

Overview of Russian Transfer Pricing Rules

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- A new piece of Russian transfer pricing legislation came into force starting from 2012
- New TP dramatically changed the old legislation (so called article 40 of the Russian Tax Code) and made current TP rules very close to OECD standards

• What has changed:

- New criteria for dependent persons
- Changed list of controlled transactions
- New TP methods together with their application guidelines
- Symmetric adjustments
- TP documentation and Advance Pricing Agreements
- Special tax control features

- Main tests:
 - Participation test (direct / indirect) 25 % and more (art. 105 p. 2 sb. 1 3, 10)
 - Power to elect test -50 % and more of elective body (art. 105 p. 2 sb. 4-5)
 - Governance test (art. 105 p. 2 sb. 6 8)
 - Subordination test (art. 105 p. 2 sb. 10)
 - Relatives test (art. 105 p. 2 sb. 11)
- Self disclosure option (art. 105 p. 6) in case no formal criteria exists
- Recognized dependency (art. 105 p. 7) a court may find that parties are related even if parties do not meet formal criteria. Preconditions: 1) deal is not at arm's length and 2) one party have factual ability to influence other party's business decisions

- Domestic transactions between related parties, if meet any from the following criteria:
 - Incomes from transaction exceed 1 Billion RUR (3 Billion RUR for 2012 / 2 Billion RUR for 2013)
 - Party to the transaction pays mineral extraction tax at an interest rate + income under transaction should exceed 60 Mio RUR
 - Party to the transaction applies special tax regimes: single agricultural tax, single tax on imputed income + income under transaction should exceed 100 Mio RUR
 - Party to the transaction applies special tax regimes: single agricultural tax, single tax on imputed income + income under transaction should exceed 100 Mio RUR
 - Party to the transaction is exempt from corporate profit tax or enjoys CPT at 0 rate + income under transaction should exceed 60 Mio RUR
 - Party to the transaction is a resident of special economic zone + income under transaction should exceed 60 Mio RUR (applies starting from 2014)

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- All foreign transactions between related parties, irrespective of other deal parameters
- Transaction between unrelated parties:

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- If carried out through an intermediary with no functions, assets and risks
- Cross border transactions in respect to commodities of world stock-trading, specifically crude oil or derivatives thereof; ferrous and non-ferrous materials; mineral fertilizers; precious metals and stones (income under transaction should exceed 60 Mio RUR)
- If a party to a transaction is a resident of a jurisdiction included in the Russian Ministry of Finance black list



- Practice change: application irrespective of the transactions' subject
 - Loan obligation
 - IP rights and royalties
 - Shares and other property right (claims)
- TP rules do not apply to stocks and financial instruments due to existence of special rules which apply irrespective of parties dependency – expecting for future changes

- Obligation to notify tax authorities on controlled transactions
- Content of notification:
 - subject of transaction and codes thereof (TN VED, OKP, OKVED);
 - country of origin;
 - shipping and delivery address as well as delivery basis;
 - parties of transaction;
 - amount of income received;
 - quantity and price for unit;
- Submission of notifications till May 20th (November 20th for 2012 transactions)
- Income thresholds for 2012 (100 Mio RUR) and 2013 (80 Mio RUR)

- Methods:
 - Comparable price transaction (old) priority method
 - Resale Price (old) priority for distribution subsidiaries or related parties
 - Cost Plus (old)
 - Transactional net margin method (new)
 - Profit split (new)
 - Or Independent appraisal
- No safe harbor 20 % corridor (price interval / margin interval)

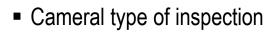


- Old concept of official information does not apply
- New concept only publicly available information
- Source priority
 - 1) Local and foreign exchanges; custom statistics; official information from state and municipal authorities; information and rating agencies; taxpayers' transactions
 - 2) Public editions and information systems; officially available financial and statistic reporting; appraisal reports and any other information used in accordance with section 14.3. of the Russian Tax Code (TP methods)
- Tax secrecy information wrong source for TP purposes
- Court has right to consider any other TP relevant facts avoidance of priority rules



- Obligation to submit TP documentation upon request of tax authorities in order to support transfer prices
- TP documentation may be requested (claimed) from taxpayer not earlier than June 1st of the following tax year
- Do not apply if:
 - APA is concluded;
 - Regulated prices;
 - Transactions with shares and other financial instruments





- Limitation period: Starts not later than 2 years from notification of CT
- Depth: standard 3 years
- No both side inspections
- Duration: 6 months; maximum extension 21 months
- Special Liability: 40 % from the amount of underpaid tax
 - Not applicable for 2012- 2013
 - 20 % for 2014 2016



- Tax base adjustments for both parties of controlled transaction
- Available:
 - Only upon execution of TA resolution
 - Only under a special notification from TA
 - The amount of adjustment is undisputable unless TA resolution is challenged

- Available only for major taxpayers
- Protects from tax accruals
- Protects from legislative changes
- APA deals with:
 - type of transactions under control;
 - methods;
 - sources of information;
 - documents exchange
- Maximum duration period 3 years
- Termination for cause (taxpayers' breach) may be challenged in court

THANK YOU FOR YOUR ATTENTION!

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