### 2015 Transfer Pricing Ukraine Overview

#### Regulation

<table>
<thead>
<tr>
<th>Arm’s length principle</th>
<th>Yes. Starting from 01/01/2015 the arm’s length principle is applicable</th>
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#### Legislation

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#### Applicable regulations or administrative guidance

(Regulation = secondary legislation, Administrative guidance = other than Law and Regulations)

- The Resolution of the Cabinet of Ministers of Ukraine (CMU) dated 02.10.2013 No.749 “On approval of the percentage price range for certain commodity items under Ukrainian classification of import-export goods for transfer pricing purposes”;
- The Resolution of the CMU dated 04.06.2015 No.381 On “Procedure of calculation of the price range (profitability) and the median of such range for transfer pricing purposes”;
- The Resolution of CMU dated 17.07.2015 No.504 “On approval of the procedure for coordination of prices in the controlled foreign transactions, which is the base for agreements of bilateral or multilateral nature for transfer pricing purposes”;
- The Order of CMU dated 23.10.2013 No.865-p “On the list of specialized commercial publications for transfer pricing purposes”;
- The Order of CMU dated 23.10.2013 No.866-p “On approval of the list of information sources about market prices for transfer pricing purposes”;
- The Order of CMU dated 16.09.2015 No.977-p “On approval of the list of countries (territories) that meet the criteria established in subsection 39.2.1.2 subparagraph 39.2.1 paragraph 39.2 of Article 39 of the Tax Code of Ukraine”;
- The Order of the Ministry of Revenues and Duties dated 11.11.2013 No.669 “On approval of the form and the Order for the controlled operations statement”

#### Controlled parties

According to the Ukrainian legislation, the related parties are legal entities and/or individuals relations between which can impact on the conditions or economic effects of their business activity or the activity of the persons they represent considering the following criteria:

For legal entities:

- one legal entity directly and / or indirectly (through related parties) owns corporate rights of another entity in the amount of 20% or more;
- the same legal entity or individual directly and / or indirectly owns the corporate rights in each such legal entity in the amount of 20% or more;
- the same legal entity or individual makes a decision regarding the appointment (election) of a sole executive body of every such legal entity;
- the same legal entity or individual makes a decision regarding the appointment (election) of 50% or more of the collegial executive body or supervisory board of every such legal entity;
- at least 50% of the collegial executive body and/or supervisory board of each legal entity is composed of the same individuals;
- the sole executive bodies of such legal entities are appointed (elected) by decision of the same person (the owner or authorized body);
- the legal entity has the right to appoint (elect) the sole executive body of such legal entity or to appoint (elect) of 50% or more of its collegial executive body or supervisory board;
- the total amount of all loans, repayable financial assistance provided by one legal entity and / or loans, repayable financial assistance provided by others legal entities, guaranteed by one legal entity in relation to another legal entity exceeds its own equity by more than 3.5 times (for financial institutions and companies which conduct exclusively leasing activity - more than 10 times)

For individuals and legal entities:

- the individual directly and/or indirectly (through related parties) owns corporate rights of legal entity in the amount of 20% or more;
- the individual has the right to appoint (elect) a sole executive body of such legal entity or to appoint (elect) at least 50% of its collegial executive body or supervisory board;
- individual conducts the powers of a sole executive body in such legal entity;
- the total sum of all loans, repayable financial assistance provided by the individual to legal entities and / or any other loans, repayable financial assistance provided by other individuals to the legal entities which are under the guarantees of such individual exceeds the amount of its own equity by more than 3.5 times (for financial institutions and companies which conduct exclusively leasing activity - more than 10 times) For individuals - husband (wife), parents (including adoptive parents), children (adults / minors, including adopted), and siblings fully and bot fully relative by blood, guardians, child under guardianship.
### TP documentation requirements

Transfer pricing documentation (set of documents or a sole document made in free form) should contain the following information.

**Data on related parties, namely:**

- counterparty (counterparties) of the controlled transactions;
- persons directly (indirectly) owing the taxpayer’s corporate rights in the amount of 20% or more.

This data should give the possibility to identify such related persons (including country (territories) of residence of the related persons):

- general description of the activity of the group of companies (including the parent company and its subsidiaries/branches), including the ownership structure of the group of companies, transfer pricing policy of the group of companies;
- description of transactions, its implementation conditions (price, terms and other mandatory terms of the agreements set by the Ukrainian legislation);
- description of goods (works, services), including physical characteristics, quality and reputation in the market, the country of origin and manufacturer, the presence of a trade mark, and other information related to the quality characteristics of the goods (works, services);
- terms and conditions for transactions implementation;
- factors (indicators) that affect formation and pricing;
- information on the functions of the related persons that are parties of the controlled transaction, the information on used assets associated with such controlled transaction, and economic (commercial) risks that were considered by the parties during the conducting of such controlled transaction (functional analysis and analysis risks);
- economic analysis, including methods used to determine the conditions of the 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;
- results of the comparative analysis of business transactions and financial conditions under the principals of the comparison of the commercial and financial conditions of the transactions;
- information on the independent or proportional adjustment of the tax base and tax amounts made by the taxpayer (if any).

