



EMEA TAX NEWSLETTER

Welcome

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Dear Friends and Colleagues,

I am thrilled to introduce you to our first ever internal tax newsletter.

No doubt most of you would agree, the launch of our tax newsletter fulfills a long standing need for disseminating international tax news and information to BKR members and their staff.

Peter Drucker once said:

“Today knowledge has power. It controls access to opportunity and advancement.”

With this newsletter I believe that sharing our knowledge can open new doors, create opportunities and enhance cross border cooperation amongst our members. In this very first issue you will find articles featuring highlights of the UK tax system, and country specific topics such as related party transactions, inheritance tax, real estate transfer, trust taxation, controlled transaction submission, declaration of assets abroad, Value Added Tax and Personal Income tax; prepared by our colleagues in the Czech Republic, Iraq, Romania, Russia, Spain, and the Ukraine.

I take this opportunity to pass on our thanks to

all authors and those who have volunteered to contribute to the creation of this newsletter.

Finally, I wish to encourage more contributions from all our fellow members, to ensure the continuity of this newsletter, as well as provide comments and suggestions that may improve the quality of the newsletter; all of which are most welcome.

Thank you, and I hope you will find this first newsletter both informative and useful.

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Important changes in Czech Tax Regulation as of 1st January, 2014



Although this article is supposed to be focused on taxes, it is worth mentioning, that the New Civil and Corporation Law is coming into force starting from January 2014. Upcoming changes are going to impact all Czech legal entities and private persons, and of course foreign persons running business in the Czech Republic. In particular, business entities have been spending significant amounts of money to adapt to the new law (e.g. statutory deeds, general terms

and conditions of contracts with customers).

As far as the nature of changes in the civil and corporation law is concerned, it could be said that the general concept remains unchanged. The New Civil Code is rather viewed as a symbolic comeback of an old tradition of civil law having been practiced in the Czech Republic before the communist era. However, the new law brings some new legal instruments (e.g. trust

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Important changes
in Czech Tax Regu-
lation as of 1st Janu-
ary, 2014 (Cont.)

law) and modifies some contemporary civic and corporate law instruments (e.g. corporate governance, inheritance, absolute and relative invalidity/nullity of legal acts).

The adoption of the New Civil and Corporation Law required some amendments to the tax law. Nevertheless, the government has taken the opportunity and had some other changes passed in the Parliament. Despite the recent political turmoil, the changes in the tax law are to become effective at the same time as the new civil and corporation law. Summary of important changes follows:

Gift and inheritance taxes are to be incorporated into Income tax.

Inheritance and gifts are to be subject to income tax. However, the inheritance is to be generally tax exempt for both legal and private persons. Gifts are to be generally taxable. Only a few exemptions were adopted (e.g. gifts between family members under certain conditions).

The contemporary real estate transfer tax is to be replaced with the new real estate acquisition tax.

The new tax shall have similar parameters as the previous one (e.g. the tax rate, concept of exemptions). However, some changes have been made e.g. contributions in kind into the registered capital of business corporations in the form of a real estate are no longer tax exempt.

Trust taxation.

Trust is considered as an accounting entity. It is obliged to keep books (double entry accounting) and to prepare financial statements. As far as income tax is concerned, the trust is regarded as a corporate income tax payer whose profit shall be subject to 19% flat tax rate. However, assets transferred into the trust from its founder

are not subject to income tax. The taxation of benefits provided to a beneficiary depends on the facts (i) whether they come from the profit or property substance, (ii) how the property was acquired by the trust, (iii) to whom the benefits are paid (legal entity vs. private person, tax residency).

Sale of an enterprise located in the Czech Republic by a Czech tax non-resident.

Income from the sale of an enterprise located in the Czech Republic is considered as income sourced in the Czech Republic.

Support of research and development to be increased and support of technical education to be adopted.

Starting from 2014 the rules governing what shall be considered as research and development expenses for the purpose of tax deduction shall be liberalised (e.g. expenses paid to research centres of public universities). Moreover, a new tax deduction focused on a support of technical education has been adopted.

Income of private persons from a sale of shares in a joint stock company (or other kind of securities in general).

