

Bauyrzhan S. Yessengeldin¹, Leyle S. Komekbayeva², Erbolsyn T. Akbayev³

FEATURES OF TAX REGULATION OF TRANSFER PRICING IN THE REPUBLIC OF KAZAKHSTAN

The article considers the problem of transfer pricing tax regulations and current trends in the use of offshore elements as tax benefits. The basic economic assumptions of tax optimization are determined. The analysis of the legislation of the Republic of Kazakhstan on transfer pricing is provided. The factors influencing the choice of jurisdiction for the establishment of departments of companies are studied.

Keywords: transfer pricing, taxation, double taxation, tax benefits.

Бауыржан С. Есенгельдин, Лейле С. Комекбаева, Ерболсын С. Акбаев

ОСОБЛИВОСТІ ПОДАТКОВОГО РЕГУЛЮВАННЯ ТРАНСФЕРТНОГО ЦІНОУТВОРЕННЯ В РЕСПУБЛІЦІ КАЗАХСТАН

У статті вивчено проблеми податкового регулювання трансфертного ціноутворення та сучасні тенденції використання офшорних елементів як податкових пільг. Визначено основні економічні передумови оптимізації оподаткування. Проведено аналіз законодавчої бази Республіки Казахстан з трансфертного ціноутворення. Досліджено фактори, що впливають на вибір юрисдикції для заснування структурних підрозділів компаній.

Ключові слова: трансферне ціноутворення, оподаткування, подвійне оподаткування, податкові пільги.

Табл. 1. Літ. 10.

Бауыржан С. Есенгельдин, Лэйлэ С. Комекбаева, Ерболсын С. Акбаев

ОСОБЕННОСТИ НАЛОГОВОГО РЕГУЛИРОВАНИЯ ТРАНСФЕРТНОГО ЦЕНООБРАЗОВАНИЯ В РЕСПУБЛИКЕ КАЗАХСТАН

В статье изучены проблемы налогового регулирования трансфертного ценообразования и современные тенденции использования офшорных элементов в качестве налоговых льгот. Определены основные экономические предпосылки оптимизации налогообложения. Проведен анализ законодательной базы Республики Казахстан по трансфертному ценообразованию. Исследованы факторы, влияющие на выбор юрисдикции для учреждения структурных подразделений компаний.

Ключевые слова: трансфертное ценообразование, налогообложение, двойное налогообложение, налоговые льготы.

Defining the problem in its relation to the key scientific and practical problems. Nowadays, globalization stimulates the growth of transnational corporations when tax advisers face serious risks in tax regimes with different rules and requirements. As long as each cross-border transaction between companies within the same group affects several tax jurisdictions along with different interpretation of the same opera-

¹ Doctor of Economic Sciences, Associate Professor, Dean of Economic Faculty, Karaganda State University of E.A. Buketov, Republic of Kazakhstan.

² Candidate of Economic Sciences, Associate Professor, Head of Finance Department, Economic Faculty, Karaganda State University of E.A. Buketov, Republic of Kazakhstan.

³ Candidate of Economic Sciences, Associate Professor, Finance Department, Economic Faculty, Karaganda State University of E.A. Buketov, Republic of Kazakhstan.

tion by local tax authorities, it is impossible to completely eliminate the risks associated with transfer pricing. In such cases, corporations need to develop the processes of distribution costs and overheads and to define the strategy to assess transfer prices for goods and services.

The literature review on the problem. In contemporary literature transfer pricing (price variance) is interpreted as the process of minimizing (avoiding) taxes. This is evidenced by the scientific works where transfer prices were defined as monetary value assigned to goods and services transferred between units of a same company (Fantl, 1974; Lambert, 1979; Cats-Baril et al., 1988). Another definition of transfer pricing was introduced by Wells (1968): "the value of the sales of goods or services between departments of the same organization".

Significant amount of scientific literature draws attention to economic aspects (Hirshleifer, 1956; Abdel-Khalik et al., 1974) and organizational processes (Cools et al., 2008) of transfer pricing.

First provisions on transfer pricing appeared in the tax legislation of Kazakhstan in 1995. The Law of the Republic of Kazakhstan "On state control over transfer pricing" was released on January 5, 2001, which in its approach differed from international practice. Some forward movement was the adoption of the Law of the Republic of Kazakhstan "On Transfer Pricing" on July 5, 2008. However, in practice, the effectiveness of the law depends on its conformity to international standards developed in accordance with the United Nations Convention on the Avoidance of Double Taxation and the OECD regulations on transfer pricing.

