

Transfer Pricing Rules in Belarus



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Transfer Pricing

In 2016 the transfer pricing rules are used controlling tax base for the income tax.

The principles of price determination for goods, works, and services for taxation purposes are regulated by Article 30-1 of the Tax Code of the Republic of Belarus.

From 2016 the volume of transactions the prices for which are to be controlled has expanded significantly comparing with the previous years.



Transfer Pricing

I. Price level, applied by the payer is analyzed according to transactions (selling or acquisition):

a) Real estate transactions:

- Real estate and its parts
- Transfer of the shared construction facility to the stakeholder
- Housing bonds during the process of the transactions made after the state registration of the construction facility creation

Control Criterion:

deviation of the transaction price **for more than 20%** of the market price for identical (homogeneous) real estate, an identical (homogeneous) object of shared construction

b) Sales of goods (performing works, rendering services):

1st type of transactions (foreign trade)



Tax resident of the Republic of Belarus



Foreign legal entity or individual being interdependent or an offshore company

Tax Code, Art. 20

Control Criterion:

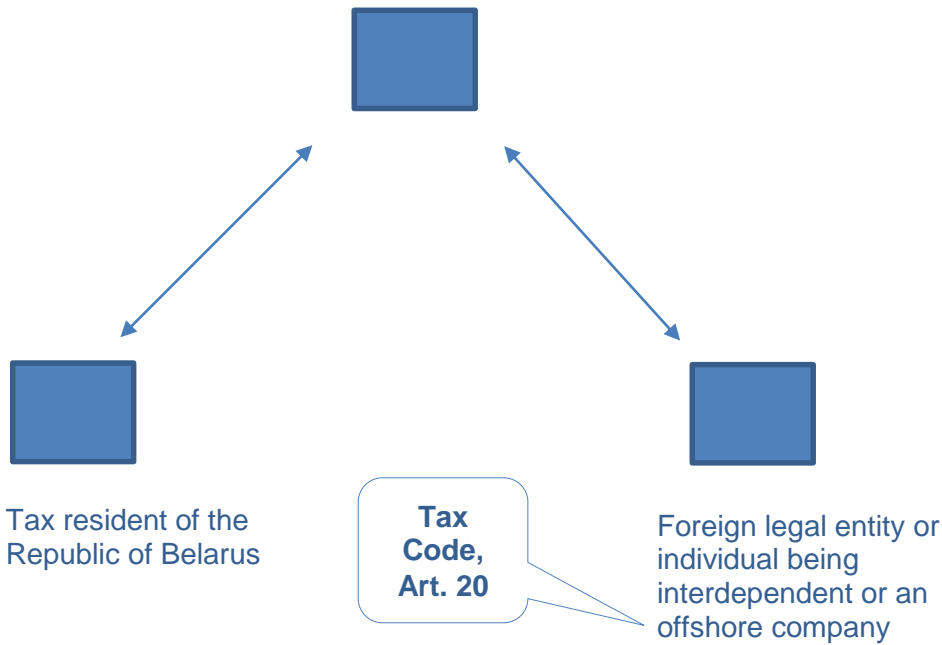
during a tax period the sum of transactions on selling / acquisition with one person **exceeds 1 billion rubles** (excluding indirect taxes)

2) selling / acquisition at the price lower / higher of the market price **for more than 20%**

b) Sales of goods (performing works, rendering services):

2nd type of transactions (foreign trade)

«Formal Agent»



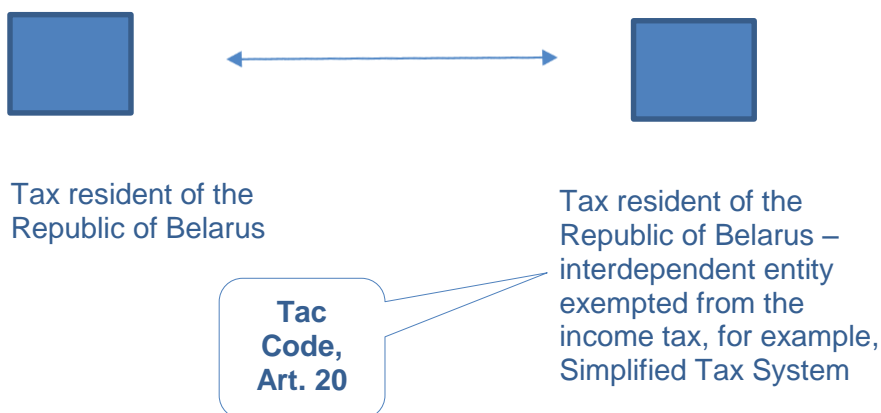
Control Criterion:

1) during a tax period the sum of transactions on selling / acquisition with one person **exceeds 1 billion rubles** (excluding indirect taxes)

