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News Flash

July, 2015

Transfer pricing 2015

How to deal with the new regulations in Ukraine?

In 2015 Ukraine introduced new procedure for transfer pricing reporting

The taxpayers (except the National Bank of Ukraine), which during the reporting period carried out controlled operations required to submit information on the implementation of the controlled transactions along with filing corporate income tax return (Annex to the tax return). The taxpayers whose amount of the controlled transactions with a single counterparty is over 5 million hryvnia (excluding VAT) are required to submit an additional report on controlled transactions **before May 1 of the year,** following the fiscal year, by electronic means in soft copies. The Report layout for controlled operations shall be established by the central executive authority.

Submission of report on controlled transactions

The taxpayers engaged in the controlled transactions shall keep and maintain documentation on transfer pricing. At the request of the central executive authority, the taxpayer within one month from the date of receipt shall submit documentation on specified controlled operations, mentioned in the request. The request shall be sent no sooner than May 1st of the year coming after the calendar year in which this controlled transaction(s) has been carried out.

According to the Tax Code the reporting period is the calendar year. If the taxpayer fails to submit report and/or mandatory documentation on the controlled transactions carried out during the year, or fails to include to this report information on all controlled transactions implemented during the reporting period, he shall be obliged to pay a fine:

- 100 amounts of the minimum salary set by the Law as of Jan 1 of the fiscal (reporting) year – if fails (delays) to submit report on controlled transactions;
- 5% the amount of the controlled transactions which were not declared in the report;
- 3% the amount of the controlled transactions for which the corresponding documentation has not been filed but not more than 200 amounts of the minimum salary for all undeclared controlled transactions.

Definition of controlled transaction

According to the current legislation the controlled transactions are:

1. business transactions influencing taxable item of the party (parties) of such transactions being carried out by taxpayers with the related parties – non-residents;
2. business operations on sale of goods through commercial agents – non-residents;
3. business transactions affecting the taxable item of the taxpayer, one party of which is a non-resident registered in the state / territory included into the list of states /territories adopted by the Cabinet of Ministers of Ukraine. Specifying the mentioned list the Cabinet of Ministers takes into consideration the following criteria:

- states / territories where CIT rate 5 and more percentage point lower than in Ukraine;
- states / territories which do not disclose publicly information on ownership structure of legal entities;
- countries with which Ukraine has not signed international treaties providing interchange of information.

The list of such states / territories is disclosed publicly every year in the official publications and on the official webpage indicating the CIT rates. The information on the change of tax rates is published during three months from the date of change.

In May 2015, the Cabinet of Ministers of Ukraine updated the list of countries the trade transactions with which is subject to special tax control. As stated in the executive order No.449 published on the Cabinet's web-portal over 70 countries included into this list. Apart from island offshore countries the list includes also a number of European countries – Austria, Andorra, Bulgaria, Bosnia and Herzegovina, Ireland, the Spanish Canary Islands, Cyprus, Kosovo, Liechtenstein, Luxembourg, Macedonia, Malta, Moldova, the autonomous region of Madeira (Portugal), San Marino, Montenegro, Switzerland. The Middle East and Asia - Qatar, Bahrain, Brunei Darussalam, a special region of China Hong Kong Special Region of China Macao, Morocco, UAE, Singapore. Republic of the Caucasus and Central Asia - Georgia, Kyrgyzstan, Turkmenistan, Uzbekistan. Countries in Africa - Liberia, Lebanon, Lesotho, Sudan and South America, Panama, Paraguay and Jamaica. It is worth noting, that upon the decision of the Cabinet of Ministers which comes into force from August 1, 2015 Austria shall be excluded from this list of offshore countries.

Identifying criteria for controlled transactions

Business transactions shall deemed to be controlled ones if they meet both following conditions:

1. total volume of income of the taxpayer and / or his related parties from all kinds of activities taken into account when defining the item subject to corporate income tax is over 20 million UAH for the corresponding fiscal calendar year;

2. volume of the group of the mentioned business transactions of the taxpayer and / or his related parties with single counterparty is over 1 million UAH (excluding VAT) or 3% of income taken into account when defining the item subject to CIT of the taxpayer for the corresponding fiscal (reporting) year.

