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SERBIA: Tax

Amendments to the Transfer Pricing Rulebook

In our [Newsletter 17/2013](#), we presented novelties introduced into Serbian transfer pricing regulations by the new Rulebook on Transfer Pricing and Arm's Length Methods Applicable to Determination of Prices in Transactions Between Related Entities¹ ("Rulebook"), which elaborates on the statutory requirement for mandatory transfer pricing documentation for FY 2013 and onwards.

On 29 January 2014, the Ministry of Finance adopted amendments to the Rulebook aimed at easing certain transfer pricing requirements and rectifying certain ambiguities and technical errors. The most important amendments pertain to the following:

- abbreviated form of the transfer pricing report;
- content of functional and group analysis;
- definition of internal comparable uncontrolled price;
- definition of the term related entity for the purpose of the application of the certain transfer pricing methods.

Abbreviated report

The amended Rulebook allows for submission of an abbreviated report which does not have to contain analysis as to whether the transfer prices are in conformity with the arm's length principle, in the following cases:

- for one-off transactions with the individual value not exceeding RSD 8.000.000 (turnover threshold for mandatory VAT registration);
- if the total value of all transactions with one related entity in the relevant financial year does not exceed RSD 8.000.000.

¹ *Pravilnik o izmenama i dopunama Pravilnika o transfernim cenama i metodama koje se po principu „van dohvata ruke“ primenjuju kod utvrđivanjacene transakcije među povezanim licima (Official Gazette of the Republic of Serbia, no. 8/2014).*

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Abbreviated report must indicate:

- description of the transaction;
- value of the transaction; and
- designation of the related counterparty.

Loans between related entities always require full report.

Group and functional analysis

The obligation to list all related entities within the group analysis is abolished. According to the amended Rulebook, taxpayer is required to provide only basic information on related entities counterparties to its transactions.

The content of the functional analysis is slashed by doing away with the obligation to disclose information on planned development of the business and transfer pricing policies with related entities.

Definition of internal comparable price

Definition of internal comparable price is expanded to encompass not only prices in transactions with unrelated parties but also prices in transactions which the taxpayer's related entity executed with unrelated parties, provided that such transactions were carried out under comparable circumstances.

Definition of "unrelated entity" for the purpose of different transfer pricing methods

Before the amendments, unrelated entity was defined for all purposes as an entity which has no related entities within the meaning of Article 59 of Law on Corporate Income Tax ("CIT")². This was a drafting error as there was no intention to unduly restrict the concept of unrelated entity in this manner. The error is now rectified. For the purpose of internal comparable price and internal comparable margin techniques, unrelated entity is an entity which is not related to the taxpayer within the meaning of Article 59 CIT, irrespective of whether this unrelated entity is a stand-alone company or a member of a group. For the purpose of external comparable price and external comparable margin techniques, the parties to the benchmark transaction have to be mutually unrelated. Finally, unrelated entity is defined as an entity which has no related entities within the meaning of the Article 59 of CIT only for the purpose of the application of transactional net margin method, which is used to determine the market range of transactional net margins.

² According to Article 59 CIT, a party related to the taxpayer is an individual (and a relative of that individual falling within one of the prescribed categories) or a legal entity who/which has ability to control or significantly influence business decisions of the taxpayer. The ability to control or significantly influence business decisions of the tax payer is deemed to exist in case of:

- direct or indirect ownership of at least 25% of shares or stakes of the tax payer;
- direct or indirect holding of at least 25% of voting rights in the corporate bodies of the tax payer

Two legal entities are also deemed related if same individuals or legal entities, directly or indirectly, hold at least 25% ownership or voting participation in those legal entities.

Finally, any non-resident entity from a jurisdiction with preferential tax regime (a list of such jurisdictions is issued by the Ministry of Finance) having transactions with the Serbian tax payer is deemed related to the latter.

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SRBIJA: Poresko pravo

Izmene i dopune Pravilnika o transfernim cenama

U našim [poreskim vestima 17/2013](#) prikazali smo rešenja uvedena Pravilnikom o transfernim cenama i metodama koje se po principu "van dohvata ruke" primenjuju kod utvrđivanja cene transakcije među povezanim licima (dalje u tekstu: Pravilnik) kojima je bliže uređena zakonska obaveza pripreme dokumentacije o transfernim cenama počev od 2013. godine.

