

New Transfer Pricing Rules in Ukraine

On 4 July 2013 the Parliament of Ukraine amended the 2010 Tax Code of Ukraine to introduce new transfer pricing rules (the "**New Rules**"). If the law is signed by the President, the New Rules will become effective on 1 September 2013.

Controlled Transactions

The New Rules will apply to transactions by a Ukrainian counterparty with:

- a related non-resident;
- a related Ukrainian entity that:
 - declared a negative corporate profit tax ("CPT") base in the preceding reporting year;
 - is governed by a special tax regime;
 - pays CPT and VAT at rates which differ from the standard tax rates; or
 - did not pay CPT or VAT (as of the beginning of that financial year); or
- an unrelated non-resident that:
 - is registered in a low-tax jurisdiction (ie where there is no CPT or where the CPT rate is 5% or more lower than in Ukraine (currently 19%)); or
 - does not pay CPT or pays CPT at a rate of 5% or more lower than the rate in Ukraine.

A transaction with any person described above is considered a "Controlled Transaction" if the total value of all transactions with that person in any calendar year is equal to, or more than, UAH 50 million (approximately USD 6.25 million).

Price Determination Methods

If a transaction is a Controlled Transaction, then the price payable in relation to that transaction should be comparable to the "arm's length price". What the "arm's length price" is may be determined using one or a number of the following methods:

- comparable uncontrolled price method;
- resale price method;
- "cost plus" method;
- net profit method; and
- profit-split method.

The price payable in relation to a Controlled Transaction will be deemed to be an "arm's length price" (i) unless the Ukrainian tax authorities are able to prove otherwise, or (ii) if the taxpayer has applied the price agreed with the Ukrainian tax authorities in an advance pricing agreement.

Key issues

- Controlled Transactions
- Price Determination Methods
- Advance Pricing Agreements
- Reporting
- Penalties

Contact details

If you would like to know more about the subject covered in this publication or services, please contact:

Jared Grubb
+380 44 390 5885

Dmitriy Orendarets
+380 44 390 2217

To email one of the above, please use
firstname.lastname@cliffordchance.com

A taxpayer may select and use, from the above methods, the method which it reasonably believes is the most appropriate for its particular Controlled Transaction. However, in a situation where a taxpayer is able to use both the comparable uncontrolled price method and any other method, it should use the former.

When conducting an audit in respect of the Controlled Transactions of a taxpayer, the tax authorities are required to use the same price determination methods (or a combination thereof) which the taxpayer used for the determination of the price payable in relation to such Controlled Transactions. The tax authorities are able to challenge a tax payer's method selection and use another method (or a combination thereof) to determine the "arm's length price" if they are able to prove that the method used by the taxpayer did not allow the taxpayer to correctly determine the price payable in relation to a Controlled Transaction.

Advance Pricing Agreements

The New Rules will allow large taxpayers to enter into agreements with the Ukrainian tax authorities in which they can agree pricing for certain Controlled Transactions that are frequently entered into.

Reporting

Under the New Rules, each taxpayer is required to report all of its Controlled Transactions to the tax authorities by 1 May of the year following the year when such Controlled Transactions occurred. The tax authorities may require that supporting documentation or information relating to the reported Controlled Transactions also be provided.

Penalties

The following penalties will apply to taxpayers that breach the New Rules:

- for failure to notify the tax authorities about a Controlled Transaction, the tax authorities will be able to impose a fine equal to 5% of the total value of the unreported Controlled Transaction; and
- for failure to file the relevant transfer pricing documentation, the tax authorities will be able to impose a fine equal to 100 minimum wages (currently approximately USD 14,000).

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 75 Zhylyanska Street, 01032, Kyiv, Ukraine
© Clifford Chance 2013
Clifford Chance LLC

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.