
Transfer pricing in Belarus

Tax newsletter

October, 2016



Transfer pricing is a widespread way to minimize taxes paid. In order to prevent abuse of transfer pricing by companies, many countries apply transfer pricing rules.

Belarus introduced new price control regulations for tax purposes (“transfer pricing rules” or “TP rules”) in 2012. However, only now Belarusian TP rules become actual due to introduction of new taxpayers’ obligations as of January 1, 2016. The main provisions of Belarusian TP rules are outlined below.

Sphere of control

Belarusian TP rules cover not only goods, works and services, but property rights as well.

Within control over TP rules tax authorities review completeness of calculation and payment of corporate income tax only. TP adjustments do not influence VAT and other taxes, as well as do not require making amendments to primary accounting documents for accounting purposes.



Controlled transactions

Since January 1, 2016 the following transactions are under TP control in Belarus:

- Selling or acquisition of immovable property as well as housing bonds when the price of the transaction deviates by more than 20% of the market price.
- The following transactions with one party the amount of which exceed BYN 100,000 and the price of such transaction (transactions) deviates by more than 20% of the market price of goods (works, services) or property rights:
 - foreign trade (cross-border) transactions with a related party;

*Individuals and / or organizations are recognized as **related parties** provided that relations between them influence on the conditions or economic results of their activity and activity of the persons represented by them.*

- foreign trade (cross-border) transactions with a party located in an offshore zone;

*List of offshore zones is **approved** by the Edict of the President of Belarus dated May 25, 2006 No. 353. According to the List offshore zones include, inter alia: Andorra, British Virgin Islands, Gibraltar, Liechtenstein, Monaco, Seychelles, State of Delaware, State of Wyoming, Republic of Montenegro.*

- foreign trade transactions with a related party or a party located in an offshore zone if they are carried out via unrelated intermediary companies, where such intermediary companies do not perform any additional functions and do not use any assets;
- domestic transactions with a related Belarusian tax resident, which is allowed not to calculate and pay CIT (is exempt from CIT).

***Belarusian tax residents, which are allowed not to calculate and pay CIT / are exempt from CIT** are - including but not limited to - residents of Hi Tech Park, entities applying simplified tax system, residents of Free Economic Zones.*

- The following transactions with one party when the transaction price (price of a number of transactions) during a period of a calendar year exceeds BYN 1 million:
 - foreign trade (cross-border) transactions on purchasing/acquisition of goods included into the list of strategic goods determined by the Belarusian government (e.g., oil and oil products (EAEU HS Codes 2709 00 and 2710), oil gas and hydrocarbon gases (EAEU HS Code 2711));
 - foreign trade (cross-border) transactions carried out by an entity included into the list of largest taxpayers.

Taxpayers' obligations

If carrying out controlled transactions, a taxpayer is obliged to perform the following actions regardless of the fact whether the price of the transaction deviates from the market price or not:

