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WAYS TO IMPROVE THE ORGANIZATIONAL ASPECTS OF TAX CONTROL IN TRANSFER PRICING

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Abstract

In this article, in order to stabilize the financial situation of prestigious companies in the world, create new jobs and achieve economic growth, it is necessary to "transition to international standards of management, use transfer pricing in the process of concluding financial transactions in entities of the cluster and cooperative system, and present financial and management reports on operational segments." . International experience testifies to the fact that a sufficient information base has been formed on the theoretical, methodological and organizational aspects of these problems, and special scientific and innovative research is being conducted in this regard.

Keywords: tax, fiscal policy, budget, tax administration, tax potential, normative analysis, positive analysis, tax burden, representative tax rate, average rate, tax reporting, tax revenues, analysis, positive analysis, tax burden, market price, management account, transfer price.

Introduction

Transfer pricing is particularly relevant in the context of globalization and the growth of international trade. It is also relevant in that the formation of transfer prices in order to avoid or underpay taxes in intra-republican trade leads to the non-receipt of taxes that should be paid to the state budget.

The direction of tax control on transfer pricing, as noted above, is a new direction in the legislation of the Republic of Uzbekistan. Article 193 of the Tax Code establishes that the documents specified in the first part of this article may be required from the taxpayer by the Tax Committee no later than June 1 of the year following the calendar year in which the controlled transactions were concluded. That is, in simple

terms, the provisions of the Tax Code on transfer pricing have been implemented since January 1, 2022, and it is provided that an audit of controlled transactions concluded in 2022 may be conducted from June 1, 2023.

To date, no audits have been conducted in this direction.

In our opinion, we believe that the provisions of the Tax Code contain the following problems:

1. Article 194 of the Tax Code establishes that an audit shall be conducted on the basis of a notification of controlled transactions sent in accordance with Article 182 of the Tax Code or a notification of the territorial tax authority, as well as in the event that a controlled transaction is identified as a result of a tax audit.

Article 182 of the Tax Code establishes that taxpayers are obliged to notify the tax authorities of the controlled transactions they have concluded during the calendar year, and the notification shall be sent by the taxpayer to the tax authority at the place of its registration no later than the deadline for submitting the annual financial report for the calendar year in which the controlled transactions were concluded.

The deadline for submitting annual financial reports is set for enterprises with foreign investment no later than March 25 of the year following the reporting year, and for other business entities no later than February 15 of the year following the reporting year.

The legislation does not specify the deadline for submitting a notification for permanent establishments and individuals, but controlled transactions are also carried out by permanent establishments and individuals.

However, if the deadline for submitting a notification on a controlled transaction were set as a single deadline, i.e. April 1 or June 1 of the year following the year in which the transaction was carried out, taxpayers would be given additional time to fully cover their existing controlled transactions, avoid uncertainties, and create equal conditions for taxpayers.

2. If a taxpayer has a controlled transaction but does not submit a notification, there is no possibility of conducting an audit. Also, no liability measure has been established for failure to submit a notification.

In order to eliminate existing shortcomings, it is advisable to introduce an appropriate amendment to the Tax Code to allow for an audit to be conducted even if the tax authorities determine that a controlled transaction exists.

3. In accordance with Article 337 of the Tax Code, a 0% profit tax rate is established for profits from the sale of goods (works) for export (excluding goods approved in the Appendix to the Decree of the President of the Republic of Uzbekistan dated November 29, 2018 No. PF-5587).

In this case, the sale of goods and services between related persons at prices below market prices and the application of a 0% rate to exports even when the amount of income not fully received as a result of transfer pricing determination by the Tax Committee leads to non-calculation of tax. In order to eliminate this imbalance, it is necessary to introduce into Article 337 of the Tax Code the application of the base rate of profit tax (15%) rather than a 0% rate "to the amount of income not fully received as a result of transfer pricing determination when exporting goods (services)". This is because in practice, there are no obstacles to exporting goods (services) from the republic at low prices in order to transfer profits earned by exporting entities to other countries with a lower tax burden.