Transfer pricing documentation details

«Transfer pricing documentation» (a set of documents or a single document), is prepared in optional form and shall contain the following information:

a) data on related parties, namely

- counterparty / counterparties of the controlled transaction;
- persons who directly / indirectly own corporate rights of the taxpayer in the amount of 20 percent or more. The data should enable identification of such related parties (including the name of the state / territory) where these persons are residents.

b) general description of the group (including parent company and its subsidiaries), as well as the organizational structure of the group, description of business activities of the group, transfer pricing policies;

c) description of the transactions, conditions for their implementation (price, time frames and other specific terms set by the legislation of Ukraine binding for agreements (contracts);

d) description of goods (works, services), including physical characteristics, quality and reputation in the market, the country of origin and the manufacturer, trademark and other information related to the quality characteristics of the goods (works, services);

e) conditions and terms for settlements in transactions;

f) factors affecting pricing;

g) information about the related parties, which are parties of the controlled transaction, about the assets used by them relating to the controlled transaction and economic risks which these parties considered when implementing the controlled transaction;

h) economic analysis, including methods used to determine the conditions of controlled transactions and justification of the reasons for choosing the appropriate method; the amount of revenue / profit and / or amount of the costs incurred / loss as a result of the controlled transaction, the level of profitability; calculation of the market price range (profitability) for the controlled transaction describing approach to the selection of the comparable transactions, the sources of information used for determination of conditions of the controlled transaction;

i) results of the comparison study of commercial and financial conditions of the transaction;

j) information on the carried out by the taxpayer independent or proportionate adjustment of the tax base and tax amounts.

According to the norms of the Tax Code profitability ratio for the purposes of transfer pricing shall be defined based on the accounting data and financial statements displayed under the national accounting standards or international standards in accordance with the accounting standards and financial reporting used in Ukraine, with a corresponding adjustment to ensure comparability.

The analysis of the functions performed by the parties when determining comparability commercial and / or financial conditions of transactions with the conditions of controlled and uncontrolled transaction can be carried out taking into account the tangible and intangible assets being at disposal of the parties to the transaction and used to generate income.

Transfer pricing methods

One of the following five methods can be used to find out that the conditions of the controlled transaction follow through with the arm's length principle:

1. Comparable uncontrolled price method
2. Resale price method
3. Cost-plus method
4. Transactional net margin method
5. Profit split method

Comparable uncontrolled price method is based on comparing the price applied during the controlled transaction with the price (price range) in comparable uncontrolled transaction(s). When applying the comparable uncontrolled price method the price of the controlled transaction is compared with the price of the comparable uncontrolled transactions actually carried out by the taxpayer or other parties. Comparison of the price of the controlled transaction with the price (price range) of the comparable uncontrolled transactions is performed based on the available information about prices applied during the analyzed period or information for the nearest date before the day of uncontrolled transaction implementation.

Resale price method provides the comparison of the result of resale received by the buyer of goods in the controlled transaction from the resale of goods in uncontrolled transaction, with the result of resale received in the comparable uncontrolled transaction of purchase and transactions of resale.

Cost-plus method consists of the comparison of the allowance for expenses incurred directly or indirectly while delivering goods (services, works) in the controlled transaction, with the allowance for expenses incurred directly or indirectly while delivering goods (services, works) in the comparable uncontrolled transaction.

Transactional net margin method compares the net profit margin based on the relevant base (costs, sale, assets) received by the taxpayer in the controlled transaction with the net profit margin based on the same base in the comparable uncontrolled transaction.

Profit split method provides allocation of the share of total income (or loss) received from the transaction to every related enterprise participating in this controlled transaction, which unrelated enterprise could obtain form participation in the comparable uncontrolled transaction. If the parties of the controlled transactions whose total profit is subject to distribution maintain accounting records and financial statements based on different accounting forms and methods, for the purposes of profit split method accounting and financial statements shall be brought in line with the single methodological accounting principles. The profit between the parties of the controlled transactions is distributed based on the assessment of their contributions into total income in accordance with the criteria based on the unbiased evidence and supported by the information in the comparable transactions and/or the internal data of the parties of the controlled transactions with account of the implemented by each of them functions used during the controlled transactions of assets and incurred economic (commercial) risks related to such implementation.

How we can help?

Our full-range transfer pricing services have been established based on our international background, high level of professional knowledge and practical experience. Therefore we are able to support you not only with the review of intra-group transactions and preparing the required documentation, but also offer full assistance with the planning and implementation of new internal transfer pricing policies within the local legal deadlines. Moreover, we will offer you full assistance during audits from tax authorities.

Contact us

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About Accace