2) selling / acquisition at the price lower/ higher of the market price **for more than 20%**

b) Sales of goods (performing works, rendering services):

3rd type of transactions



Control Criterion:

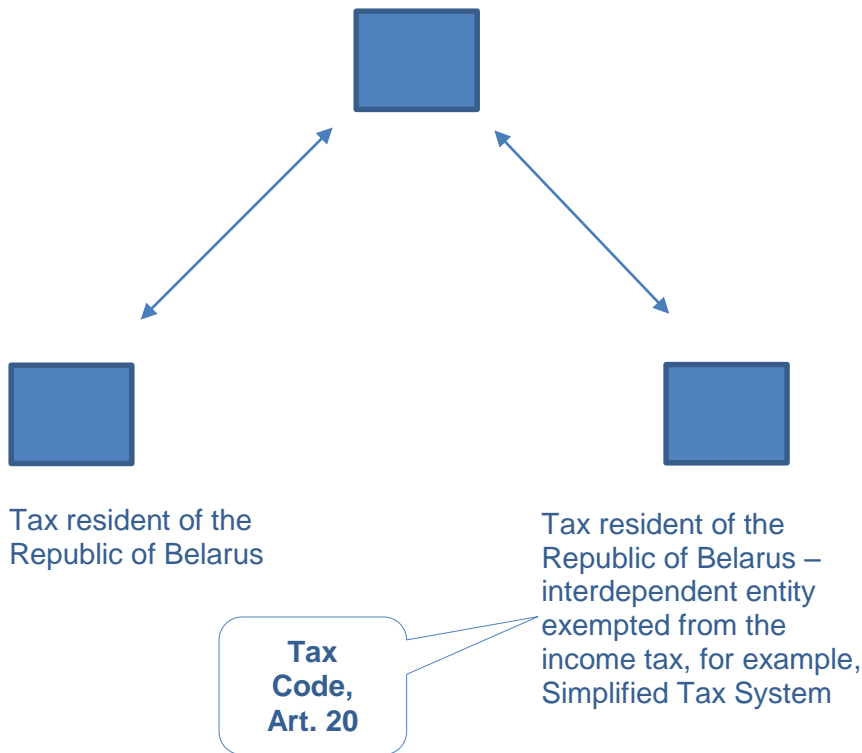
1) during a tax period the sum of transactions on selling / acquisition with one person **exceeds 1 billion rubles** (excluding indirect taxes)

2) selling / acquisition at the price lower/ higher of the market price **for more than 20%**

b) Sales of goods (performing works, rendering services):

4th type of transactions

«Formal Agent»



Control Criterion:

1) during a tax period the sum of transactions on selling / acquisition with one person **exceeds 1 billion rubles** (excluding indirect taxes)

2) selling / acquisition at the price lower / higher of the market price **for more than 20%**

b) BIG transactions on sale of goods (performing works, rendering services):

5th type of transactions (foreign trade)



Control Criterion:

1) during a tax period the sum of transactions on selling/ acquisition with one person **exceeds 10 billion rubles** (excluding indirect taxes)

2) strategic goods according to the list approved by the Government of the Republic of Belarus or the tax resident of the Republic of Belarus is a major payer

3) selling / acquisition at the price lower / higher of the market price **for more than 20%**



Transfer Pricing

IMPORTANT DEFINITIONS

«Formal» agent in transactions on sales of goods (performing works, rendering services):

- is not interdependent against parts of the transaction;
- does not fulfill any additional functions in these transactions, except organization of the selling (resale) of goods (performing works, rendering service) by one individual to another recognized interdependent on this individual;
- does not use any assets for organization of the selling (resale) of goods (performing works, rendering service) by one individual to another recognized interdependent on this individual.

Goods (work, service) – goods, other property, property rights, work, service.

Sale of goods (work, service) – selling of goods, other property, including property rights (performing works, rendering service), provision of property for use.

Acquisition of goods (work, service) – acquisition of goods, other property, including property rights, work, service, provision of property for use.

Sum of transactions is determined by the sum of each transaction price during a tax period (calendar year).



Transfer Pricing

II. Transactions not getting under the tax control

The legislation determines a list of transactions on goods selling that do not get under the tax control. Particularly taxable base on the transactions below are not subject to tax adjustment:

- selling or acquisition of goods (works, services) if the price (cost) of the transaction is determined in the international agreement of the Republic of Belarus;
- banking transactions from the list determined by the Banking Code of the Republic of Belarus;
- transactions with securities and financial tools of forward transactions circulating in formal equity market.



Transfer Pricing

III. Statements on controlled transactions

a) Provision of information to the tax body about the implementation of all the transactions prices for which are to be controlled.

