

Tax and Legal Newsletter

Ukrainian Parliament changes transfer pricing legislation

On 15 July 2015 the Parliament of Ukraine adopted the draft Law №1861 dated 27 January 2015 "On Amendments to the Ukrainian Tax Code (regarding Transfer Pricing Control)" ("the Law").

The Law is yet to be signed by the President and shall enter into force on the day following its publication. The amendments provided for by the Law will apply to controlled transactions for the entire 2015.

Below we provide an overview of key changes introduced by the Law.

Changes in the value threshold for controlled transactions

The value threshold for the recognition of transactions as controlled has been increased and the wording has been made clearer. The Law provides for recognizing transactions as controlled if both of the following criteria are met:

- ▶ The annual taxpayer's revenue exceeds UAH 50 million for the corresponding tax year;
- ▶ The volume of such transactions of the taxpayer with each counterparty exceeds UAH 5 million for the corresponding tax year.

Changes in the penalties

The nondisclosure of any controlled transactions in the TP report will result in a penalty of 1% of the amount of undisclosed transactions (instead of 5% currently) but not more than 300 minimum wages for all undisclosed transactions (there is no celling currently).

However, penalties for failure to file a TP report have increased and shall expose a taxpayer to a fine of 300 minimum wages (instead of 100 minimum wages currently).

Penalties for failure to submit TP documentation remain unchanged (therefore, shall result in a fine of 3% of the amount of affected controlled transactions but no more than 200 minimum wages).

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VAT was excluded from the scope of TP control

The inconsistencies in the wording of the Tax Code in the context of the TP control over VAT were removed. The VAT is outside the TP control.

Special TP rules for commodity transactions

The CMU shall approve a list of commodities, transactions with which shall be tested by the comparable uncontrolled price (CUP) method on the basis of commodity exchange prices. Now, the Tax Code of Ukraine only prescribes the approval of commodity exchanges list for the purpose of this method.

In addition, the procedure for applying the CUP method for goods traded in the commodity exchange has changed. The Law provides for the calculation of the arm's length range according to the general principles based on the prices of such goods, prevailing on the commodity exchange over the 10 day period preceding the performance of the controlled transaction (instead of calculating the simple average price). Also, the list of comparability factors to be considered when applying this method has been supplemented with the "qualitative characteristics" criterion (i.e. adjustments for differences in quality of goods became possible)

TP control over regulated prices

The Law narrowed the exemption from the TP control for prices of goods which are subject to government regulations. The exemption does not allow now to cases where minimal and *maximal* or indicative sale prices are established. These goods will be subject to the TP control, but the arm's length price shall not be less (greater)

than the minimal (maximal) price respectively as prescribed by the government price regulations.

The list of Profit Level Indicators

The Law has introduced a list of Profit Level Indicators (PLIs) that can be tested under 2-5th TP methods. This list is similar to the one applicable in 2013-14 and defines Gross Profit Margin, Gross Return on Costs, Operating Margin (ROS), Total Cost Mark-Up (ROTC), Berry Ratio, Return on Assets (ROA) and Return on Capital Employed (ROCE) indicators. The list is not exclusive and the taxpayer is allowed to use other economically justified ratios.

Other changes include but are not limited to:

- ▶ The obligation to submit the information on controlled transaction in the annex to the CPT return has been excluded;
- ▶ Sub-paragraph 39.2.2.8 of Article 39, comprising limits of 5% influence on price by difference in characteristics of goods within the set standards, has been excluded.
- ▶ The deadline for submission of additional information on controlled transactions in case of request from the supervising authorities has been extended to 30 days (instead of 10);
- ▶ The period of limitation for auditing the completeness of accrual of tax liabilities arising from controlled transactions of 7 years has been retained (the Parliament of Ukraine has not accepted the amendment concerning the reduction of this period to 3 years).

We will continue monitoring the developments and will inform you on further changes in tax legislation.

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