



General rules on tax control in transfer pricing in Uzbekistan

**Abdiev Jahongir
Ibrahimovich**

**Tashkent State University of Economics
Independent researcher**

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. According to the research, "US Federal Tax Service (IRS) received 3.4 billion dollars obtained as a result of illegal allocation of royalties and other costs in the process of trade deals between UK and US companies in the process of formation of transfer pricing." that dollar income was returned to the main company located in England" indicates the seriousness and importance of the issue.

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: The reforms currently being implemented in our country are ultimately creating the basis for the rapid development of the economy, and tax control is an important tool for preventing violations in the financial sector. Targeted and well-targeted tax control will ensure that taxpayers comply with tax legislation and in the future will increase tax revenues by expanding the tax base. Although effective tax control practices have been established in our republic, there is almost no experience in organizing tax control in determining transfer prices.

Transfer prices help to shift profits to countries with low tax rates or to avoid taxation. Governments around the world strictly control transfer prices to ensure fair taxation and

prevent abuse of granted benefits. At the same time, it is important to determine whether tax revenues to the budget due to transfer pricing are not fully received due to the novelty of the direction of transfer pricing control in the Republic of Uzbekistan, and the control process is just beginning.

Analysis of the literature on the topic

Scientific research on transfer pricing is being studied as a research direction in developed countries. B. Khasanov emphasized that, according to his opinion, on the issue of transfer pricing policy, there are two alternative approaches to its formation among financiers and marketers - cost and value approaches.

When considering transfer pricing, it is necessary to pay attention to its differences

from market prices. The article "General Rules on Market Prices" of the current Tax Code states that in order for transaction prices, income and expenses of the parties to these transactions to be recognized as market prices, the following requirements must be met: the contractual price clause in transactions concluded between independent persons, based on the results of stock exchange trading, or the price agreement protocol, the taxpayer has not made independent adjustments to the amounts of tax (losses) and in other cases specified in the legislation.

Soya-Serko A.A., referring to the tax control established over transfer prices, acknowledges that they are considered in the economic literature as suspicious or unusual prices. In his opinion, the definition given to transfer prices is appropriate, which is explained by the fact that transfer prices are determined by agreement of the parties outside the market to achieve commercial goals and are used precisely to reduce the tax burden.

Avrova (2007) emphasizes that management accounting is the main function of management, along with such functions as planning, regulation, organization and motivation. This means that improving management and creating a market mechanism are inextricably linked with the development of the accounting system.

Bogatina (2007) describes management accounting as a part of production management, which, together with other types of services, provides complex information for the management of the enterprise, and is an infrastructure necessary for the normal functioning of the enterprise.

Drury (2003) sees management accounting as providing managers with the information they need to determine, plan, control and evaluate the performance of an organization. In his work, he pays attention to the following positions of management accounting;

- the purpose of management accounting;
- users of accounting information;
- comparative characteristics of management and financial accounting systems;
- decision-making process;
- transfer pricing formation;

- management process;

- the role of accountants-analysts in the management process.

Popova (2014) showed that in developing a unified methodology for assessing tax potential, it is necessary to make scientifically based management decisions related to: the distribution of interregional transfers between donor regions and subsidized regions; development of a strategy for the socio-economic development of regions; quantitative assessment of the existing tax system and the existence of ways to further develop it; at the level of regions, the cross-section of industries, as well as the possibilities of using the comparison on the formation position of the dynamics of the tax potential; interstate comparison of tax potential, which allows for the assessment of regions from the position of tax competition.

Analysis and discussion of results.

The history of the development of transfer pricing dates back to the beginning of the 20th century, when the development of capitalism was rapidly developing, and scientific and technological progress stimulated the exchange of goods and services between divisions of one enterprise. At this stage, the concept of transfer pricing did not yet exist, but its essence was already clearly visible. Later, as the trend of intra-company exchange developed, the need arose to create a single legislative framework and pricing methodology, on the basis of which prices for such transactions would be determined. The United States of America was the first country to introduce the principles of transfer pricing into its legislation.

