

IMPORTANT! CHANGES IN TRANSFER PRICING FROM 01.01.2024

30.11.2023

Dear colleagues,

On 28.11.2023 a so called "[Big Tax Law](#)" Federal Law No. 539-FZ of 27.11.2023 was published, which makes **revolutionary changes in transfer pricing** already from **01.01.2024**.

We have compiled a detailed overview of the planned changes.

What will be changed:

1. A **15% withholding tax** has been introduced on intragroup services provided by foreign related parties;
2. The list of related parties will expand;
3. More transactions will be recognized as controlled;
4. The amount of additional tax charges will increase;
5. Penalties for failure to comply with transfer pricing rules will increase;
6. The list of information submitted in transfer pricing reporting will be expanded;
7. New "safe" intervals for interest rates.

Below we will consider each of these significant changes separately.

1. Withholding tax on services of foreign related parties

According to the new rules, a withholding tax of 15% will obligatory be withheld from the services of foreign related parties with residence in a country with which [the DTT has been suspended](#).

For transactions with other countries, it is necessary to read the terms of the DTT agreement.

2. Expansion of the list of related parties

The list of related parties will be added to:

- 1) the related party and **its controlled foreign company (CFC)**
- 2) CFC's of the same related parties, «sister's» CFC
- 3) foreign structures **without the formation of a legal entity** registered in an offshore jurisdiction (or if at least one of the participants in such a structure is registered in an offshore jurisdiction)

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3. Expansion of the definition of a controlled transaction

Transactions, one of the parties to which is a person whose place of registration (place of residence, place of tax residence) is a so-called **offshore jurisdiction**, are considered controlled.

Since the list of offshore jurisdictions was [expanded](#) from 01.07.2023, all international transactions with these jurisdictions, **even with independent partners**, will be considered controlled from 01.01.2024.

Reporting on such transactions must be submitted after exceeding the threshold of **120 million rubles per year**.

At the same time, transactions will not be recognized as controlled if the following conditions are met:

- transactions were concluded **before March 1, 2022**
- the procedure for determining prices and (or) pricing methods (formulas) used in such transactions did not change after March 1, 2022,
- transactions are not recognized as controlled in accordance with transfer pricing legislation as of March 1, 2022.

4. Possible additional tax charges

When a tax audit is carried out and it is discovered that prices other than market prices have been used for a controlled transaction, the tax base will be adjusted to the **median value** (and not to the maximum-minimum value of the corridor, as it was previously).

If tax authorities make a transfer pricing adjustment to the tax base in the Russian Federation for foreign trade transactions, these adjustments will be qualified as **hidden dividends** from sources in the Russian Federation (the so-called "secondary adjustment"), and will be subject to **withholding tax at a rate of 15% (in addition to the penalty)**.

If the taxpayer independently carries out a transfer pricing adjustment before the start of control measures and the corresponding funds are transferred by a foreign partner to an account in a Russian bank, this transfer pricing adjustment would not be qualified as hidden dividends.

Thus, the total possible amount of additional tax charges can be up to 35% of the price adjustment amount:

20% additional profit tax + 15% withholding tax

5. New levels of penalties

For non-payment or incomplete payment of tax as a result of the application of prices that do not correspond to market prices:

- in relation to **foreign trade** transactions - **100% of the amount of unpaid tax** on the profit of the foreign counterparty, equal to the amount of the transfer pricing adjustment (**but not less than 500 000 rubles**)
- in relation to **domestic Russian transactions** - **40% of the amount of unpaid tax (but not less than 30 000 rubles)**

For failure to submit within the prescribed period or provision of a notification of controlled transactions containing misinformation - **100 000 rubles**

For failure to submit documents within the prescribed period - documentation regarding a specific transaction (group of transactions), notification about participation in an international group of companies (for each fact of violation) - **500 000 rubles**.

For failure to submit within the prescribed period or provision of documents containing misinformation - country report, global documentation, local documentation, accounting (financial) statements of a member of an international group of companies (for each fact of violation) - **1 000 000 rubles**.

6. More information to submission to tax authority

Expanded information required to be submitted to the Federal Tax Service from 01.01.2024

Notification of controlled transactions (compulsory annually no later than 20.05.)	Documentation on transfer pricing (upon request of the Federal Tax Service within 30 days)
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| <ul style="list-style-type: none"> • terms of the transaction (details are established only for goods transactions) • methods and sources of information used in the transfer pricing (previously not required to be disclosed) • value creation chain for transactions in the field of foreign trade in raw materials (according to the list of the Ministry of Industry and Trade, clauses 5-6 of Article 105.14 of the Tax Code of the Russian Federation) only with related parties | <ul style="list-style-type: none"> • information on income and expenses, number of employees, amount of profit (loss), value of fixed assets and intangible assets of a foreign counterparty that is a party to a controlled transaction (including the attachment of relevant supporting documents) • description of the terms of the transaction • financial statements of a foreign counterparty |
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The refusal of an **independent counterparty** to provide the requested information must be reported to the Federal Tax Service of Russia.

In transactions with **related counterparties**, the taxpayer does not have the right to refer to a refusal to disclose information.

Disclosure of information will require the taxpayer to collect a significant amount of additional information, as well as its systematization and storage in the accounting system.

7. New "safe" interest intervals for loans

From 01.01.2024, the lower limit of the basic "safe" intervals for loan transactions is reduced:

- for loans in RUB: min - 10% of the key rate of the Central Bank of the Russian Federation (but not less than 2%), max -150% of the key rate of the Central Bank of the Russian Federation;
- for loans in CHF and JPY: min – 1%, max – corresponding rate plus 5%;
- for loans in EUR, CNY, GBP and other currencies: min – 1%, max – corresponding rate plus 7%.

The first reporting period under the amended rules is **2024**, notification of controlled transactions must be submitted before 20.05.2025, but an audit of contracts that are subject to changes and possible adjustments to international transactions **must be carried out now**.

There are many changes in transfer pricing, and the risks of additional charges for transfer pricing are increasing.

High-quality documentation remains a tool for protecting the taxpayer's position regarding approaches and methods for justifying market prices

We have been working with transfer pricing and preparing documentation for our clients for many years.
We will gladly support you in preparing a reasoned tax position.

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