction.
- the documentation relating to the taxpayer. This documentation will include, among other questions, the following: the identity of the taxpayer and the related persons or entities involved in the transaction; a comparison analysis leading to the correct application of the transfer pricing methodology; an explanation concerning the selection of the chosen transfer pricing methodology and the details of the range of valuations arising from that methodology.

The documentation will not be required when the consideration of all transactions with the same related party does not exceed the amount of 250,000 euros (market value), nor will be required for small size entities when the total related party operations does not exceed the aggregate amount of 100,000 euros (market value). It should be noted that the obligation to apply market values is applicable in all cases even when there is no obligation to prepare documentation.

When is the documentation needed to be available?

The described documentation covers the related-party transactions carried out by the taxpayer from 19 February, 2009 onwards; and needs to be available by the end of the voluntary period for filing the corporation tax return; notwithstanding this, the tax authorities may ask for the correspondent fair market value analysis for those transactions carried out since 1 December, 2006.

Monetary fines

It is a fiscal offence if a taxpayer provides documentation that is incomplete, inexact or false, or, does not provide any of the required documentation that must be available for the Spanish Revenue concerning related persons or entities. It will also be a fiscal offence if the normal market value that derives from the required documentation is different to the value declared for Corporation Tax, Personal Income Tax or Non-Resident’s income Tax.

The aforementioned offences are classified as “serious” and will attract the following fines:

- when the Spanish Revenue does not have to correct the value of the transactions subject to the tax in question, the fine will be a fixed amount of €1,500 for each piece of information/data and €15,000 for each group of information/data that is omitted, inexact or false. These fines are linked to each of the documentary requirements established by the regulations for each group or for each entity as a taxpayer.
- furthermore, when the Spanish Revenue makes valuation adjustments to the operations subject to the tax in question, the fine will be 15% of the adjustment and the minimum fine will be twice the fine that would result from the application of the preceding section.

In addition, for transactions between a partner/shareholder and an entity, a secondary adjustment has been created. This may result in taxable income for the relevant tax being adjusted for the difference between the value agreed between the parties and the market value, which will be treated as taxable income for the related parties.

What solutions can Grant Thornton provide?

If you would like more information on transfer pricing or advice on satisfying the new requirements, please contact your Grant Thornton service partner or the following specialists from our transfer pricing team:

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