Such income is to be exempt from personal income tax in the Czech Republic after 3-years period of holding.

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Developments in Iraq

For a few years now, Iraq and the semi-autonomous region of Kurdistan has been going through continuous changes with the help of international organisations, trying to restructure most of the governmental bodies in both Iraq and the semi-autonomous region of Kurdistan. The laws have been rectified and amended since the fall of the previous regime. In all provinces the tax system is the same and reports to the Central government of Iraq with the exception of the Kurdistan semi-autonomous region that has amended some of these laws to attract foreign investments.

This report explains some of these laws below.

1. Income tax:

In both Iraq and Kurdistan the same income tax is applied on all companies, at a rate of 15% flat, with the exception of companies in Iraq working in the oil and gas production sector and related industries, where tax is at a rate of 35%. In Kurdistan, the same companies are subject to 15% as with any other company.

2. The income tax on salaries:

In Iraq the system varies to the one in Kurdistan. The Kurdish ministry of finance has eased more tax rates on salaries, especially on the low sala-

ries, attracting more companies to be established in Kurdistan rather than in the rest of Iraq. The same tax rates are implemented in both Iraq and Kurdistan, varying from 3% to 15%, but in Iraq the 15% rate is effective for salaries that are 1,000,000 Iraqi Dinar (equivalent to 860 USD, as at the time of publication of this paper) rather than in the semi-autonomous region of Kurdistan where the 15% rate is effective for salaries above 6,000,000 Iraqi dinar (equivalent to approx. 5000 USD)

3. Social security on locals and expatriates:

In previous years, expatriates working in Iraq were exempt from social security, but recently a law was implemented imposing social security on all expatriates working in Iraq. The rate is 17%, of which 12% is payable by the employer and 5% paid by the employee. Yet several companies are not abiding by this decision and most of them are not registering their employees.

4. Companies and projects through the board of Investment:

In both Iraq and the semi-autonomous region of Kurdistan the board of investment has implemented a system that allows local and foreign companies to own land (for investment projects only) at no cost and, after construction of the project, the ownership goes to the company with an exemption of 10 years for income tax.

In conclusion, both the Iraqi and the Kurdish systems are changing continuously with new regulations and laws that are being implemented. We will surely see new outcomes in the coming year that will be implemented in Iraq with regards to Foreign and local companies.

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Developments in Iraq (Cont.)



Tax changes in Romania during 2013

Introduction

During 2013 Romania has continued its efforts of adapting the Tax Code to the EU Directives and necessary changes enforced by the economic environment. In this respect, the legislative amendments have affected almost all the Romanian Tax Code sections.

Among the most important:

1. Profit tax

1.1 Supplementary deductions for research and development expenses

1.2 International aspects related to the profit tax

2. Withholding tax

2.1 Artificial transactions

2.2 Taxable services in Romania, rendered outside Romania by the non-residents

3. VAT

3.1 Vat reduced quota of 9% for bread, flour, wheat

3.2 VAT reverse charge mechanism for electricity and trading green certificates

3.3 VAT on collection

4. Excises

Tax news

1.1 [Supplementary deductions for research and development expenses](#)

For research and development activity expenses, there are granted deductions of 50% of eligible expenses (instead of 20% as before 2013) under the condition that this activity is relevant for the company from an industrial and commercial point of view, meaning in the purpose of obtaining income.

1.2 International aspects related to the profit

The non-resident entity which develops its activity in Romania through more permanent establishments has the obligation to designate one of them as being assigned permanent establishment, in order to collect all the income and expenses of the entity, from all the permanent establishments existing in Romania, and accomplish the declarative tasks.

Also, non-resident legal persons who obtain income from:

- Immovable properties in Romania
- Selling or cession of the shares or social parts held in a Romanian company have the obligation of paying profit tax in Romania.

Still, if between their residence country and Romania is agreed a Double Taxation Treaty, then the most convenient percentage between Romanian profit tax (16%) and DTT will be applied.

2.1 Artificial transactions

The artificial transactions are defined by the

Tax changes in Romania during 2013 (Cont.)

Romanian Tax Code starting from this year as being the ones without economical substance and their purpose is to avoid taxation or to obtain fiscal advantages.

