Transfer Pricing Country Summary

Ukraine

May 2022

1. Introduction

Ukraine is not an OECD member. Neither the OECD Guidelines nor the UN TP Manual are currently recognized in Ukraine. The UTA (Ukrainian Tax Authorities) states in letter 1615/6/99-99-15-02-02-15 dated 15 August 2017 that both tax authorities and taxpayers may use the OECD Guidelines only as advisory and guiding material when applying article 39 of the Tax Code.

The main difference between Ukrainian rules and the OECD Guidelines is that the scope of controlled transactions includes transactions with counterparts in low-tax jurisdictions, whether or not such entities are affiliated. Ukraine's rules also include an atypical TP regime applicable to the export/import of specific commodities that differs from the OECD Guidelines. Overall, Ukrainian laws remain hazy and have numerous gaps.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

The legal framework is the Tax Code of Ukraine, Article 39; Order of the Ministry of Finance NJo. 8, dated 18 January 2016.

Generalized Tax Consultations on Transfer Pricing adopted by Decree No.699 of the Ministry of Revenues and Duties(effectiveNovember22,2013) and No.368(effectiveJuly01,2014); Explanatory letter from the Ukrainian Tax Authorities regarding changes introduced to TP by the Law No. 1797 dated 21 December 2016 (effective January 01, 2017).

b) Definition of Related Party

To better understand the definition 'related parties' they are divided by the Tax Code of Ukraine into three groups: legal entities, natural persons and legal entities, and natural persons. On this regard we separated them. Furthermore, we did the following amendments:

For transfer pricing purposes, the following are to be recognized as related parties:

- Legal entities
  - in case if one of such entities directly and / or indirectly (through related parties) owns equity rights of another legal entity in the amount of 20 percent or more;
  - in case if one of such entity or person directly and / or indirectly owns equity rights of such entity and the size of the share of the equity rights of such entity is 20 percent or more;
  - Legal entities, sole executive body of which are appointed (elected) by a resolution of the one and the same person (the owner or his authorized agent);
  - Legal entities in which 50 percent of the collective executive body or a supervisory board or more are appointed (elected) by a resolution of the one and the same entity or person;

  - Legal entities in which at least 50 percent of the collective executive body and / or the supervisory board are represented by the same individuals;
  - Legal entities in which the sole collective executive body are appointed (elected) by a resolution of the one and the same legal entity or person;
  - Legal entities have the authority to appoint (elect) sole executive body of such entities or to appoint (elect) 50 percent of its collective executive body or supervisory board or more;
  - A legal entity grants a loan or repayable financial aid (an interest-free loan), and the outstanding amount of that loan/repayable financial aid exceeds 3.5 times the equity capital of the recipient legal entity (10 times for financial institutions and leasing companies).
- Natural persons and legal entities
  - A natural person and a legal entity — if a natural directly and / or indirectly (through related parties) owns equity rights of other legal entity in the amount of 20 percent or more;
  - A legal entity and a person who has the right to appoint (elect) the sole executive body of such legal entity or to appoint (elect) no less than 50 percent of its collective executive body or supervisory board;
  - A legal entity and a natural personal — in the case if a natural person exercises powers of the sole executive body of such entity;
  - A legal entity and a person who has the authority to appoint (elect) the sole executive body of such legal entity or to appoint (elect) 50 percent of its collective executive body or supervisory board or more;
  - A natural person grants a loan or repayable financial aid (an interest-free loan), and the outstanding amount of that loan/repayable financial aid exceeds 3.5 times the equity capital of the recipient legal entity (10 times for financial institutions and leasing companies).
- Natural persons o
  - Natural persons: a spouse (husband or wife), parents (including adoptive parents), children (adult children, minor/underage children, including adopted children), siblings and halfsiblings, trustee, custodian, a child under trusteeship or custody.

