

Ukraine:

Scope of transfer pricing rules broadened and clarified

Amendments to Ukraine's transfer pricing rules that became effective on 1 January 2017 increase the monetary threshold for a transaction to be deemed a controlled transaction, extend the types of transactions that are considered controlled transactions and modify the penalties for transfer pricing reporting infractions. The new rules also codify certain criteria previously used in practice.

The following are the significant changes to the transfer pricing regime:

- The threshold for a transaction to be considered a controlled transaction is met where (i) the taxpayer's total income from all transactions exceeds UAH 150 million (increased from UAH 50 million); and (ii) the total of all transactions with one counterparty exceeds UAH 10 million (increased from UAH 5 million).
- The types of transactions subject to the transfer pricing rules now include all of the following transactions with nonresidents:
 - Related-party transactions, including those that involve independent intermediaries with no substantial functions (these transactions also were covered by the previous rules);
 - Transactions involving the sale or purchase of goods and services through nonresident commission agents (the previous rules covered only the sale of goods);
 - Transactions with nonresidents from low-tax jurisdictions, based on a list of such jurisdictions published periodically by the Cabinet of Ministers of Ukraine (CMU); this provision covers transactions with counterparties registered in a jurisdiction that has a corporate income tax rate at least five percentage points lower than Ukraine's rate (i.e. a rate below 13%), as well as transactions with residents of such jurisdictions (regardless of whether the entity is registered there); and
 - Transactions with nonresidents in specified organizational legal forms that do not pay corporate tax or are not tax residents of the country where they are registered. The list of relevant legal forms will be issued by the CMU.
- If information on comparable transactions is not available, a taxpayer can use the financial data of comparable companies in calculating the market margin range, provided the comparable company (i) carries out activities and functions comparable to the taxpayer's controlled transactions; (ii) does not hold more than 20% of (and/or is not more than 20% held by) another legal entity; and (iii) does not have losses in more than one reporting period. Some of these criteria previously were used in practice, but not codified.
- In making a self-initiated adjustment (self-initiated adjustments are allowed, provided they do not lead to a reduced tax liability), the taxpayer can calculate its tax liabilities based on the minimum/maximum level of the arm's length price range where there is a deviation from this range; however, during an audit, the tax authorities will make the adjustment based on the median of the arm's length range (which may be less advantageous for a taxpayer). In the previous version of the rules the median was used for both self-initiated adjustments and adjustments made by the tax authorities.
- The deadline for submitting the report on controlled transactions is now 1 October of the year following the reporting period (previously, the deadline was 1 May following the reporting period). As a result, the report on controlled transactions carried out in 2016 must be submitted to the tax authorities before 1 October 2017.
- The penalty regime for failure to comply with the transfer pricing reporting rules is modified.

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