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Ukraine

Ukrainian Parliament Implements Three-Tier Approach to TP Documentation and Other Important Changes to the Tax Code

On 16 January 2020, the Ukrainian Parliament adopted the hugely debated draft law #1210 which introduced considerable amendments to the Ukraine tax code.

BEPS Implementation

A large portion of the new legislation concerns the implementation of TP-related actions of the BEPS plan into Ukrainian tax law. The most important changes are as follows:

The law adopts a three-tier approach to transfer pricing documentation according to Action 13 of BEPS. Namely, TP documentation shall consist of a (i) master file, (ii) local file and (iii) country-by-country (CbC) report. In addition, Ukrainian entities of multinational companies will have to file a notification about participation in the international group of companies.

Suggested amendments are generally in line with BEPS recommendations. Yet there are also some differences. For instance, although it envisages a general threshold of EUR 750 million for the submitting of the CbC Report, the master file may be requested by Ukrainian tax authorities if annual consolidated group revenue is equal to or exceeding EUR 50 million.

The law introduces new penalties for the failure to comply with added reporting requirements which may be very material. They are linked to subsistence wage amounts which are gradually revisited. By way of illustration, the penalty for the failure to submit the CbC Report is 1,000 times the subsistence wage, which currently would amount to UAH 2 million (around EUR 74,000 under current exchange rate).

Business Purpose

A key novelty is the introduction of the principle of the business purpose of transactions. Namely, taxpayers will be obliged to prove in the TP documentation that controlled transactions have a clear business purpose. When calculating the profit tax base, the Tax Authorities may disregard the transactions that do not have a reasonable business purpose.

Deemed Dividends

According to the law, the amount of TP adjustment that increases the tax base in Ukraine may be treated as deemed dividend distribution. Such dividend distribution would be subject to withholding tax (WHT) in Ukraine under a regular WHT rate of 15% unless otherwise provided by applicable double tax treaties.

Independence Threshold

The threshold for the recognition of the parties as related would be raised to 25% as compared to 20% which is applied currently. This change would bring Ukrainian legislation closer to the dominant international practice.

Special TP Rules for Commodities

The law introduces new rules for transactions with commodities. Namely, the taxpayers would need to apply the so-called quoted prices for TP analysis of some transactions with commodities. The quoted prices are defined as pricing data which includes exchange quotations, price indices published by recognised agencies, statistical and government agencies.

The law envisages that the list of commodities which are subject to these rules as well as the procedure of application of the quoted prices would be adopted by the Cabinet of Ministers of Ukraine.

There are also other changes, including the introduction of rules on controlled foreign corporations (CfC) and specific adjustments of profit tax on transactions with non-residents which fall under the Ukrainian list of low-tax States or list of organisational forms (covering fiscally transparent entities).

In conclusion, the law provides for a dramatic overhaul of the Ukrainian tax system. Yet, it shall be noted that as of the date of this material the President of Ukraine is yet to sign the law. Reportedly, the President is considering vetoing it. Yet even in the case of a veto, we expect that BEPS-related amendments would still be introduced soon as the separate law comprising most of the rules outlined above.

Ivan Shynkarenko
i.shynkarenko@wts.ua

Vietnam

Advance Pricing Agreements gaining importance

The extent of economic restraints caused by COVID-19 cannot be known as of yet, and also the Vietnamese economy will not grow as recently estimated. This will make it necessary to reduce the estimation regarding the tax revenue from normal tax declarations. It can be assumed that this re-estimation will further increase the expectation of the Government of Vietnam, that the Vietnamese Tax Authorities (TA) will increase the additional revenue from tax audits.

In the past, the general tax audits and TP tax audits were mostly held separately. The very recent tendency is to incorporate TP issues in the normal tax audits, which multiplies the audits that involve TP issues. According to the plan for the 2020 tax audit, TP audits continue to be the priority of the TA, especially in foreign-invested companies.

The regulations on the Advance Pricing Agreement (APA) are not new, but until now the practical importance was rather limited. The APA is an agreement between the taxpayer and the TA that determines in advance the basis of tax calculation, methods of determining taxable prices and the arm's length prices of one or more related-party transactions in a certain period of time.

With the TA increasingly focusing on TP, this instrument is becoming more interesting for taxpayers and also Tax Authorities as a method for reducing risks and uncertainties. Possible are:

- → A unilateral APA between a taxpayer and a Vietnamese TA regarding national Vietnamese issues;
- → A bilateral and multilateral APA between a taxpayer, a Vietnamese TA and one or more foreign tax authorities regarding issues under a tax treaty.