In particular, in the Republic of Uzbekistan, the concept of transfer pricing was introduced into the new edition of the Tax Code, approved by the Law of the Republic of Uzbekistan No. ZUR-599 dated December 30, 2019 "On Amendments and Addenda to the Tax Code of the Republic of Uzbekistan". The Tax Code came into effect on January 1, 2020. It is set that Section VI of the Tax Code, which deals with transfer pricing, will come into effect on January 1, 2022. Currently, the problem of studying the compliance of prices formed between related parties and

within the framework of controlled transactions with market prices is very relevant.

The Tax Code defines the concepts of transfer pricing and transfer pricing, according to which:

- a price that differs from the price formed in transactions between related parties and (or) from the price formed in an impartial manner that could be used in comparable economic conditions when concluding transactions between independent persons is understood as a transfer price for the purposes of this Code.

- commercial and (or) financial conditions and (or) results that differ from the conditions and results that could be obtained by independent persons in comparable economic conditions of the activities of related parties are understood as transfer pricing for the purposes of this Code. As we emphasized in paragraph 1.1 of this chapter, in accordance with Section V of the Tax Code, tax control is carried out in two forms, namely, tax monitoring and tax audits. Tax audits, in turn, are divided into types - office tax audits, mobile tax audits and tax audits.

In accordance with Section VI of the Tax Code, tax control in determining transfer pricing is carried out in the form of an audit of the full calculation and payment of taxes in connection with the conclusion of controlled transactions within the framework of tax control in determining transfer pricing, as established by Article 194 of the Tax Code.

An audit of the full calculation and payment of taxes in connection with the conclusion of controlled transactions (hereinafter referred to as an audit) is carried out by the Tax Committee of the Republic of Uzbekistan at its location in accordance with the Tax Code. The audit is carried out on the basis of a notification of controlled transactions sent in accordance with Article 182 of the Tax Code or a notification from the territorial tax authority, as well as in the event that a controlled transaction is identified as a result of a tax audit.

During the audit, the Tax Committee checks the full calculation and payment of the following taxes:

- 1) profit tax;
- 2) income tax from individuals;
- 3) tax on the use of subsoil;
- 4) value added tax;

5) excise tax.

An audit of the tax part for the use of subsoil is carried out if one of the parties to the transaction is a taxpayer of this tax and the subject of a profitable mining transaction, in which taxation is carried out at the ad valorem tax rate during extraction.

Also, an audit of the value added tax and excise tax part is carried out if one of the parties to the transaction is a legal entity or individual entrepreneur that is not a taxpayer of the relevant tax.

If the audit of transfer pricing reveals that the tax amounts for the above types of taxes have been reduced or the amount of losses has been increased, the Tax Committee shall make adjustments to the relevant tax base and (or) the tax amount.

This audit may not be the subject of tax control conducted by the Interregional Tax Inspectorate for Large Taxpayers or territorial tax authorities.

Article 195 of the Tax Code establishes the procedure for conducting an audit of the full calculation and payment of taxes in connection with the conclusion of controlled transactions, which reflects the following.

The difference between the audit of the full calculation and payment of taxes in connection with the conclusion of controlled transactions and other types of audits can be seen in Table 1 below.

The audit shall be conducted for a period not exceeding six months.

In exceptional cases, this period of the audit may be extended up to twelve months by decision of the head (deputy head) of the Tax Committee.

In cases where it is necessary to obtain information from foreign state bodies, conduct an examination of documents submitted by the taxpayer in a foreign language and (or) translate them into Uzbek or Russian, the audit period may be extended for an additional period not exceeding six months.

If the audit was extended to obtain information from foreign state bodies and the Tax Committee was unable to obtain the requested information within six months, the extension period for this audit may be extended for an additional three months.

If the taxpayer has used the methods specified in Chapter 23 of this Code or a combination thereof to determine the comparability of the commercial and (or) financial terms of the controlled transactions with the terms of comparable transactions between independent persons, the Tax Committee shall apply the method (combination of methods) applied by the taxpayer when conducting the audit. If the Tax Committee proves that the method (combination of methods) applied by the taxpayer, based on the terms of the conclusion of the controlled transaction, does not allow drawing a reasoned conclusion as to whether the commercial and (or) financial terms of the controlled transactions are comparable or not with the terms of comparable transactions between independent persons, another method (combination of methods) may be applied.

