

## 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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