2.2 Taxable services in Romania, rendered outside Romania by non-residents

During 2013 there were defined taxable services for non-residents who obtain income for services rendered outside Romania from resident Romanian persons:

- Consultancy in any area
- Marketing
- Technical assistance
- Research and projection
- Advertising and publicity
- Services rendered by lawyers, architects, engineering, public notaries, accountants, auditors

3.1 Vat reduced quota of 9% for bread, flour, wheat

Reduced quota of 9% for bread assortments, bakery specialties, flour, wheat and rye is applicable for the whole marketing chain, both producers and retailers as VAT taxable persons, with the exception of restaurants and catering services which include the above mentioned products.

3.2 VAT reverse charge mechanism for electricity and trading green certificates

The VAT reverse charge is applicable for the delivery of electricity to a taxable resident person, if:

- The supplier is VAT registered in Romania
- The beneficiary is settled and registered in Romania for VAT purposes

Also, the VAT reverse charge is applicable for green certificates transfer between taxable persons registered for VAT purposes in Romania.

3.3 VAT on collection

The VAT on collection system has been introduced starting from January, the 1st, 2013.

The companies applying the system collect the VAT at the moment of receiving the payments from their customers, but no later than 90 days, and in the same time they are able to deduct the VAT from the suppliers' invoices only at the moment of outgoing payments.

Companies which don't apply the VAT on collection system, collect the VAT at the moment of issuing the invoice to the customer, but deduct the VAT from suppliers applying the new VAT system at the moment of payment of the in-

voice.

4 Excises

The Government reintroduced the excises for luxury products as: jewels of gold and platinum, confections of natural fur, cars with a cylindrical capacity of over 3.000 cm³, guns, boats, etc., this measure having a social character.

Conclusion

- ◆ The facility regarding the supplementary deduction granted for research and development activity was extended starting from this year also for companies that obtain valuable results in Romania and states from EU and SEE.
- ◆ Taxable income of permanent establishment is calculated by using the rules of transfer pricing for transactions between the foreign entity and the assigned permanent establishment in Romania.
- ◆ Artificial transactions generate a withholding tax of 50% for incomes obtained by non-residents from Romania, if the income is paid to a state which doesn't have a DTT agreed with Romania.
- ◆ The exact stipulation of the taxable services for non-residents who obtain incomes for services rendered outside Romania from resident Romanian persons increases the area of taxation for the non-residents withholding tax.
- ◆ When the beneficiary of the electricity delivery is not settled in Romania, even if it is registered in Romania for VAT purposes, the simplifications measures are not applicable, due to the fact that the place of electricity delivery is not Romania from the VAT point of view.
- ◆ Stipulations regarding the VAT reverse charge mechanism related to electricity and green certificates are enforced till December, 31st, 2018.
- ◆ There are proposals from the Ministry of Finance to permit that the VAT on collection system to become optional starting from next year.

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Russia - Controlled Transactions

Currently, tax-payers are actively submitting information on 'controlled transactions'.

The deadline for submitting controlled transactions notices has been moved from May 20 to November 20.

The following terms have also been extended:

Until December 1, 2013 – tax authorities' demand for documents concerning a specific transaction (a group of homogeneous transactions), profits and/or losses from which were recorded in 2012;

Until June 30, 2014 – tax authorities' checking the conformity to market prices regarding the transactions specified.

These amendments were introduced by the Federal Law in April, 2013:

Among the transactions that fall under control are those that were conducted with companies that are either registered or have a permanent representation (participating in the transaction being analysed) in offshore territories. For these transactions to be 'controlled', each party has to receive a profit of no less than 60 million rubles. However, if such transactions are conducted between related parties, they are considered 'controlled' irrespective of the profits received, as specified by the Russian Ministry of Finance.

If controlled transactions are conducted by a mediator, the notice is to be submitted by the party that is slated to pay taxes on the profits from these transactions, as reported by the Russian Ministry of Finance.

In accordance with the transitional provisions of the Law, informing tax authorities of controlled transactions is obligatory in 2012 only if the sum total of profits from all the controlled transactions conducted by the tax-payer in the calendar year with one person (several same persons that act as parties in the controlled transactions) exceeds 100 million rubles. In 2013 the figure will be 80 million rubles.