The Cabinet of Ministers Resolution No. 111 dated March 10, 2022 approved the Regulation "On establishing the grounds and procedure for extending the term of a tax audit in connection with the conclusion of controlled transactions". This Regulation establishes the procedure for extending the term of a tax audit in connection with the conclusion of controlled transactions in accordance with Article 195 of the Tax Code of the Republic of Uzbekistan.

First, despite the lack of universally binding international instruments aimed at regulating transfer pricing, the Organization for Economic Cooperation and Development (OECD) developed and approved the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations on July 22, 2010. This is a recommendation-based document, the provisions of which are reflected in the national legislation of various countries, including non-OECD member states. The currently applicable Guidelines are a new edition of the Transfer Pricing Report adopted in 1979.

For ease of understanding, we will consider these processes in conditional examples.

Example 1. The price for a unit of product under a controlled transaction is set at 25.4 thousand soums and is realized.

The following prices applied to different enterprises for a unit of product under comparable transactions are being analyzed:

25.6 thousand soums, 28.7 thousand soums, 25.0 thousand soums, 26.8 thousand soums, 25.0 thousand soums, 31.5 thousand soums, 28.7 thousand soums, 25.0 thousand soums, 34.5 thousand soums, 32.8 thousand soums, 33.6 thousand soums. Based on this information, it is necessary to determine the range of market prices and draw a conclusion on the implementation of tax control on transfer prices by comparing them with the price of the controlled transaction. In accordance with the rule set out in the Tax Code, when there is information about several comparable transactions with identical goods as in our example, when calculating the market price range, the set of prices used in the initially comparable transactions and used to determine the market price range is arranged in ascending order, forming a set used to determine this range. In this case, each price indicator is assigned its own serial number, starting from the smallest. However, in the given conditional example, the price of 25.0 thousand soums is repeated three times, and the price of 28.7 thousand soums is repeated twice. In such cases, if the set includes two or more identical price values, all such indicators are included in it.

The set of price indicators used in comparable transactions is arranged in ascending order as follows:

1. 25.0 thousand soums;
2. 25.6 thousand soums;
3. 26.8 thousand soums;
4. 28.7 thousand soums;
5. 31.5 thousand soums;
6. 32.8 thousand soums;
7. 33.6 thousand soums;
8. 34.5 thousand soums.

Then, depending on whether the number of price indicators used in comparable transactions in the set is divisible by 4 without a remainder, the market price range is determined by one of the following two methods:

- 1) if this number is divisible without a remainder, the minimum value of the market price range shall be taken as equal to half the sum of the price indicators used in the comparable transactions, these indicators shall

have a serial number equal to the part resulting from the division in the set and a subsequent serial number. The maximum value of the market price range shall be taken as equal to half the sum of the price indicators used in the comparable transactions, these indicators shall have a serial number equal to three times the part resulting from the division in the set and a subsequent serial number;

2) if this number is not divisible without a remainder, the minimum value of the market price range shall be taken as equal to the price indicator used in the comparable transactions, this indicator shall have a serial number equal to the whole part of the part resulting from the division in the set increased by one. The highest indicator of the market price range in this case is taken to be equal to the price indicator used in the comparable transactions, this indicator has an ordinal number equal to the value of the whole part of the part formed by division in the set increased by three times the unit. In the given conditional example, since the number of price indicators used in the comparable transactions is divided by 4 without a remainder ($8/4=2$), the lowest indicator of the market price range is equal to 26.2 thousand soums, since the indicators are taken to be equal to half the sum of the indicators with the ordinal number equal to the part formed by division in the set and the next ordinal number, indicator 2 is 25.6 thousand soums and indicator 3 is half of 26.8 thousand soums $((25.6+26.8)/2)$.

The maximum amount of the market price range is 33.2 thousand soums, since the indicators are taken to be equal to half the sum of the indicators with an ordinal number equal to three times the part formed by dividing the set and the next ordinal number, the indicator 6 ($2*3$) is 32.8 thousand soums, and the indicator 7 ($6+1$) is half of 33.6 thousand soums $((32.8+33.6)/2)$.

