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Corporate income tax – transfer pricing and thin capitalization rules in Ukraine

Transfer pricing

For the purposes of correct corporate income tax (CIT) taxation, the control has been established over:

- related-party transactions (it concerns the persons who, among other things, have at least 25% of corporate rights in a legal entity);
- foreign commercial transactions for the sale and/or purchase of goods and/or services by non-resident commission agents;
- commercial transactions with non-residents not paying corporate income tax on foreign income; as well as over commercial transactions between a non-resident and his/her permanent representative office.

In addition, such control is also exercised over transactions with non-residents in low-tax jurisdictions.

Low-tax jurisdictions are determined on the basis of the following criteria:

- the general corporate tax rate in such countries is five or more percentage points lower than in Ukraine, or preferential taxation regimes are provided to business entities, or certain features of the taxable amount calculation actually allow business entities to pay no corporate tax in such countries or to pay corporate tax at a rate which is five or more percentage points lower than in Ukraine;
- Ukraine does not have any agreements on information exchange with such countries;
- countries, the competent authorities of which do not provide timely and complete exchange of tax and financial information.

The transfer pricing control is exercised over transactions, where:

- the taxpayer's revenue exceeds UAH 150 million (approx. USD 5,41 million) for the tax year;
- the annual volume of the transactions with each counterparty (related person) exceeds UAH 10 million (approx. USD 361 thousand).

Business transactions between a non-resident company and its permanent representative office in Ukraine are considered to be controlled if the volume of such business transactions, determined in accordance with the accounting rules, exceeds UAH 10 million (net of indirect taxes) in the relevant tax (reporting) year.

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Fines for failure to submit a report on the controlled transactions and respective documentation on transfer pricing and similar duty failures are as follows:

- 300 amounts of subsistence minimum (approx. USD 23,7 thousand) for failure to submit the report on controlled transactions;
- 3% of the amount of transactions in respect of which transfer pricing documentation was not submitted, but no more than 200 amounts of subsistence minimum (approx. USD 15,8 thousand);
- 300 amounts of subsistence minimum for failure to submit complete documentation on transfer pricing (master file);
- 1000 amounts of subsistence minimum (approx. USD 79 thousand) for failure to submit reports on the countries of the international group of companies;
- 50 amounts of subsistence minimum (approx. USD 4 thousand) for failure to submit notification on membership in an international group of companies.

Thin capitalization rules

In order to prevent tax base erosion and profit outflow from the country, there are the thin capitalization rules effective in Ukraine.

Under the thin capitalization rules, expenses of the resident in the current tax period include the amount of interest paid on loans, which does not exceed 30% of profits, expenses on repayment of interests. It should be noted that the amount of taxpayer's liabilities with a non-resident exceeds the equity ratio by more than 3.5 times.