Pursuant to p. 3 article 105.16 of the Russian Tax Code, the information on controlled transactions should contain the following:

- the calendar year that it relates to;
- transaction items;
- profits received and/or losses incurred from these transactions.

However, the confirmed form of the Notice requires more information to be submitted on controlled transactions than it is specified by the Tax Code. As a result some organisations took to court decrying the inconsistency in the Tax Code and demanding that the Decree which approved the Notice form be deemed partially invalid. However, in September of 2013 the Supreme Court of Arbitration of the Russian Federation declared the notice on controlled transactions to be compliant with the Tax Code.

In conclusion, it should be noted that the penalty for not submitting the notice on controlled transactions, or submitting unreliable information, is set to be a fine of 5.000 rubles.

The fine for non-payment or incomplete payment of taxes as a result of violation of the pricing process during controlled transactions is 40% of the unpaid tax, but no less than 30.000 rubles. However, as of yet, on the basis of the transitional provisions of the Law this fine is not imposed in cases of additional tax charge for the periods 2012 - 2013.

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Featured Tax Summary: The United Kingdom

Introduction

The United Kingdom (UK) has become a very favourable location for overseas companies to do business in. This is due to a combination of ease of establishing the business as well as the reduced corporate tax rates and tax incentives. We will look at some of these below.

The right entity – trading with, or in the UK

Where a company is trading with the UK, there is no need to establish an entity and comply with various related regulations (except VAT).

Where a company is trading in the UK, there are a number of factors to be considered.

If the activities of the overseas company, trading in the UK, are of a preparatory or auxiliary nature (i.e. initial market research, distribution of promotional material etc) these do not commonly give rise to any corporate tax implications. However, there may be a need to register as an establishment. Local tax advice should be sought to determine whether the activities of the establishment fall outside the scope of UK corporate tax.

An overseas company may decide that there is market in the UK and wishes to establish a presence in the UK, which would have a corporate tax presence.

In such circumstances either a taxable establishment (branch) or a subsidiary will need to be registered.

An establishment is not a separate legal entity but an extension of the parent company, operating under the laws of another jurisdiction. Therefore, it does not provide the limited liability that a subsidiary company does. If the nature of the business is such that it is important to ring-fence liabilities arising in a specific jurisdiction, the subsidiary will afford the safer option.

The other issue to consider is whether it is important for the overseas company to be seen to have a UK presence. Although an establishment and a company both provide a UK presence, the perception is that a UK company is a local business with a greater sense of permanence. If this is important from a commercial perspective, you may wish to establish a subsidiary.

Corporation tax

Tax rates

The current rates of corporation tax are noted in the table below.

UK profits above £1.5m*	%
Main rate from 1 April 2013	23
2014	21
2015	20
UK profits below £300k*	
Small companies rate	20

*Threshold divided by number of companies in the group

Taxable profits

Corporation tax is payable on the profits made by UK com-

panies and UK establishments.

UK transfer pricing legislation dictates that trading between connected parties needs to be on an arm's length basis. This is designed to stop international groups manipulating intra-group transactions so that profits always flow to the country with the lowest tax rate.

A group is considered large, for transfer pricing purposes, if it does not meet the criteria for a small or medium sized group set out in the table below.

	<u>Maximum number of staff</u>	<u>And less than one of the following limits:</u> <u>Annual turnover</u>	<u>Balance sheet total</u>
Small sized	50	€10 million	€10 million
Medium sized	250	€50 million	€43 million

If a group is large, it will be necessary for the UK entity to undertake a transfer pricing study to prove that the pricing between the parent and its UK entity is consistent with what would be agreed by parties acting on an arm's length basis. For small and medium sized groups there is not a requirement to prepare a full transfer pricing study; however medium sized companies should prepare an inter-company service agreement. This would typically include an overview of the activities of each entity and detail the extent of the role and responsibilities associated with the UK entity and the level and basis of its remuneration.

Corporation tax payment

A UK business is required to calculate its own tax liability and file a corporate tax return with HMRC.