### Subjects obliged to keep the documentation

The taxpayer that conducts transfer pricing transaction is obliged to maintain and keep documentation.

### Penalties

The current UA legislation provides the penalties for the failure to submit the report and/or the documentation on the carries out controlled transactions during a year or not displaying the information about all performed controlled transactions during a year in the following amount:

- for the failure to submit report or delay with the deadlines for submission
- 300 minimal salaries set as of January 1st of the reporting (fiscal) year (as of 28/09/2015 17 151 EUR)
- 1% of the amount of the undeclared controlled transactions, but no more than 300 minimal salaries (as of 28/09/2015 17 151 EUR) for all undeclared controlled transactions;
- 3% of the amount from the controlled transactions related to which the documentation was not submitted to the tax authority, but no more than 200 minimal salaries (as of 28/09/2015 11 434 EUR) for all controlled transactions performed during current year.

### Language

The documentation related to transfer pricing should be made in Ukrainian. If the documentation contains the documents in foreign languages the taxpayer is obliged to provide the tax authorities with the translation into Ukrainian.

### Simplification measures in place

The UA legislation does not provide any simplification measures.
The UA legislation indicates categories of the controlled transactions, which are as follows:

- transactions that affect the object of taxation of the parties (parties) of transactions carried out by taxpayers with related parties - non-residents
- transactions related to the goods sales through commissionaire - non-residents
- transactions with non-residents registered in the country from the list set by the Cabinet of Ministers of Ukraine
- transactions recognized in written or non-written, in particular, but not limited: transactions with goods (e.g. raw stuff, final product etc.), transactions on rendering of services

Business transactions shall deemed to be controlled if they meet both following conditions at the same time:

- the annual income of the taxpayer from any activity defined by accounting rules, more than 50 million (without indirect taxes) for the relevant fiscal (reporting) year;
- the volume of the taxpayer's transactions with each counterparty, determined by accounting rules, exceeds 5 million (net indirect taxes) for the relevant fiscal (reporting) year.

The calendar year is considered as reporting period for transfer pricing purposes. The taxpayers, which have the volume of the controlled transactions with one counterparty in the amount that exceeds 5 million UAH (excluding VAT) are obliged to submit the report on the controlled transactions to the tax authority before May 1st after the reporting period.

The following transfer pricing methods can be applied based on the principle the most advisable for the certain case:

- Comparable uncontrolled price method
- Resale price method
- Cost-plus method
- Transactional net margin method
- Profit split method

The taxpayer is allowed to apply one of the set methods.

The big taxpayers (legal entity which has the revenue for the last 4 consecutive fiscal (reporting) quarters in the amount that exceeds 500 mln. UAH (as of 28/09/2015 20 743 445 EUR) or the total amount of the paid taxes to the state budget for the same period exceeds 12 mln UAH (as of 29/09/2015 497 843 EUR) have the possibility to conclude an advance pricing agreement (APA) with the State Fiscal Service of Ukraine. The duration of the advance pricing agreement cannot exceed 3 calendar years.

The procedure for APA formation specifies 2 possible steps: - advance consideration of the advisability of price coordination procedure (take place only based on the taxpayer’s request) - application for price coordination procedure. In addition to the mentioned above application form the taxpayer is obliged to submit the following list of documents:

- transfer pricing documentation
- description of current tax disputes concerning the subject of coordination (if available)
- description of the impact of the Double Tax Treaty Agreement (Convention) between Ukraine and the foreign country, the tax residence of the counterparty in a controlled operation, in terms of coordination (if any agreement (convention))
- the analysis result of the possible impact on the coordination of contract prices on the amount of tax liabilities of the controlled transaction parties;
- copies of documents confirming the fact of the application on the prices coordination procedure (if any) by the controlled transaction counterparty with the authorized foreign state agency in the country of the residence of the counterparty;
- a copy of the document confirming the authority of the representative (representatives) of the taxpayer that is (that) will (take) part in the process of the prices coordination;
- copies of the taxpayer’s statutory documents;
- accounting data and financial statements of the taxpayer for the previous reporting (fiscal) period (year);
- the document proving the residence of the party - non-resident;
- suggestions on procedure, submission deadlines and list of the documents which confirm the taxpayer's compliance with the price coordination procedure;
- other documents necessary for price coordination procedure upon the taxpayer’s point of view

The UA legislation does not specify any fee for the price coordination procedure.
Contact us for more about transfer pricing in Ukraine!

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