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Unilateral agreements as an alternative to mutual agreement procedures?

Dear Sir or Madam,

Digitalisation, Industry 4.0 and globalisation are just some of the significant challenges faced by businesses and that are crucial in determining current and future commercial success. In order to survive against national and international competition, it is necessary even for medium-sized companies in many industrial sectors and the service industry to maintain production, research or marketing units within subsidiary companies and branch offices in several countries outside the country of origin. This means that very different national tax laws must be coordinated in order to avoid double taxation.

This usually happens via the creation of detailed global transfer pricing documentation/guidelines by the parent company, which are supplemented by local transfer pricing documentation fulfilling the relevant legal requirements in the country of residence of the other Group companies.

In order to obtain legal certainty regarding the transfer prices used ahead of time, it is advisable to conduct unilateral negotiations with the individual countries involved for the acceptance of the transfer pricing documentation and to enter into the appropriate transfer price agreements.

Within the context of a company audit, it is also advantageous to actively approach the foreign tax authorities during the auditing process – if unilateral transfer price agreements have not already been reached – in order to strengthen the company’s position with the German tax authorities, or to at least partly compensate for the German audit findings via corresponding alterations to the affected foreign tax assessments.

The advantage of unilateral agreements compared to so-called mutual agreement procedures according to the relevant double taxation agreement is that the taxpayer is able to actively organise negotiations at any time and is not a passive supplier of documents, reliant on the willingness of the participating tax authorities to reach an agreement. Many German double taxation agreements with countries outside the EU do not stipulate an obligation to reach an agreement. This leads to the termination of many mutual agreement procedures, thereby effectively resulting in double taxation of the company concerned.

We are happy to support you worldwide in the creation of transfer pricing documentation and in negotiations with the respective local tax authorities. Please contact us for further information.

Best regards

Michael Samson

The author

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Mr Samson completed his studies in tax law at the FHVR Herrsching as a Diplom-Finanzwirt (FH) in 2011. Mr Samson was subsequently employed as an auditor at the Bavarian Tax Authority in Munich. He was also an expert in new auditing techniques.

In October 2014, Mr Samson moved to a medium-sized international auditing and consulting company in the Ruhr region.

As part of his role, Mr Samson was, between October 2014 and August 2018, head of the tax department of the largest specialist mining company in Germany, which is active all over the world.

After passing his professional examinations as a tax advisor in March 2016, Mr Samson then joined the DORNBACH group in September 2018 as an authorised signatory.

Specialisation
International tax law / Transfer pricing / Fiscal court proceedings / Auditing / Corporate tax law / Customs law / Inheritance and gift tax

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Company presentation

DORNBACH

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