It is delivered by updating information on the transactions in an electronic invoice (regardless the amount of transaction prices and deviation of prices applied by the payer, market prices).

b) Provision to the tax body on its notification:

- economic evaluation of the applied price and (or)
- documentation confirming economic evaluation of the applied price in cases provided by the Tax Code, Art. 30-1, Par. 9 (major transaction).

Documentation confirming economic evaluation of the applied price:

- is provided by the payers handling major transactions (5th type of transactions from the page 6).

Economic evaluation of the applied price:

- is provided by the payers handling real estate transactions, transactions with interdependent parties, residents of offshore zones subjected to control.

Documentation and confirmation of economic evaluation of the applied price are provided on the notification of the tax body conducting in-house audit (on the basis of an instruction (at the request) of the tax body, conducting a field audit or thoroughly planning an audit)

Documentation and confirmation of economic evaluation of the applied price are provided:

- conducting in-house audit – within the time-limits determined in an notification and being not more than 10 working days from the day of notification sending;
- conducting a field audit except in-house audit – within the time-limits determined by the tax bodies in an instruction (request), that cannot be more than 5 working days from the day of the instruction (request) delivery).



Transfer Pricing

IV. Control of prices appropriateness by tax bodies

Is made by the tax body regarding the income tax through:

- in-house audit
- audit except in-house one.

If reasonable doubts on the appropriateness of market prices arise during an in-house audit, a notification is sent to the payer in paper or in electronic form with a proposal to correct the tax return (calculation) or to provide:

- economic evaluation of the applied price
- documentation confirming economic evaluation of the applied price – concerning big transactions.



Transfer Pricing

V. Methods of market price determination

- comparable uncontrolled price method
- resale price method
- cost-plus method
- net-margin method
- profit split method

Basic method

New method from 2016

Each further method is applied if the market price cannot be determined with a previous one

Comparable uncontrolled price method:

- comparison of the analyzed transaction price with the prices for identical (homogeneous) goods in comparable economic conditions, within the range of market prices;
- range of market prices – two or more market price for the research period.

Transaction price is identified as a market one if:

- it corresponds to the legislative requirements of the Republic of Belarus or a foreign state, regulating pricing for the goods (work, service);
- it is applied in accordance with the instruction issued by an anti-monopoly authority;
- the transaction was made on the stock-exchange and the transaction price was calculated in accordance with the results of stock trading, auction conducted according to the legislation of the Republic of Belarus, foreign law;
- it is determined by the appraiser in accordance with the legislation on valuation activities, when cost estimating is compulsory according to the legislation of the Republic of Belarus or a foreign state.

Sources of information for the tax authorities (are used sequentially):

- information about the prices following the results of stock trading conducted in the Republic of Belarus for identical (in their absence - homogenous) goods;
- information about the prices on the basis of statistics of external trade of the Republic of Belarus, published or received upon the tax authorities' request from the customs authority, state statistics authorities;
- information about the prices following the results of stock trading conducted in foreign states for identical (in their absence - homogenous) goods;

- information about the prices (within price range) and stock-exchange quotation contained in official sources of information of authorized bodies of the public management of the Republic of Belarus, official sources of information of foreign states or international organizations or in other published and (or) accessible publications and information systems;
- information about the prices for identical (in their absence - homogenous) goods (works, services) from competent authorities of foreign states received upon the tax authorities' request or other state bodies (organizations) of the Republic of Belarus;
- information about the transactions made by the payer;
- data of price agencies.



Transfer Pricing

VI. Interdependent parties

Article 20 of the Tax Code of the Republic of Belarus:

Interdependent persons are natural persons and/or organizations the relations between which influence the conditions or economic results of their activity or activity of the persons represented by them:

- between the persons being founders (participants) of one organization;
- when one person is a founder (participant) of another organization, if the portion of its direct and/or indirect participation is not less than 20 percent;
- when one person is subordinated to another under its official status or one person is (directly or indirectly) under control of another person;
- between organizations if one person is directly and/or indirectly a participant of these organizations and the portion of this participation in each of these organizations is not less than 20 percent;
- when natural persons are, in accordance with legislation, married, are close relatives, are adopted in relation between step parent and step child, guardian and guarded person.
- between trustor, trustee and beneficiary, and also between trustee and organizations the management of property of which the trustee performs;
- between organizations, as a part of the collective executive body or board of directors (supervisory board) being more than 50 percent - the same individuals together with the interdependent persons referred to in the sixth paragraph of the second part of Article 20 of the Tax Code of the Republic of Belarus.



Contact information

Cooperating with the experts in the sphere of transfer pricing within Baker Tilly International network we render services regarding development of recommendations on the transfer pricing, using international database of prices, as well as its documentation.



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