

Transfer pricing: problems and prospects of implementation

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The article investigates the essence of transfer pricing and perspectives of its implementation in Ukraine. Researched the alterations to legal and legislative documents, which regulate this issue; in particular, considered the latest alterations to the Art. 39 of the Tax Code of Ukraine.

Implementation of the tax reform and alterations to the Tax Code of Ukraine made a lot of alterations to the issue of transfer pricing, which substantially influences the determination of the value of taxable income by economic entities.

The latest alterations to the Art. 39 of the Tax Code, which properly regulates the transfer pricing, were amended by the Law №72 and the Law №609. Regulations of these laws essentially changed the definition of main terms, which are concerned to the controlled operations and the criteria of admission of operations as controlled.

Revealed the essence and features of implementation of such a new notion for the native practice as an “arm’s length principle” and the methodology of determination of transfer prices in accordance with this principle. The principle of “arm’s length” is a standard, according to which prices on agreements between interdependent persons should display the conditions that would take place between independent enterprises. On the whole, the main idea of this principle is an attempt to compare operations (uncontrolled and controlled) from the point of view of tax benefits, advantages (or disadvantages), which they create.

Criteria of controlled operations in accordance with the requirements of the national legislation are determined.

The order of recognition of the operation as controlled can be the following:

1. If the value of enterprise’s income (except indirect taxes) from its all activities exceeds 50 bln. hrn., it is necessary to determine status and character of your contractors:

- whether they belong to non-residents and whether such non-residents:
- are connected persons;
- non-residents with law-tax jurisdiction?
- whether you contractors are mediators in operations with connected persons-nonresidents?

2. Then it is necessary to verify the volume of a transaction in the accounting year separately for each of the contractors, namely: whether the volume of a transaction exceeds 5 bln. hrn. in the accounting year for each separate contractor?

In case if the same contractor participated in purchasing as well as sales, the sum volume of transactions is included.

3. Then it is necessary to verify the character of the operations:

- whether such operations influences the volume of taxation of enterprise by income tax?
- whether such operations are operations for product sales through the nonresident-commission agent?

Revealed features of criterion of persons’ connectedness with the purpose of recognition of operations as controlled.

Sampling of prices on comparable operations given in ascending order is used for determination of price range for transfer pricing. The appropriate mechanism is determined by the Order of calculation of price range (profitability) and median of such a range for transfer pricing.

Ukraine actively adopts the experience of neighbor countries and implements into life the recommendations of OECD on transfer pricing. Owing to it Ukraine realizes an opportunity to protect its economical interests, to fill the budget and to improve country's image as a whole.