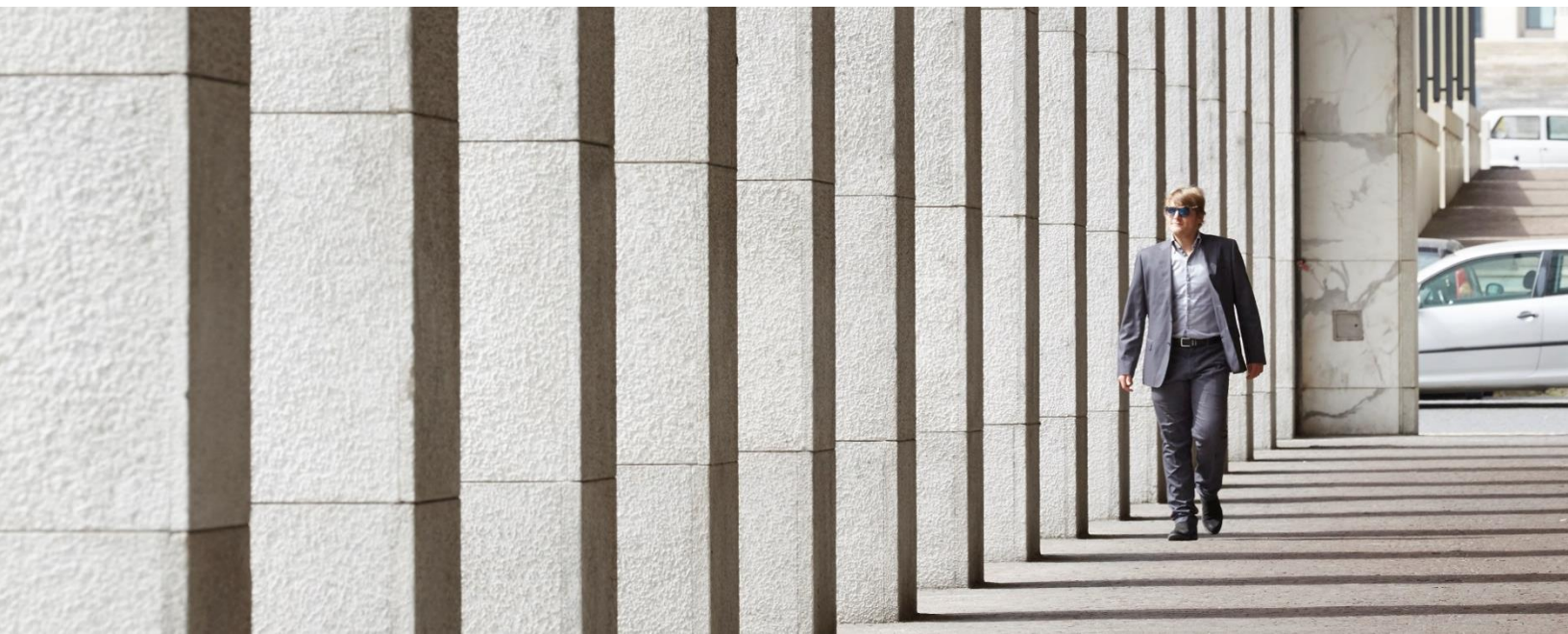
- 1** inform tax authorities on controlled transactions performed. The notification is actually made while completing electronic VAT invoice via VAT internet portal for every particular transaction immediately after the transaction; and
- 2** submit economic justification of prices ("**Justification of prices**") or documentation confirming economic justification of applied prices ("**Documentation**").

Justification of prices and Documentation

Entities, carrying out transactions with strategic goods, and largest taxpayers, performing controlled transactions, are obliged to prepare and upon tax authorities' demand submit Documentation. Entities, performing other types of controlled transactions, including intercompany transactions, should prepare Justification of prices on tax authorities' demand.

Belarusian legislation does not provide for established form of Justification of prices or Documentation. Justification of prices or Documentation may be prepared in any form as a single document or as a set of documents.

Belarusian tax legislation stipulates a list of information which must be included into Justification of prices and Documentation.





Justification of prices should contain the following information:

- full name of the party which concluded the controlled transaction, place of its incorporation or tax residence;
- subject of the transaction; and
- information, if any, about prices of identical (similar) goods (works, services), profitability of the comparable transactions applied by a taxpayer with independent parties or by other organizations carrying out comparable transactions, with indication of the sources of respective information and together with documents containing information about prices (profitability).

Documentation should include the following information:

- 1 description of business activities of the taxpayer in the period when the controlled transaction was performed;
- 2 information about the related party or the party located in offshore zones;
- 3 subject of the transaction;
- 4 information, if any, about prices of identical (similar) goods (works, services), profitability of comparable transactions applied by the taxpayer with independent parties or by other organizations carrying out comparable transactions, with indication of the sources of respective information. The taxpayer should add documents containing information about prices (profitability) to Documentation;
- 5 information on TP method applied by the taxpayer.

The deadlines for submission of Justification of prices or Documentation are established by tax authorities during tax audit and depend on the type of tax audit. In case the request is made during desk tax audits, minimum submission period is 10 business days from the date when the notification was sent. In case the request is made during other types of tax audits, minimum submission period is 5 business days from the date when the taxpayer received the request.

Procedure for the monitoring of compliance with TP rules

Tax authorities control compliance with TP rules in Belarus during either **desk tax audits** or **other types of tax audits (e.g. field tax audit)**.

According to the Ministry of Taxes and Duties of Belarus the following taxpayers are subject to top-priority TP control:

- organizations reporting losses within two and more years in a row;*
 - organizations being a part of international companies; organizations reporting inconsiderable amount of profit along with considerable volume of sales within two and more years in a row;*
 - organizations with profitability level lower than industry average level;*
 - organizations carrying out foreign trade activity with a foreign related contractor or if the contractor is located in an offshore zone, is a resident of Free Economic Zones or other territories granting privileged tax regime.*
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If based on the audit results tax authorities identify that transaction price deviates from market price of identical (similar) goods (services, works) by more than 20%, tax authorities compare the conditions of analyzed transaction with information on prices of identical (similar) goods (services, works).