The corporation tax liability needs to be paid within nine months of the company's accounting year end. There are provisions for certain 'large' companies to pay taxation on account before the year end.

Losses

If an establishment incurs a loss, this could be available for offset against parent company profits, in the parent's jurisdiction. Additionally, the establishment's losses can be carried forward for offset against future UK taxable profits.

If a subsidiary is formed and it incurs losses, these can be carried forward indefinitely for offset against future taxable profits of the subsidiary, providing they are from the same trade.

These losses, however, are generally not available for offset against the parent company profits.

UK as a holding company

The UK is a very attractive location for forming a holding or sub-holding company.

If the UK company holds shares in other companies, and the shares were subsequently sold, the resulting gain is exempt from tax providing the company held at least 10% of the shares for 12 months and it was a trading company, or was part of a trading group before and after the transaction.

The UK company can also act as the holding company which either forms establishments/branches or subsidiaries in other parts of the world. The wide network of double tax treaties that the UK has entered

Featured Tax Summary: The United Kingdom (Cont.)

into means that withholding taxes on dividend payments from overseas jurisdictions to the UK parent will be minimised.

Dividends received by the UK parent, whether in the UK or from overseas, are exempt from UK tax.

The UK itself does not levy a withholding tax on dividends paid to its shareholders, whether UK or overseas based. Furthermore, because of the network of double tax treaties, the parent company will not suffer double taxation in its own jurisdiction when it receives dividends from its UK subsidiary.

Research and development tax incentives

The UK government provides significant tax incentives to encourage companies to undertake research and development ("R&D") work.

The incentives are most attractive for SMEs, which can claim a deduction of 225% of R&D expenditure. Companies with tax losses can claim a cash credit of up to £24.75 for every £100 spent on R&D.

Large companies can claim a deduction of 130% and by 1 April 2016 this deduction will be replaced by an Above The Line credit (ATL). The ATL equates to 10% of the company's qualifying R&D spend, and after tax is a net benefit of 7.7%. The ATL for loss-making companies may also be repaid as a cash credit, capped at the level of payroll taxes incurred in respect of R&D employees during that year. A large company can opt into the new regime as of 1 April 2013.

HMRC and the Department of Trade and Industry have issued some guidance on the meaning of R&D for tax purposes. Broadly, for an activity to be considered as R&D it should aim to achieve an advance in science or technology through the resolution of a scientific or technological uncertainty.

The R&D should not be something which is already available or could be made available by a competent professional working in the relevant field.

Patent Box

The Patent Box will allow companies to elect to apply a 10% rate of corporation tax to all profits attributable to qualifying patents, whether paid separately as royalties or embedded in the sales price of products.

The effective rate of tax will be 10% from 1 April 2017. The benefit is being phased in from 1 April 2013 so that approximately 33.9% of the adjusted profit is excluded, rising to 50% from 1 April 2017.

Personal taxation

As a general principle, if an individual is resident in the UK in any tax year, he/she will be subject to UK tax laws.

Taxable income includes all income and benefits. The rates of personal taxation are in the table below, together with the level of personal allowances. These are amounts that each individual is able to earn before becoming liable to taxation.

Personal tax rates & Allowances

	%	Band of Taxable Income (£)
Year to 5 April 2014		
Tax free allowance		£9,440*
	20	1-32,010
	40	32,011-150,000
	45	Over 150,000

*Income of more than £100,000 sees the personal allowance reduced by ½ of income over the limit.

Income tax is generally deducted from salary on a monthly basis, through an employee run system known as 'pay as you earn' ("PAYE"), and automatically paid to HMRC.

National Insurance

Social security, otherwise known as National Insurance (NI) in the UK, is payable by both the employer and employee.

The current rates of National Insurance contributions by the employer and employee are shown in the table below.

National Insurance rates: year to 5 April 2014

		Rate
Employer	Up to £7,696	0%
	Over £7,696	13.8%
Employee	Up to £7,748	0%
	£7,749-£41,444	12%
	Over £41,444 on excess	2%

As with income tax, this is also deducted from salary on a monthly basis and paid through the PAYE system.

