KPMG

Tax & Legal Flash

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The Commissioner for the South African Revenue Service (SARS) warned non-compliant taxpayers last week in a media release that SARS will not tolerate transgressions of South African tax or customs laws.

In addition to VAT and customs, transfer pricing was specifically mentioned as an area of major concern, because "some MNEs engage in aggressive tax planning to create a disconnect between the local activities which give rise to profits and then declare these profits in tax jurisdiction with lower tax rates." The Commissioner specifically pointed out that "[S]ignificant revenue leaves South Africa every year in the form of intra-group services linked to multinational enterprises."

Intra group services rendered to a South African member of a multinational can be considered problematic where the services do not create a benefit for the recipient. This can occur, for example where an independent third party would not have paid for similar services, the fees allocated to the South African group company were not commensurate with the services provided or the profit element charged was not arm's length.

SARS further indicated that transfer pricing risk profiling will be one of the measures to identify and address non-compliance with South African transfer pricing laws. Once an increased transfer pricing risk is identified and an initial request for information issued, the selection of cases for in depth audit and possible criminal action against taxpayers could follow. The Commissioner went on to say that, where warranted, SARS may even go as far as to reverse service charges if the multinational group fails to provide information to support their claims.

KPMG Observation

KPMG in South Africa is aware of several requests for relevant material relating to the receiving of intra group services by a South African member of a multinational groups. These requests for information have been issued by SARS since January 2020 and we advise taxpayers to cooperate with SARS in this regard and provide the information and documentation requested. Furthermore taxpayers should attempt to understand their potential TP risk through the following steps:

- Identify all intercompany agreements;
- Determine whether sufficient documentation exists to support the pricing of those transactions;
- Analyse the pricing of undocumented transactions (if relevant);
- Quantify the potential exposure related to documented and undocumented transactions.

If you have any questions regarding the above, please contact a member of our Transfer Pricing Team:

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