In case of absence of such information, tax authorities should apply TP methods listed below in order to determine the tax base.

If after comparison of prices applied by the taxpayer with market prices determined using TP methods, tax authorities find out CIT underpayment, they make a decision on adjustment of CIT base and recalculation of CIT to be paid.

The results of adjustments to the tax base and the tax amount to be additionally paid by the taxpayer should be stipulated by the tax authorities in the tax audit report and decision on the tax audit report.

Comparison of the conditions of analyzed transaction with information on transactions with identical (similar) goods (services, works)

While determining market prices of goods (services, works) tax authorities take into account information about transactions with identical (similar) goods (services, works) in comparable economic conditions concluded as of realization date of goods (services, works) (hereinafter – “**comparable transactions**”).

In case of absence of information on comparable transactions within the reporting period under review, in order to determine values of profitability tax authorities and taxpayers may use information on comparable transactions carried out in other

reporting periods with their correction based on price indices established by National Statistics Committee of Belarus or based on official exchange rate of Belarusian ruble established by the National Bank of Belarus.

Determination of transactions' comparability is executed based on so called "functional" analysis of transactions which includes analysis of the following conditions of analyzed and comparable transactions:

- quality characteristics of goods (works, services) being a subject of transaction, quantity of goods (works, services), terms of delivery and payments;
- functions performed by transaction parties, risks assumed by them.

Transfer pricing methods

For the purposes of TP rules 5 methods of tax base determination apply:

- Comparable uncontrolled price method (CUP);
- Resale price method;
- Cost plus method;
- Transactional Net Margin Method (TNMM);
- Profit split method.

Sources of information

Main sources of information about market prices used by Belarusian tax authorities are:

- information on prices established at the close of stock trading with regard to identical (in their absence – similar) goods held in Belarus;
- information on prices on the basis of statistics of foreign trade of Belarus;
- information on prices established at the close of stock trading with regard to identical (in their absence – similar) goods held in foreign countries;
- information on prices (maximum and minimum price fluctuation) and stock-exchange quotations from official sources of Belarusian state bodies, official information of foreign states or international organizations or other published and (or) publicly available publications and information systems;
- information on prices of identical (in their absence – similar) goods (works, services) provided by the competent authorities of foreign countries on the request of the Belarusian tax authorities or other Belarusian state bodies (organizations);
- information on transactions carried out by the taxpayer;
- data from informational pricing agencies.

Tax authorities use these sources of information in the sequence specified above. If the above sources of information are insufficient or do not contain the information required, tax authorities may use other sources of information specified in the Tax Code of Belarus.

Liability

Currently Belarusian legislation does not stipulate any liability for failure to notify tax authorities on controlled transactions as well as for failure to provide tax authorities with Justification of prices or Documentation. We believe that in such case tax authorities could apply general liability for failure to provide requested information / documents. In this case the taxpayer may be subject to administrative liability in the form of fine in the amount no more than thirty basic units (630 BYN or approximately 328 USD*).

If the tax authorities prove that prices applied in controlled transactions are not in line with market prices, the taxpayer will be liable to the following penalties:

- fine amounting to 20% of unpaid corporate income tax, but no less than 10 basic units (210 BYN or approx. 109 USD*);
- penalty interest equaling to 0,05%** of unpaid corporate income tax charged for each day of delay in payment.

** As of October, 19 2016*

*** As of October 19, 2016. Actual amount of penalty interest is equal to 1/360 of the refinancing rate set by the National Bank of Belarus effective during the periods when the tax was outstanding.*

How PwC can help you?

PwC Belarus offers the following TP services:

- analysis of the client's transactions and identification of controlled transactions;
- functional analysis of controlled transactions;
- selection of transfer pricing method to justify applied prices;
- preparation of justification of prices and (or) TP documentation;
- analysis of group documentation and its adaptation to Belarusian requirements;
- tax consulting on other issues related to application of transfer pricing rules;
- assistance in settlement of disputes with tax authorities on TP matters.

For more information, please feel free to contact us:

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