VAT

VAT is a sales tax. It is chargeable by businesses if they are making supplies (sales) greater than the current threshold, of £79,000. Once a business exceeds this threshold they are required to register with HMRC. The VAT rate applicable depends upon the goods or services you supply. The standard rate is currently 20%. A reduced rate or a rate of zero can apply.

The main areas where VAT should be considered are importing goods for resale, providing services from overseas to private individuals in Europe, and digital businesses who are transacting with businesses and individuals in different jurisdictions. Consideration should be given to this when building a platform/commercial website so that information is captured correctly for reporting purposes. None of these issues are difficult if they are considered in advance.

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Main new measures approved by the Spanish Tax Administration

INTRODUCTION

While awaiting a major reform of the Spanish tax system for the coming years, measures have been approved since late 2012 and in this financial year 2013 that, to a greater or lesser extent, have a major effect on taxation of transactions within Spain.

The most notable due to its novelty is probably the obligation for Spanish tax residents to file a declaration of assets and rights abroad. However, that is not the only major tax novelty the Spanish Government has approved.

The following is a list, duly classified by taxes, of the latest tax novelties, with special emphasis on those that may affect international clients:

TAX NEWS

Declaration of assets abroad

The Spanish Government's new plan to prevent and combat tax fraud includes establishment of the obligation for natural and legal persons who hold property abroad to declare assets with a value exceeding 50,000 euros, under any of the following headings:

- ◆ Current Accounts.
- ◆ Securities, rights and insurance.
- ◆ Real estate

Value Added Tax

Cash-Basis Special Regime.

A new optional special regime shall come into effect from 1st January 2014, applicable to VAT taxpayers with a volume of operations under 2,000,000 euros per annum. VAT accrual under the regime shall take place at the moment of collection of the invoices issued and, moreover, the right to deduct the quotas borne shall take place at the moment they are paid.

Corporate Tax

Restriction of financial expense deduction. With effect from 1st January 2013, a limitation has been introduced on deduction of finance expenses arising from intra-group debts, as well as a general limitation on deduction of the financial expense of 30% of the operating profits, while financial expenses that do not exceed one million euros shall be deductible in all cases.

Limitation on tax deductible depreciation. Temporary limitation for financial years 2013 and 2014, of 70% of the depreciation of fixed assets for large companies (annual turnover >10 million €).

Deduction for investment of profit. As of 2013, small sized companies (annual turnover <10 million €) may deduct 10% of the profit that is assigned to investments in tangible fixed assets or real estate investments.

Impairment of the value of stakes in the capital or equity of companies shall not be deductible.

As of 2013, losses due to impairment of securities representing stakes in the capital or equity of companies shall not be deductible.

Measures to encourage state tax collection shall be extended for financial years 2013 and 2014 (applicable to large companies):

- ◆ Limits to application of Negative Tax Bases from previous financial years.
- ◆ Limit to deductible depreciation of intangible fixed assets.
- ◆ Payments to account of the tax may not be lower than 12% of the accumulated tax result.
- ◆ Increase in the existing limit for application of R&D deduction.

Personal Income Tax.

Suppression of the deduction for first home acquisition on properties purchased after 01/01/2013.

Non-Resident Income Tax.

The special tax on real estate (3% of Cadastral Value) is eliminated, and only companies in countries classified as a tax haven shall be subject.

CONCLUSION

The main aim of the new tax measures introduced by the Spanish Government is to undertake reforms that favour growth and reactivation of the economy, as well as reduction of the public deficit.

Among the new measures, that mainly affect Corporate Tax, there are measures of a strictly temporary nature that allow greater public revenue to be obtained and higher tax pressure on the taxpayers, and other more structural measures that are permanent in nature.

Finally, one must also state that measures are introduced to prevent and combat tax fraud, in keeping with the OECD recommendations.



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Major changes in tax laws of Ukraine in 2013

This article is prepared to highlight the major changes in tax laws of Ukraine in 2013, influencing resident companies and non-resident shareholders. We rather describe major changes than intend to evaluate the local tax situation in general.

