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TRANSFER PRICING AND RELATED PARTY TRANSACTIONS

Spain has recently introduced new measures to prevent tax fraud in relation to the documentation required to ensure that the transactions between related parties and companies have been made at market prices. These rules will generate costs for companies that until now they did not have to assume. Nevertheless, if these requirements are not fulfilled they will have to face considerable penalties. Since 2007, companies have been forced to apply the principle of free competition in so far as related party operations are concerned and, above all, to prove that the relevant market price is applied. Being optimistic, one might consider that the new requirements are a step forward in so far as they provide a strengthening of the legal relationships between the parties.

These costs, in most cases, are inevitable due to the so-called analysis of comparability, a rigorous study of different economic ratios of unrelated competitors in the same industry. This involves searching in databases such as Bureau Van Dijk's Amadeus, if one does not want to be at a disadvantage with respect to the information held by the authorities. The difficulty that surrounds the preparation of this analysis has driven the authorities to grant small companies and individuals, a considerable decrease in the number of documents to be submitted, thereby reducing costs, as established the principles set out by the OECD. According to Tax experts from various Spanish associations these rules and its penalties are too high for SMEs, while acknowledging its utility at an international level in intra-group transactions.

The rule covers exhaustively the agreed prior valuation assessments which until now have provoked mistrust in the provision of certain information to the Authorities. However, those agreements prevent possible problems that may arise in the event of a tax inspection. The Tax Office, in our view, should create the right climate of confidence for companies to follow this previous route of negotiation. This not only reduces the time and effort invested by both sides in a tax inspection but also legal disputes, which ultimately benefits both parties.

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