Moreover, all members in a “vertical ownership chain,” where each shareholding exceeds 20 percent is considered related parties. Direct or indirect state participation in the activity of legal entities does not make these entities related per se. Such entities can be recognized as related based on other criteria prescribed by the Tax Code.

c) Nature of Transfer Pricing Documentation

With effect from 23 May 2020, the Tax Code was amended by the Law No. 466 dated 16 January 2020, regarding the implementation of the BEPS Action 13 in Ukraine including the introduction of a three-tiered documentation mechanism (country-by-country (CbC) reporting, Master File and Local File).[1]

d) Tax Havens & Blacklists[2]

The CFC (controlled foreign companies) rules in Ukraine will come into force on 1 January 2022. The first reporting period is 2022. The first report is allowed to be submitted in 2024 for the first two reporting periods.
Broadly, under the CFC regime, a Ukraine resident company or individual may be taxed on a proportion of the profits of certain entities that are owned or controlled by a Ukrainian tax resident. The profits of a CFC are included into the taxable income of the controlling person and are taxed at standard income tax rate and rules. Please note there are a few specific tax rates for individuals.

e) Advance Pricing Agreement (APA)

Unilateral, bilateral, and multilateral APAs are available for large domestic taxpayers (i.e. taxpayers with revenues over UAH 1 billion, or the amount of taxes paid to the state exceeding UAH 20 million in the last 12 months). An APA cannot cover customs valuation issues. No fee is charged on APA application.

f) Audit Practice

The reasons for inspection of regulated transactions are the following:

- Notification as to regulated transactions discovered in accordance with Article 39.4 of Article 39;
- Identification of the results of monitoring of price deviations of regulated transactions from the level of regular (market) prices in accordance with paragraph 39.5.1 of Article 39;
- Failure of the taxpayer to file the report on the regulated transaction in accordance with clause 39.4 of Article 39;
- Failure of the taxpayer to file documentation on regulated transactions or if it is filed in violation of the requirements of paragraph 39.4 of Article 39.

[1] Document - Ukraine - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD, para. 13.1.

[2] https://taxsummaries.pwc.com/ukraine/corporate/group-taxation

Inspection of regulated transactions is conducted by tax authorities, within a maximum duration of 18 months. In certain cases, this period can be extended for another 12 months. Taxpayer is notified of the decision within 10 days from the date of issuance and no later than 10 days from the starting date of the audit process.

Two transfer pricing audits on one transaction of a one taxpayer within the same calendar year are not allowed.

3. Transfer Pricing Documentation

a) Level of Documentation

Transfer pricing documentation should include:

• data related to persons who allow for their identification (including counterparties in controlled transactions; persons directly (indirectly) own equity rights of the taxpayer in the amount of 20 percent or more; the states (territories) of their tax residence);

• information about the group, including the structure of the group, description of the activities of the group, and transfer pricing policies;

• description of the transaction, the conditions of its implementation (price, timing and other specific conditions required by the legislation of Ukraine as essential elements of agreements (contracts);

• description of the goods (works, services), including physical characteristics, quality and reputation in the market, the country of origin and manufacturer, availability of trademark, and other information related to the quality characteristics of goods (works, services);

• terms and conditions of the settlement under the transactions;

• factors that have influenced the formation and establishment of the price;

• information on the functions of related parties who are parties to the regulated transaction, and assets which they used and whish are associated with such regulated transaction, and economic (commercial) risks taken into account by such persons in the implementation of the regulated transaction (functional analysis and risk analysis);

• economic analysis (including the methods used to determine the price of the regulated transaction and the rationale for choosing the appropriate method, the amount of revenues (profits) and / or the amount of expenses (loss) incurred as a result of the regulated transaction, the level of profitability; the calculation of the market range of prices (profitability) for regulated transaction with a description of the approach for selection of comparable transactions, the sources of information used to determine the price of regulated transactions);

• results of a comparative analysis of commercial and financial conditions of transactions in accordance with sub-clause 39.2.2 of Article 39;

• information as to proportional adjustment of the tax base and the amount of tax exercised by the taxpayer in accordance with paragraph 39.5.4 and 39.5.5 of Article 39 (in case when this adjustment is taken place).

