



## **Azerbaijan Tax News**

### **Transfer price rules have been approved**

On 27 January 2017, the Ministry of Taxes approved the Rules on transfer pricing and its application ("Rules") that become effective from 8 February 2017.

Main purpose of introduction of transfer price is the recalculation of taxes by taxpayer or tax authorities from the controlled transactions within which prices of provided or purchased goods (works, services) are not consistent with prices defined for comparable transactions. Transfer price is applied to transactions exceeding AZN 500,000.

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**As per the Rules controlled transactions shall be understood as transaction taking place between below parties:**

- between Azerbaijani resident and mutually dependent non-resident persons;
- between the non-resident's permanent establishment in Azerbaijan and non-resident itself or any representative, branch and other division of such non-resident located in other countries;
- between the resident of Azerbaijan or permanent establishment of non-resident in Azerbaijan and subjects established (registered) in countries with preferential taxation.

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**During the selection of comparable transactions for transfer pricing, the following rules shall be taken into account:**

- selection of controlled transaction and comparable uncontrolled transaction are conducted based on comparative analysis;
- both similar transactions undertaken by the party of controlled transactions with independent parties and similar transactions undertaken between independent parties can be treated as comparable uncontrolled transactions.

Selection of similar comparable transactions should be based on the principle of time consistency of their execution with controlled transactions, identity and similarity of the following data between transactions:

- type, country of origin, quality and other consumer data for goods (work, services) subject to transaction;
- conditions of contract, including quantity of provided goods, amount of work, services, contractual obligations performance time, delivery conditions and terms of payment;
- transaction functions performed and risks taken by each of the party to such transaction;

- rights and tangible and intangible assets in taxpayer's ownership used or involved in transaction;
- economic conditions where parties to transaction operate, including geographic position of markets, availability of homogenous and similar goods (work, services) in the market;
- putting on the market new goods (work, services) in connection with marketing policy implementation, or presenting trade patterns to introduce to consumers, bring goods (work, services) in new market.

In case of controlled transactions are undertaken in relation to intangible assets and intragroup financing, besides the above-mentioned principles additional intangible assets and intragroup specific factors shall be taken into account in selection of comparable transactions.

**The following methods are used for calculation of the transfer price:**

- Comparable uncontrolled price method;
- Resale price method;
- Cost plus method;
- Profitability method;
- Profit split method.

According to the Rules, to the extent it is possible, strict priority shall be given to application of comparison of prices. Other methods may only be applied, if the transfer price cannot be determined by direct application of this method.

A documentation filing requirement is introduced in relation to the transactions exceeding AZN 500,000 per annum. Notification on controlled transactions ("Notification") must be filed by 31 March of following reporting year. Failure to comply with filing requirement is subject to a financial sanction of AZN 500.

It is worth noting that, taxpayers are still liable to comply with the Rules even if controlled transactions do not exceed AZN 500,000.

## Following databases may be used while specifying transfer price:

- local and international stock market quotes;
- foreign trade statistics conducted by the customs committee;
- reports placed in the well-known public sources;
- databases of well-known international agencies available for tax authorities.

According to the Rules, the taxpayer may approach the tax authorities with the official inquiry by presenting the details of transaction along with the contract and request to specify the transfer pricing method in advance.

The Rules also introduce provisions on double taxation, dispute resolution procedures between taxpayers and tax authorities over transfer pricing matters.



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