



TAX INSIGHTS

Do I need a Transfer Pricing Study to file my entity's tax return?

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For many years, the Puerto Rico Treasury Department (PR Treasury) has been looking for ways to oversee the amount of expenses that entities in Puerto Rico get charged or allocated by related entities outside Puerto Rico. In Puerto Rico, it is very common to have entities operating here as subsidiaries or branches of foreign entities, where the Parent Company or Home Office is in the United States or elsewhere.

PR Treasury, as do most countries' Tax Authorities, has embraced the use of Transfer Pricing rules to ascertain the reasonability of those intercompany charges.

Any entity operating in Puerto Rico that has expenses paid or accrued to a related party outside of Puerto Rico, will be subject to a 51% disallowance of such expenses, unless it has a transfer pricing study, in which case it could deduct 100% of the expenses, if reasonable, so long as it paid the corresponding sales and use tax to the PR Treasury related to nonresident services received. Not any transfer pricing report is valid for these purposes, the study must comply with various requirements established in the Puerto Rico Internal Revenue Code of 2011, as amended.

The requirements are as follows:

- (1) the study must be prepared following Section 482 of the United States Internal Revenue Code of 1986, as amended, and related regulations,
- (2) it must include the Puerto Rico operation, and

(3) it must be completed by the time of filing the entity's tax return.

The purpose of the study is to show that the intercompany charges comply with transfer pricing rules and are arm's length. In other words, that these charges are what an unrelated entity would charge the Puerto Rico operation for similar services.

The PR Treasury has issued Form AS 6175 Certification of Compliance with Sections 1033.17(a)(16) and (17) of the Puerto Rico Internal Revenue Code of 2011, as amended, Transfer Pricing Study Availability (Form 6175).

This form must be filed with the Puerto Rico income tax return, by entities that are deducting intercompany charges, to certify that the entity has a transfer pricing study in place. It also certifies that the study was issued before filing the tax return, that it includes the Puerto Rico operation, and that it was prepared in accordance with Section 482 of the United States Internal Revenue Code of 1986, as amended. The form also requires the name of the firm that prepared the study. When the tax return is filed, Form 6175 must be uploaded through Suri (PR Treasury's electronic platform) to be able to take the full deduction of expenses paid or accrued to related entities outside of Puerto Rico.

If you need assistance evaluating your intercompany transactions, do not hesitate to contact us. We have a team with vast expertise in this area who are ready to assist you.

As always, we are committed to keeping you up to date with all tax-related developments. Please contact our Tax Department for additional information regarding this or any other tax issue. We will be glad to assist you.

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