Ministar finansija je 29. januara 2014. godine doneo Pravilnik o izmenama i dopunama Pravilnika sa ciljem pojednostavljivanja određenih zahteva i otklanjanja primećenih nejasnoća i tehničkih omaški. Najznačajnije promene odnose se na sledeće:

- Izveštaj o transfernim cenama u skraćenom obliku
- Propisani sadržaj funkcionalne analize i analize grupe
- Definicija interne uporedive cene
- Definicija povezanog lica za potrebe primene metoda transfernih cena

Skraćeni izveštaj

Izmenjenim Pravilnikom omogućeno je da se izveštaj o transfernim cenama predaje u skraćenom obliku, koji ne mora da sadrži analizu usklađenosti transfernih cena sa principom "van dohvata ruke", u sledećim slučajevima:

- Jednokratne transakcije čija vrednost nije veća od 8.000.000 RSD (vrednost prometa za koju je zakonom kojim se uređuje porez na dodatu vrednost propisana obaveza evidentiranja za porez na dodatu vrednost)
- Ukoliko ukupna vrednost transakcija sa jednim povezanim licem u toku godine za koju se podnosi poreski bilans nije veća od 8.000.000 RSD.

Izveštaj u skraćenom obliku mora sadržavati sledeće informacije:

- Opis transakcija
- Vrednost transakcija
- Povezano lice sa kojim je transakcija izvršena.

Za zajmove i kredite ne može se podnositi izveštaj u skraćenom obliku.

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Funkcionalna analiza i analiza grupe

Ukinuta je obaveza da se u analizi grupe navedu sva lica koja su povezana sa poreskim obveznikom. Prema izmenjenom Pravilniku, od poreskog obveznika se samo zahteva da pruži osnovne informacije o povezanim licima sa kojima je imao transakcije.

Umanjen je i obim funkcionalne analize tako što je ukinuta obaveza da se u izveštaju o transfernim cenama navode podaci o planiranom razvoju poslovnih odnosa i politika transfernih cena sa povezanim licima.

Definicija interne uporedive cene

Proširena je definicija interne uporedive cene i sada ona osim cena u transakcijama koje je poreski obveznik izvršio sa nepovezanim licima obuhvata i cene u transakcijama koje je obveznikovo povezano lice izvršilo sa nepovezanim licima pod uslovom da su takve transakcije izvršene pod uporedivim uslovima.

Definicija pojma nepovezano lice za potrebe primene metoda transfernih cena

Pre izmena Pravilnika povezano lice je za potrebe primene Pravilnika bilo definisano kao ono lice koje nema povezanih lica u skladu sa članom 59. Zakona o porezu na dobit pravnih lica (ZPDPL).³ Ovo je bila greška u pripremi teksta s obzirom na to da nije postojala namera da se značenje termina nepovezano lice ograniči na neadekvatan način. Izmenama Pravilnika ova omaška je otklonjena. Nepovezano lice je definisano kao lice koje nije povezano sa obveznikom u smislu člana 59. ZPDPL kada se primenjuju metode interne uporedive cene i interne uporedive marže, bez obzira na to da li se u konkretnom slučaju radi o privrednom društvu koje je član grupe ili ne. Kod primene eksterne uporedive cene i eksterne uporedive marže, nepovezana lica su definisana kao lica koja nisu uzajamno povezana u smislu člana 59. ZPDPL. Konačno, nepovezano lice je definisano kao lice koje nema povezanih lica u skladu sa članom 59. ZPDPL kod primene metode transakcione neto marže prilikom utvrđivanja tržišnog raspona transakcione neto marže.

³ U skladu sa članom 59. ZPDPL pod licem povezanim sa obveznikom se smatra fizičko ili pravno lice u čijim se odnosima javlja mogućnost kontrole ili značajnijeg uticaja na poslovne odluke, kako sledi:

- neposredno ili posredno posedovanje najmanje 25% akcija ili udela u obveznikovom kapitalu
- neposredno ili posredno posedovanje najmanje 25% prava glasa u obveznikovim organima upravljanja

Dva pravna lica se, takođe, smatraju povezanim ukoliko u njima ista fizička ili pravna lica neposredno ili posredno poseduju najmanje 25% vlasništva nad kapitalom ili 25% prava glasa.

Konačno, sva nerezidentna pravna lica iz jurisdikcija sa preferencijalnim poreskim sistemom (listu je izdao ministar finansija) smatraju se povezanim sa srpskim poreskim obveznikom..

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