

Tax  
Insights

# The inevitable arrival of transfer pricing to Puerto Rico

Transfer Pricing has been the long forgotten and avoided sleeping giant in the Puerto Rico Treasury Department (hereon “PRTD”), but make no mistake this giant is finally awakening. While the PRTD has always avoided the implementation of a formal Transfer Pricing policy, by adopting half measures, such as the 51% disallowance of related party expenses and alternative minimum tax on such expenses, recent high profile cases, for example Walmart Puerto Rico vs. Secretary of Treasury, have opened the door and forced the PRTD to finally work on an official Transfer Pricing policy for Puerto Rico.

All over the world, international transfer pricing policies are becoming an everyday business occurrence and it’s about time Puerto Rico joined them. That is why the PRTD is currently evaluating Regulation 8049 to incorporate Articles 1040.09-1 to 1040.09-22 which will effectively grant Puerto Rico businesses with official Transfer Pricing guidelines.

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*The details of the final regulation are yet to be determined, but one thing is clear, transfer pricing is here to stay.*

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It is important to note that the proposed regulation is mostly technical and does not include administrative provisions.

Transfer Pricing rules and regulations vary from country to country, but most are based, in principle, on the Organization for Economic Co-operation and Development (OECD) guidelines. The US, with whom most transactions subject to transfer pricing by Puerto Rico based entities occur, uses Section 482 of the Federal IRC, and related Regulations, as its guidelines for transfer pricing matters, which are substantially similar to the OECD guidelines.

Given Puerto Rico’s history in law-making and on the preliminary draft, we have observed that the Regulation includes portions of Section 482, and also some guidelines from the OECD.

For those who are not familiar with transfer pricing, the main concept of transfer pricing is the “arm’s length principle”, which effectively confirms if transactions conducted between related parties are consistent with third party transactions under the same sets of circumstances.

For your benefit, the following is a very short and summarized explanation of a transfer pricing report:



#### Contact us

For assistance in this matter, please contact us via [maria.rivera@pr.gt.com](mailto:maria.rivera@pr.gt.com), [francisco.luis@pr.gt.com](mailto:francisco.luis@pr.gt.com), [lina.morales@pr.gt.com](mailto:lina.morales@pr.gt.com) or [isabel.hernandez@pr.gt.com](mailto:isabel.hernandez@pr.gt.com)



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Through the **Kevane Grant Thornton business and tax application for mobile devices** you will have access to our Alerts, Tax News and other related matters, plus a customized tax calendar for individuals, businesses and other entities, thus providing an excellent tool to manage filing and payment due dates with government agencies in Puerto Rico.

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In order to confirm if the transactions between related parties are conducted at “arm’s length”, a thorough analysis of the related entities and the transactions among them is required, including the functions performed, risks assumed and assets used. Several methods are available to evaluate comparable companies from a global database, which finally arrive at an acceptable range of net margin or price. If the price agreed by the parties falls over or under the acceptable range, then the PRTD will have basis to disallow the aforementioned price and propose a transfer pricing adjustment towards the median of the range as an acceptable margin or final price.

Keep in mind that any adjustments to the stated price or margin may also affect the income tax calculation if any expenses are decreased or additional income is added, which in turn, may result in an accrual of interest and surcharges on any unpaid balance of the tax liability.

Please watch this space. Once the official Transfer Pricing Regulation becomes effective, we will inform and provide you with a brief summary of the adopted rules.

At Kevane Grant Thornton, we have been developing and implementing a transfer pricing program for the past five years, and are capable of completing transfer pricing reports in full compliance with the OECD and Section 482 guidelines and/or any rules and regulations of the participating jurisdictions, as required.

Our Grant Thornton worldwide network enables us to acquire knowledge regarding any specific transfer pricing requirements from each jurisdiction, and in many cases have the final report reviewed by local professionals which will provide additional insight regarding the full compliance of the report with that country’s requirements, thus providing our clients additional assurance and peace of mind.

**We will discuss this proposed regulation in further detail during our Conference – Tax and fiscal environment in Puerto Rico today, to be held on December 13, 2016.**

**(link invitation)**

**Please contact our Tax Department should additional information regarding this or any other tax issue is required. We will be glad to assist you.**

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