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Nataliya Yevchenko

Ph.D., Associate Professor of Banking

Lyudmila Pavlenko

Assistant Professor of Banking

SHEE «Ukrainian Academy of Banking of the National Bank of Ukraine»

TAX REGULATION OF TRANSFER PRICING IN BANKS OF UKRAINE

Transfer pricing is an international tax policy and instrument to maximize the profitability of multinational companies by minimizing tax liabilities in the countries in which operate their units, subject to the regulatory norms to establish transfer prices. Decisions on transfer pricing impact on international activity of multinational companies, and allow reaching some financial goals, such as lowering income taxa and tariffs, minimizing currency risk, cash flow management, evaluation of effectiveness of unit's activity.

However, transfer pricing not expedient to associate only with the activity of of large multinational companies. This instrument of international tax planning and capital allocation is widely used participants of international relations that create abroad their branches or representative offices and use them for transfer operations because, category transfer price is considered as the price which is used in transactions between departments within the same organization.

So, in terms of tax regulation, the use of transfer pricing in the banking sector of Ukraine allows to minimize tax payments. In banking transfer price is equated with the notion of transfer rate and is defined as the internal rate established by the considering market indicators and is used to allocate income and expenses between management areas in all structural units of a bank.

Parent (mostly foreign) bank through targeted overstatement of transfer pricing transmit resources to subsidiary (mainly domestic) bank. This operation leads to increase of tax expenditures Ukrainian bank, which usually deductible for income tax and as a result, reduces tax revenues into the national budget. On the other hand, the parent bank will optimize (minimize) their tax payments because the outputs of the profits in countries with lower tax [1].

So, in Ukraine the question of tax transfer pricing regulation is especially important because of the relatively unsettled legal basis and insufficient experience of the Ukrainian regulatory authorities in the struggle of manipulation of transfer prices.

Tax Code of Ukraine [2] extends the transfer pricing regulations in Ukraine and establishes methods for determining transfer prices based on the recommendations of the Organization for Economic Cooperation and Development (OECD). In particular, the Tax Code of Ukraine [2] provided for the introduction of regular prices, which in essence corresponds to the principle of «arm's length». Also, certain methods of regular price: comparative uncontrolled price (unique selling), resale price «cost plus», distribution of profits and net profits. Thus, each following method is applied in case if regular price cannot be determined by application of the previous method.

According to the Law of Ukraine «On Amendments to the Tax Code of Ukraine on transfer pricing regulations» [3], which effective from 01.09.2013, the amendments were made to the Tax Code of Ukraine, which provides for the principle of transfer pricing regulations in Ukraine and control of related transactions at the legislative level. Control of transfer prices will be in the event that the aggregate amount of transactions with counterparty exceeds 50 million per year.

For operations that will be controlled according to the law [3], are intra-group transactions of companies (between related parties) and international transactions with residents of countries with low taxation. Reports filed annually by May 1 following the reporting year. Also, the law [3] provides a new type of tax audit – audit of transfer pricing.

The main global trends in the tax transfer pricing adjustment can be noted: increasing attention from regulatory authorities to transfer pricing issues, increased tax reporting requirements and penalties for non-compliance. Therefore, the resolution transfer pricing regulations according to international tax practice is important for foreign banks already operating in Ukraine, or planning to enter the domestic market.

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