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

The following methods are accepted:

- Comparable uncontrolled price (CUP) method
  Resale price method
  Cost plus method
  Profit spit method
  Transactional net margin (TNMM) method.

The choice of transfer pricing method depends on circumstances, but generally should be the most appropriate method. Taxpayers can apply more than one method and are expected to consider the reliability of the method chosen for the respective situation. However, in the case where there is a possibility of application of both the CUP method and any other method, the CUP shall be applied.

If there is an equal reliability of the "resale price" method or the "cost plus" method as well as the net profit (margin) method or profit split method – the first two methods are given priority.

f) Economic Analysis – Benchmark Study

Ukraine does not have its official database of comparable information. Foreign comparables are accepted by tax authorities if Ukrainian database is not sufficient.

The following sources of information can be used:

- information regarding comparable transactions of the taxpayer as well as his counterparty with non-related parties;
- any publicly available sources of information which provide information on comparable transactions

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the ''conduct of parties'' the prevailing concept.

h) Financial Statements

In general, resident businesses pay tax on their worldwide earnings (article 134 of the UTC). The taxable base is established by subtracting income from cost of sales and other expenses as indicated by the taxpayer's financial statements, with certain adjustments and limitations. Taxpayers with an annual income of less than UAH 40 million may opt out of making the financial adjustments.

Earnings are recorded on an accrual basis.

For both parties of the transaction, the transfer of finances, receivables, and tangible and intangible assets in the course of a company's reorganization is tax-free.[3]

[3] Document - Ukraine - Corporate Taxation - 1. Corporate Income Tax - Tax Research Platform - IBFD, para. 1.3.1.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	Local IFRS	taxpayers must file a quarterly tax return and an annual tax return. The quarterly tax returns must be filed within 40 days after the last day of the reporting quarter, while the annual tax return must be filed within 60 days after the year end	Not applicable	Not applicable	Yes

Master File	Prepare	Electronic	after 12 months since the end of the group's financial year	Yes – 90 calendar days	Yes	Yes
Local File	Prepare	Electronic	taxpayer must file the Local File within 30 calendar days from the date of receipt of a written request of the UTA	Yes – 30 calendar days	Yes	Yes
CbCR	Prepare	OECD Guidelines	within 12 months of the end of the group's financial year	Not applicable	Yes – EUR 750 million	Yes
TP report	File	Electronic	1 October of the year following the reporting year	Not applicable	Yes – if the revenue	Yes
Annual Accounts	Prepare	IFRS, UA GAAP	no later than February 28/March 1 for the reporting year	Not applicable	Not applicable	Yes

Segmented P&L	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
* Ukraine has signed the MCAA agreement for the filing of CBCR.						
* Ukraine does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.						

j) Mandatory Language

Documentation must be in Ukrainian. If a taxpayer submits documents issued in a foreign language they must be translated into Ukrainian and submitted together with its originals.

k) Notification Requirement

On 2 August 2021, the Ministry of Finance has approved for CbC reporting form.[4]

l) Record Keeping

Taxpayers that conduct controlled transactions are obliged to prepare and keep TP documentation for each reporting period.

m) Penalties and Interest Charges

If the tax authority determines additional tax liabilities on course of taxpayers' understatement, a penalty of 25 percent of the amount of tax liability is applied. If an additional tax liability on course of taxpayers' understatement is determined by the tax authority for the second time, a penalty of 50 percent of the accrued tax liability is applied.

The penalties for violation of transfer pricing documentation rules are as follows:

- failure to provide the TP documentation attracts a fine of 3% of the controlled transaction value (up to Ukrainian Grivna ("UAH") 352,400 for all controlled transactions)

[4] Document - Ukraine - Transfer Pricing - 13. Documentation Requirements - Tax Research Platform - IBFD, para. 13.2.1.

- failure to provide the TP documentation within 30 calendar days after the deadline for payment of this penalty will furthermore attract a fine of UAH 8,810 per day of delay
- late filing (i.e. not within 30 calendar days from the date of receipt of a written request of the UTA) of the TP documentation attracts a fine of UAH 3,524 per day of delay, up to a maximum of UAH