4. Article 473 of the Tax Code establishes that participants in special economic zones are exempted from paying profit tax, depending on the amount of their investments:

For investments in the amount of 3 million US dollars to 5 million US dollars - for a period of 3 years;

For investments in the amount of 5 million US dollars to 15 million US dollars - for a period of 5 years;

For investments in the amount of 15 million US dollars and above - for a period of 10 years.

This tax exemption applies only to the types of activities of a participant in a special economic zone stipulated in the agreement on investment in the territory of a special economic zone concluded between the investor (investors) and the Directorate of the Special Economic Zone.

In practice, there are no obstacles to the export of goods (services) produced from the republic at low prices in order to transfer the profits received by a participant in a special economic zone to other countries with a lower tax burden.

In order to prevent such situations, it is advisable to make an amendment to the law on the non-application of the benefit for the amount of income not fully received as a result of transfer pricing for the sale (purchase) of goods (services) at prices lower (higher) than the market price.

5. In accordance with Article 187 of the Tax Code, the calculation of profitability based on the results of activities carried out under comparable economic conditions (commercial conditions) may be carried out on the basis of the data of the financial statements of a legal entity if the following conditions are simultaneously observed:

1) the legal entity carries out comparable activities and performs comparable tasks related to them. The comparability of activities may be determined taking into account the types of economic activities provided for in the General State Classification of Types of Economic Activities of the Republic of Uzbekistan, as well as international and other classifications;

2) the total amount of net assets of a legal entity is not negative according to the data of the financial statements as of December 31 of the last year for several years from which profitability is calculated;

3) the legal entity does not have losses from sales according to financial reporting data for a period of more than one year, more than several years from which profitability is calculated;

4) the legal entity does not directly and (or) indirectly participate in the activities of another legal entity with a share exceeding 25 percent and does not have a legal entity as a participant (shareholder) with a direct share exceeding 25 percent.

When determining the profitability range, if the transactions are not controlled, it is stipulated that profitability indicators determined based on the results of at least four comparable transactions, including transactions carried out by the taxpayer, or on the basis of financial statements of at least four comparable legal entities, should be used, but this very article requires that “a legal entity shall not directly and (or) indirectly participate in the activities of another legal entity with a share exceeding 25 percent and shall not have a legal entity as a participant (shareholder) with a direct share exceeding 25 percent.” This contradicts the above norm and the following norm, and this causes many problems in practice.

In order to correct the contradictory norm in this Code, the situation will be corrected if the word 25% in paragraph 4 is changed to 20%.

5. Another problem is that the Tax Code does not contain the concept of symmetrical adjustment. Thus, if an additional tax is calculated as a result of a tax audit on a controlled transaction between 2 residents, then logically both entities will have been taxed on the same amount of income. To eliminate these situations, it is necessary to introduce a norm on symmetrical adjustment into the Tax Code.

Harmonization of the rules on related parties and controlled transactions

Article 180 of the Tax Code provides an explanation of controlled transactions between related parties. According to it, for the purposes of the Tax Code, transactions between related parties, taking into account the features provided for in this article, are recognized as controlled transactions.

A transaction between related parties who are tax residents of the Republic of Uzbekistan is recognized as a controlled transaction if at least one of the following conditions is met:

1) the amount of income (the sum of transaction prices) in the relevant calendar year from transactions between these persons exceeds five billion soums;

2) at least one party to the transaction applies a special tax regime or is a participant in a special economic zone, and among the other parties to this transaction there is a person who does not apply special tax regimes;

3) at least one party to the transaction is exempt from paying profit tax, applies a reduced tax rate or other tax benefits, while among the other parties to this transaction there is a person who is not exempt from paying such tax and does not apply benefits;

4) the subject of the transaction is a mineral extracted by one of the parties to the transaction, if an ad valorem tax rate of the tax for the use of subsoil is provided for in relation to this mineral.