Major changes in tax laws of Ukraine relate to determination of "usual price" used for calculation of corporate income tax (CIT) and VAT related to business transactions, corresponding to criteria of "controlled transactions". Controlled transactions are transactions, engaging:

– related persons: non-residents, residents declaring CIT loss in previous tax year or, as at the beginning of the reporting year, enjoying special tax regimes, i.e. paying CIT and VAT at rates differing from basic ones, non-payers of CIT or VAT;

– non-residents paying CIT at the rate which is 5 and more percent less than Ukrainian rate.

The transactions are recognised as controlled, if annual payments of a taxpayer to each counterpart under transaction are not less than 50 million UAH (w/o VAT).

Controlled transactions are governed by transfer pricing rules, introduced as of September 1, 2013, regulating the determination of usual price for these transactions.

Usual price in a controlled transaction is determined using one or several of the following methods: comparative non-controlled price (similar sales), resale price, cost-plus pricing, net income, income distribution. When selecting the method, a taxpayer should take into account completeness and reliability of price-related information, keeping in mind that the 1st method has a priority.

Price in a controlled transaction is recognised as usual, if not proven otherwise by a tax agency. A taxpayer, complying with criteria of a large taxpayer, has a possibility to reconcile the prices in controlled transactions by signing a respective protocol with a tax agency.

Taxpayers will enjoy certain relaxed restrictions in usual price determination for transactions on import/export of grain, fats, ore, slag, ashes, mineral fuel, oil and oil refining products, bitumens, mineral waxes, inorganic and organic precious metals, rare-earth elements, radioactive elements or isotopes, organic compounds, ferrous metals and products, where a counterpart is a non-resident paying CIT at the rate which is 5 and more percent less than Ukrainian rate, till January 1, 2018.

Tax agencies shall control price determination in

controlled transactions by:

1) monitoring of prices in controlled transactions, using data in e-statements filed annually by taxpayers (till May 1);

2) audits performed when tax control reveals non-inclusion of controlled transactions into annual statement, monitoring detects deviation of declared prices in controlled transactions from usual prices, or a taxpayer does not file an annual statement or does not present documentation on controlled transactions at the request of a tax agency.

Fine for violation of transfer pricing rules, occurred before 01.09.2014, shall be 1 UAH, except for the cases of non-filing of:

– statement on controlled transactions – fine in an amount of 5 % of total value of controlled transactions;

– mandatory documentation on controlled transactions – fine in an amount of 100 minimal monthly salaries (114 700 UAH in 2013).

Besides, introduction of transfer pricing rules was followed by the change in basic rules and principles of determination of usual prices for non-controlled transactions. List of transactions, where taxable object is calculated based on usual prices, is significantly reduced. In particular, related-parties transactions, which were previously based on usual prices, are now based on contract prices, if they are not included into controlled transactions.

Conclusion

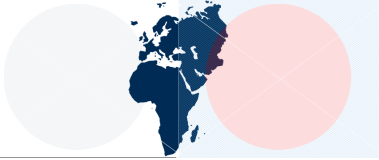
The following recommendations can be offered to Ukrainian companies:

1. Analyse all transactions for compliance with criteria of controlled transactions.
2. For controlled transactions – calculate usual price by one of the methods above and compare the resulting figure with the contract price.
3. If a contract price in a controlled transaction does not correspond to usual price – calculate and pay CIT and VAT liabilities, based on the usual price of a controlled transaction.
4. File a statement on controlled transactions to a tax agency.

In non-controlled transactions – follow market price in determination of usual price, i.e. price at arm's length transaction.

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Romania: Euroglobal Audit & Advisory SRL— <http://www.euglobal.eu>

Russia: Intercom-Audit JSC— <http://www.intercom-audit.ru/eng>

Spain: Faura-Casas Auditors Consultors, S.L.— <http://www.faura-casas.com/?lang=en>

Ukraine: International Auditing Group Ltd.— <http://www.iag.com.ua/en>

United Kingdom: Blick Rothenberg LLP— <http://www.blickrothenberg.com>

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Keep sharing information with us by sending completed articles to our EMEA Executive Office, Stephen Hamlet at stephen.hamlet@bkremea.com by **February 14, 2014** for inclusion in the next edition.

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