



## Belarus refines transfer pricing regulations

### Global Transfer Pricing Alert 2016-011

Changes to the Belarussian Tax Code introducing more detailed and stricter transfer pricing rules entered into effect January 1, 2016. For the most part, these changes are aimed at harmonizing the Belarussian transfer pricing legislation with the OECD transfer pricing guidelines. However, many of the changes appear to impose more restrictive rules on taxpayers.

#### Transfer pricing documentation requirements

Effective January 1, 2016, taxpayers are required to prepare and file transfer pricing reports. Before this change, the submission of transfer pricing documentation was not required.

Taxpayers must prepare and file the following transfer pricing reports:

- **Transfer pricing documentation** (for controlled transactions over the BYR 10 billion threshold)
- **Economic justification** of the applied price (for real estate transactions and foreign/domestic transactions over the BYR 1 billion threshold)
- **Controlled transaction notifications** (taxpayers are required to notify the tax authorities of each transaction by sending electronic invoices)

The deadlines for submission of transfer pricing documentation and economic justification are very tight. For desk tax audits, documentation must be submitted when requested by the tax authorities, but within at least 10 working days from the date of the request. For field tax audits, documentation must be submitted when requested by the tax authorities, but within at least five working days from the date of the request.

#### Controlled transactions

Effective January 1, 2016, transactions that involve intellectual property (licensing transactions), leases, and loans are subject to regulatory control (previously, only transactions involving goods, works, and services had been subject to control).

#### Real estate transactions

The list of real estate transactions subject to the Belarussian transfer pricing regime has been expanded. The transfer pricing rules now apply to the real estate transactions specified below, provided the transaction price differs from the arm's length price by at least 20 percent:

- Sale or purchase of real estate
- Sale or purchase of housing bonds

Both transactions between Belarussian residents and cross-border transactions are subject to control. No threshold is set for such transactions.

Before 2016, only transactions involving the sale of real estate were subject to transfer pricing control. Transfer pricing rules did not apply her to the purchase of real estate nor to the sale/purchase of housing bonds.

#### Cross-border transactions

In contrast, the list of cross-border transactions subject to the Belarussian transfer pricing regulations has been shortened. The list now includes:

- Transactions with related nonresidents, provided the transaction amount exceeds BYR 1 billion (approx. EUR 49,000 as of January 1, 2016);
- Transactions with nonresidents registered in low-tax jurisdictions, provided the transaction amount exceeds BYR 1 billion. The list of low-tax jurisdictions is published by the President of the Republic of Belarus;
- Transactions with related nonresidents or nonresidents registered in low-tax jurisdictions if independent intermediaries with no substantial functions are involved. The threshold of BYR 1 billion is also applicable to these transactions;
- Transactions involving strategic goods, provided the transaction amount exceeds BYR 10 billion (approx. EUR 490,000 as of January 1, 2016). The list of goods will be published by the Government of the Republic of Belarus;
- Transactions by large taxpayers, provided the transaction amount exceeds BYR 10 billion. The list of large taxpayers is published by the Ministry of Taxes and Duties of the Republic of Belarus.

Before 2016, all cross-border transactions (with both related and unrelated parties) were subject to the transfer pricing regulations if the volume of sale or purchase transactions with a single party exceeded BYR1 billion in the relevant tax period.

### **Transactions within Belarus**

Before 2016, domestic transactions did not fall within the scope of the transfer pricing regime (except for real estate transactions). However, effective January 1, 2016, domestic transactions are regarded as controlled if entered into with a related party, which has the right to corporate income tax exemption inasmuch as the party:

- Falls under certain categories of taxpayers not subject to corporate income tax;
- Applies specific taxation regimes (for example, the unified tax system); or
- Operates in the territories specified by the legislation (free economic zones, High Technology Park, etc.).

If such transactions involve independent intermediaries with no substantial functions, they are also deemed controlled. The threshold for domestic transactions is BYR 1 billion.

### **Safe harbor rule**

In 2016, a 20 percent variance from the arm's length price range is acceptable. If the variance goes beyond 20 percent, tax liabilities are to be adjusted to the minimum/maximum range values.

This rule was introduced into the Belarussian transfer pricing legislation in 2012, and has not been amended since. However, it is expected to be abolished in the near future.

### **Expanded rights for tax authorities**

The tax authorities have the right to obtain any relevant information required to determine the comparability of commercial and financial conditions from all sources (transaction parties, state authorities, or third parties). This provision is unfavorable for taxpayers, as they do not have access either to the information available to the state authorities or to information from third parties.

### **Transfer pricing methods**

Introduced in Belarus in 2016, the profit split method will be applied in accordance with the OECD transfer pricing guidelines.

The Belarussian transfer pricing rules now comprise five methods, to be applied in strict hierarchical order:

- Comparable uncontrolled price method (CUP)
- Cost plus method
- Resale price method
- Comparable profitability method (CPM)
- Profit split method

### **Changes in the determination of related parties**

The list of instances in which companies are to be treated as related parties has been extended. Now, if a party has a direct and/or indirect participating interest in other entities, and the participating interest in each of the entities is at least 20 percent, those entities are regarded as related parties. Previously, only members of "vertical ownership chains" with participating interest exceeding 20 percent had been treated as related parties.

In addition, in 2016, when at least 50 percent of two entities' collective executive bodies or boards of directors are the same individuals, the entities are considered related parties.

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