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New guidelines for transfer pricing audits

The new External Audit Regulation (EAR) replaces the previous regulations from 2000 and are designed to modernize and expedite external tax audits. The tax administration should focus even more strongly on matters relevant to tax risks, particularly cross-border intra-group transactions involving transfer pricing issues.

Here are some key points of interest:

Advance agreement

The new EAR permits written agreements between the tax authorities and the taxpayer prior to the start of an on-site audit. These framework agreements establish binding timelines, deadlines, forms of communication, points of contact, and audit priorities, and may also exclude certain areas from the audit.

Random checks

Rather than reviewing each individual business transaction, this approach essentially allows for a more process-oriented audit focus on the transfer pricing system as a whole. Among other things, the auditors can examine responsibilities, documented processes, functional and risk analyses, and the actual implementation of transfer pricing methods.

Request for cooperation and participation

Six months after the audit notice has been delivered a formal request for cooperation may be issued to the taxpayer Failure to cooperate or insufficient cooperation may therefore result in penalties.

Increased involvement of the Federal Central Tax Office (FCTO)

The FCTO will be more closely involved in audit planning at an early stage. This should ensure better coordination and improved audit of international matters. The possibility of conducting a joint audit of internationally affiliated companies remains unchanged.

Partial audit reports and partial final audit notices

Some areas of the audit, such as transfer pricing issues, can be technically concluded separately before the entire field audit is completed. This speeds up the process but also requires early decisions regarding appeals and mutual understanding or advance agreement procedures.

The new EAR also provides that facts must be presented comprehensively in the audit report if an appeal, an advance ruling, an international dispute settlement procedure, or a mutual advance agreement procedure is expected.

Takeaway

Although the new EAR does not establish an explicit right to a process-oriented transfer pricing audit, it does, for the first time, provide a significantly better procedural basis for coordinating the audit's focus, scope, and intensity with the tax authorities already at an early stage.

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