

Legal Update – 7 September 2015

TRANSFER PRICING AMENDMENTS

On August 13, 2015, the Law “On Amendment of the Tax Code of Ukraine Regarding Transfer Pricing” dated July 15, 2015 (the “Law”) came into effect.

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- The Law rules out the possibility to use transfer pricing for the purpose of charging VAT.
 - Controlled transaction criteria were amended to provide for the following criteria that shall be simultaneously met:
 - a taxpayer’s annual income from any activities, recognized under the accountancy requirements, exceeds **UAH 50,000,000** (after indirect taxes) for the respective tax (reporting) year (*previously, this amount was UAH 20,000,000, and included the income of both the taxpayer itself and its associated persons*);
 - the volume of such business transactions of a taxpayer with each counterparty, recognized under the accountancy requirements, exceeds **UAH 5,000,000** (after indirect taxes) for the respective tax (reporting) year (*previously, this amount was UAH 1,000,000, and included the transactions of both the taxpayer itself and its associated persons*).
- The criteria for recognizing transactions as complying with the “arm’s length” principle were established.
- The financial ratios were specified, which are the basis for determining compliance of a controlled transaction with the “arm’s length” principle when establishing the profitability level of controlled transactions.
- The time limit for providing information to substantiate the compliance of the controlled transaction conditions with the “arm’s length” principle was extended from 10 to 30 calendar days.
- The number of reasons triggering the inspection of controlled transactions has been reduced, now including:

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- a notice on the detection of controlled transactions during customs control, sent by the controlling authority to the central executive authority implementing the state tax and customs policy;
- based on the controlled transaction monitoring results, detection of non-compliance of the controlled transactions with the “arm's length” principle;
- a taxpayer's failure to submit, or submission with violation of the requirements, of the controlled transaction report or transfer pricing documents.

Excluded from the list of reasons that trigger inspection was *receipt from a taxpayer of the controlled transaction report, as well as receipt of documented information and data demonstrating non-compliance of the controlled transaction with the “arm's length” principle.*

- The amounts of penalties for the violation of transfer pricing legislation was changed.
 - penalties for failure to submit (or untimely submission) a controlled transaction report were increased from 100 minimum wages to 300 minimum wages, as established as of January 1 of the tax (reporting) year;
 - penalties for failure to include information on controlled transactions in the report have been reduced from 5% of the amount of controlled transactions not declared in the submitted control transaction report to **1%**. Moreover, their maximum amount has been limited to **300 minimum wages**, as established as of January 1 of the tax (reporting) year.

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