The transactions provided for in paragraphs 2 - 4 above, if the amount of income under transactions between these persons in the relevant calendar year exceeds five hundred million soums.

A series or set of transactions for the sale of goods (services) concluded with the participation (intermediation) of unrelated persons with the first seller and the last buyer of these goods (services) shall be treated for the purposes of this Code as a transaction between related persons, if the seller and buyer are related persons. In such cases, the existence of third parties with whose participation (intermediation) this series or set of transactions is carried out shall not be taken into account.

This rule applies provided that such third parties participating in this sequence or set of transactions:

1) do not perform any additional functions in this sequence or set of transactions, except for organizing the sale (resale) of goods (services) by one person to another person;

2) do not assume any risks and do not use any assets to organize the sale (resale) of goods (services) by one person to another person.

The amount of income from transactions for a calendar year is determined by adding the amount of income received in the calendar year from such transactions concluded with one person (related persons), taking into account the procedure for recognizing income established for profit tax.

In paragraph 3.1, we proposed that provisions should be introduced into the Tax Code on symmetrical amendments. Since the Tax Code currently does not contain provisions on the introduction of symmetrical adjustments, it is advisable to revise the provision on the recognition of transactions between related parties as controlled transactions if the amount of income in the relevant calendar year (the sum of transaction prices) exceeds five billion soums. In this case, it is advisable to leave control only for personal income tax for these controlled transactions.

Article 181 of the Tax Code covers controlled foreign trade transactions, according to which, for the purposes of this Code, taking into account the features provided for in this article, the following are recognized as controlled transactions:

1) transactions in the field of foreign trade of world exchange traded goods;

2) transactions in which one of the parties is a person whose place of registration, place of residence or place of tax residency is an offshore jurisdiction.

It is considered appropriate to make additions and amendments to Article 181 to recognize transactions between related parties, one of the parties of which is a tax

resident of the Republic of Uzbekistan, as controlled foreign trade transactions. The reason is that in Part 1 of Article 180, when it comes to controlled transactions between related parties, foreign trade transactions were not taken into account. First of all, if we proceed from world practice, we will see that foreign trade activities are more controlled in the formation of transfer prices.

In addition, in practice, we are witnessing the fact that when recognizing foreign trade transactions as controlled transactions, we believe that it would be appropriate to amend Article 181 of the Tax Code to include these transactions as controlled foreign trade transactions only if the amount of income from these transactions in the relevant calendar year exceeds one billion soums. The reason is that when economic entities export and import goods, if the total number of goods includes one good falling into the 5 different types of goods groups provided for in Article 181, they fall into the list of controlled transactions, and these entities, in turn, are required to submit a notification about controlled transactions. In accordance with the above, we propose to add the following amendment to Part 1 of Article 181 of the Tax Code:

“For the purposes of this Code, taking into account the features provided for in this Article, the following are recognized as controlled transactions:

...

3) transactions between related parties, one of the parties of which is a tax resident of the Republic of Uzbekistan.

If the amount of income from transactions provided for in Part 1 of this Article in the relevant calendar year exceeds one billion soums.”

A proposal has been developed to change the rule from 25% to 20% in Article 187 of the Tax Code, which states that a legal entity shall not directly and (or) indirectly participate in the activities of another legal entity with a share exceeding 25% and shall not have a legal entity as a participant (shareholder) with a direct participation share exceeding 25%.

It is advisable to amend the Tax Code to recognize transactions between related parties, one of the parties of which is a tax resident of the Republic of Uzbekistan, as controlled foreign trade transactions, and to take into account the fact that the

amount of income from transactions in the relevant calendar year exceeds one billion soums.

References:

1. Davlat soliq qo'mitasi ma'lumotlari. www.soliq.uz.
2. Солиқ кодекси (янги таҳрири). 176-178 моддалар. Қонун ҳужжатлари маълумотлари миллий базаси, 30.12.2019 й., 02/19/СК/4256-сон; 11.03.2020 й., 03/20/607/0279-сон. www.lex.uz/docs/4674902.