In accordance with the Tax Code, if the price of a controlled transaction is within the market price range, for tax purposes this price is recognized as a price corresponding to market prices. If the price of a controlled transaction is less than the minimum amount of the market price range or more than its maximum amount, this price is recognized as a price not

corresponding to market prices. In our example, since the market price range is between 26.2 thousand soums and 33.2 thousand soums, the price of 25.4 thousand soums set for a unit of production under the Controlled Transaction is recognized as a price that does not correspond to market prices. In this case, for tax purposes, a price equal to the average value of the market price range is accepted, i.e., the price for a unit of production is considered to be 29.7 $((26.2+33.2)/2)$ thousand soums, and taxes are calculated accordingly.”

In the sector to which the party to the Controlled Transaction belongs, in the absence of independent legal entities in relation to this party, the selection of legal entities for functional analysis is carried out taking into account the comparison of the functions performed by these legal entities, the risks assumed by them, and the assets used.

In the absence of information on four or more comparable transactions or in the absence of financial statements of four or more comparable legal entities, information on a small number of comparable transactions (financial statements of a small number of legal entities) may be used to determine the profitability range.

Initially, the total profitability indicators used to determine the profitability range are arranged in ascending order, forming a sample used to determine this range. In this case, each profitability indicator is assigned its own serial number, starting from the smallest. If the sample includes two or more identical profitability indicators, all such indicators are included in it.

When determining the profitability range, the profitability of the controlled transaction is not taken into account. Then, depending on whether the number of profitability indicators in the set is divisible by four without a remainder, the profitability interval is determined by one of the following two methods:

1) if this number is divisible without a remainder, the lowest indicator of the profitability interval is taken to be equal to half the sum of the profitability indicators, these indicators have an ordinal number equal to the part resulting from the division in the sample and the next ordinal number. The highest value

of the profitability interval in this case is taken to be equal to half the sum of the profitability indicators, these indicators having a serial number equal to three times the part obtained by division in the sample and the subsequent serial number;

2) if this number is not divisible without a remainder, the lowest value of the profitability interval is taken to be equal to the profitability indicator, this indicator having a serial number equal to the integer part of the part obtained by division in the sample increased by one. The highest value of the profitability interval in this case is taken to be equal to the profitability indicator, this indicator having a serial number equal to the integer part of the part obtained by division in the sample increased by three times the integer part of the part obtained by division in the sample.

Calculation of profitability based on the results of activities carried out under comparable economic conditions (commercial conditions) can be carried out on the basis of information from the financial report of a legal entity if the following conditions are simultaneously observed:

1) a legal entity performs comparable activities and performs comparable tasks related to it. The comparison of activity can be determined taking into account the types of economic activity provided for in the national classification of economic activities of the Republic of Uzbekistan, as well as in international and other classifications;

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

3) the legal entity will not have losses from sales based on financial statement data for a period of more than one year from several years for which profitability is calculated;

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

To calculate the profitability range, available information is used at the time of the controlled

transaction or close to it in time, but not later than December 31 of the calendar year of the transaction.

In our opinion, the rule that a 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 participation share exceeding 25 percent when calculating profitability is incorrect. The reason is that the purpose of introducing this rule is to determine profitability without using the reporting data of related parties. However, the 25 percent indicator of interconnectedness also implies the use of the reporting data of related parties. For this reason, and since the interconnectedness percentage is set at 20 percent in accordance with Article 37 of the Tax Code, it is appropriate to change this 25 percent to 20 percent.

Conclusions and proposals.

1. It is advisable to create a software product for assessing profitability indicators for use in determining income for tax purposes in controlled transactions in accordance with the procedure established by tax legislation.
2. It is necessary to develop a methodological manual for determining income for tax purposes in controlled transactions and establish a single deadline for submitting a notification on a controlled transaction.
3. It is advisable to also grant regional tax authorities the authority to conduct an audit of the full calculation and payment of taxes in connection with the conclusion of controlled transactions within the framework of tax control when determining transfer pricing.
4. Appropriate amendments should be made to the Tax Code to allow for an audit if tax authorities determine the existence of a controlled transaction.

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