

ALERTA FISCAL

Noviembre 2009

OBLIGACIONES DE DOCUMENTACIÓN QUE RESULTAN DE LA NUEVA REGULACIÓN DE LAS OPERACIONES VINCULADAS

La presente Alerta Fiscal tiene como finalidad recordarles que, de conformidad con la normativa sobre operaciones vinculadas que entró en vigor el pasado 1 de Enero de 2007, todas las entidades deben cumplir unas específicas obligaciones de documentación respecto de las operaciones vinculadas que lleven a cabo, estableciéndose, asimismo, un protocolo de actuación a seguir para realizar el análisis de comparabilidad que resulta necesario a efectos de establecer el valor normal de mercado que habrían acordado personas o entidades independientes en condiciones de libre competencia.

El espectro de operaciones al que abarcan las citadas obligaciones es amplísimo, incluyendo la compraventa de materia prima y productos terminados, servicios de Innovación y Desarrollo, servicios de Innovación Tecnológica, operaciones financieras -tales como prestamos entre sociedades, del socio a la sociedad y viceversa-, cesiones de uso de intangibles, arrendamientos, servicios de apoyo a la gestión, distribución y comercialización, servicios por socios profesionales, servicios de consejeros y profesionales, reestructuraciones empresariales, servicios entre casa matriz y sucursales, etc.

Dichas obligaciones de documentación resultan exigibles desde el pasado 19 de febrero de 2009, estableciendo que el obligado tributario deberá aportar a requerimiento de la Administración Tributaria dos tipos de documentación:

- La correspondiente al grupo al que pertenece el obligado tributario y
- La relativa al propio obligado tributario.

A estos efectos, recordarles que la nueva normativa establece un régimen sancionador propio extremadamente gravoso en el supuesto de que se incumplan las obligaciones expuestas.

En caso de que precise nuestro asesoramiento a fin de determinar si su compañía queda afectada por las referidas obligaciones no dude en ponerse en contacto con nosotros.

Atentamente,

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TAX ALERT

November 2009

**COMPLIANCE OBLIGATIONS ARISING FROM THE
NEW SPANISH TRANSFER PRICING POLICIES**

This communication is intended to remind you that under the new Spanish Transfer Pricing Policies that came into force on January 1st, 2007 and contained in article 16 of Royal Legislative Decree 4/2004, of March 5th, approving the Revised Text of the Corporate Income Tax Law, **Spanish companies, branches and Permanent Establishments of foreign companies acting in Spanish territory are obliged to produce and keep a specific documentation that must be available for the Spanish tax Authorities.** All these compliance obligations entered into force in connection with transactions carried out as from February 19th, 2009.

The transactions falling within the scope of these obligations are extremely wide, covering the sale purchase of raw materials and terminated products, R&D services, IT services, financial transactions - such as loans granted amongst companies, loans granted by shareholders to companies and vice versa -, assignments of intangibles, leases, management support services, distribution & commercialization, services rendered by professional shareholders, services rendered by company director's and professionals, restructuring transactions, services between the mother company and its branches, etc.

The documentation to be provided must refer to the tax period of completion of the transactions and is divided in two different groups as follows:

- Documentation related to the group of companies to which the taxpayer belongs. Such documentation includes a general description of the organisational structure of the group, the type, amounts and flow of the transactions, a description of the functions, benefits and risks for each of the parties involved and the identification of the companies of the group that carry out related-party transactions as long as these affect the transactions carried out by the taxpayer, the group's notes to the financial statements or an equivalent report.
- Documentation related to the taxpayer itself. Such documentation includes the identity of the taxpayer and the related parties involved in the transaction, a comparison analysis and an explanation on transfer pricing methodology applied.

Please bear in mind that the wording of the Law introduces a severe regime of monetary fines determining the penalties to be imposed in case of infringements of the new legislation. In order to avoid any tax contingency in connection with the new measures passed we do recommend seeking the proper tax advice in due course.

Please do not hesitate to contact us should you require further assistance on this matter.

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