Definition of the target problem for analysis. World practice shows that most of the trade takes place within multinational corporations, so one of the key international problems is the tax regulation of transfer pricing to avoid double taxation. Target analysis is to examine the nature of the tax regulation of transfer pricing in terms of various international tax regimes, which allows taxpayers opportunities to place their departments in individual jurisdictions, depending on the preferential regimes of different countries. So in the framework of the Customs Union of Belarus, Kazakhstan and Russia there are evidences of placing subsidiaries of Russian companies in the Republic of Kazakhstan, because certain types of taxes provided low interest rates and favorable tax regimes for small and medium businesses.

Presentation of research material, including the description of the methodology and main results of research. In accordance with international standards, tax and transfer pricing legislation includes provisions on the prohibition of the use of secret and unavailable for taxpayer information by tax authorities in the determination of transfer prices, which could result in additional taxes and unfair numerous disputes between taxpayers and tax authorities.

In international practice, change in the transfer price in one country implies a corresponding price change in the other. This eliminates double taxation of international transactions.

At the same time, the adjustment of prices in Kazakhstan is never accompanied by price adjustment in international transactions, thus causing double taxation. This affects the investment climate in Kazakhstan and hinders international trade development. So, the foreign trade turnover of Kazakhstan increased by 36.8% in 2011. For the analyzed periods foreign trade turnover has the trend to grow (Table 1).

Table 1. Foreign trade turnover of the Republic of Kazakhstan

Indicators	2005	2006	2007	2008	2009	2010	2011
Foreign trade turnover total, mln USD	45201.5	61927.2	80511.7	109072.5	71604.4	91397.5	125019.7
in percentage to the previous year	137.5	137.0	130.0	135.5	65.6	127.6	136.8
Export, mln USD	27849.1	38250.1	47755.3	71183.5	43195.8	60270.8	87964.0
in percentage to the previous year	138.6	137.3	124.8	149.1	60.7	139.5	145.9
Import, mln USD	17352.4	23676.9	32756.4	37889.0	28408.6	31126.7	37055.7
in percentage to the previous year	135.8	136.4	138.3	115.7	75.0	109.6	119.0

Source: Compiled by the authors based on Statistics Agency of the Republic of Kazakhstan' data.

In the structure of the foreign trade turnover more than 70% is export, which indicate the positive balance of payments of the country.

At the same time, there are cases of depressed prices for export and import of high prices in comparison with the market price. In these situations it is necessary to use the tax regulation of transfer pricing and double taxation avoidance.

Kazakhstan and several countries (Russia, China, Italy, the Netherlands, France and others) which has most of the foreign trade turnover has conventions on avoidance of double taxation.

Kazakhstan signed conventions to avoid double taxation with 44 countries which, like other international treaties, take precedence over local laws. However, these conventions on transfer pricing fail to work, because Kazakhstan's law on transfer pricing excludes the procedures of their application, and tax authorities have disagreed upon procedures for the subsequent price adjustment to the tax authorities of the countries with which Kazakhstan signed these conventions.

Kazakhstan tax legislation provides the definition of the countries with preferential tax regime:

- foreign country is considered as a country with preferential tax regime, if that state tax rate is less than 1/3 of the rate determined in accordance with the tax code, or there are laws on the confidentiality of financial information, or information about the companies that maintain the privacy of the actual owner of the property or the actual owner of income;

- administrative areas of the country related to the countries with preferential tax regime if the tax rate actually applied by the state to a non-resident entity, is no more than 1/3 of the rate determined in accordance with the tax code, or there are laws on the confidentiality of financial information or information about the companies that maintain the privacy of the actual owner of the property or the actual owner of income (Tax Code of the Republic of Kazakhstan).

If we use this concept in the control of transfer pricing, Kazakhstan can be determined as an offshore country, since some administrative-territorial units in Kazakhstan provide preferential tax rates.

If a transaction is carried out on the territory of Kazakhstan, later associated with international business transaction, then this transaction will be subject to control and such transactions include:

- 1) transaction on ongoing mineral production;
- 2) one of the parties that have tax benefits;

3) one of the parties has a loss on these tax returns for the last two fiscal periods prior the year of the transaction.

For example, a subsoil user sold his or her products to Kazakhstan company, which then sold it for export at a transfer price. In identifying data tax authorities adjust income and thus charge a corporate income tax. By the adjustment of income the tax will be charged on the profits regardless the subsoil user is associated with the exporter or not, because, according to the new definition, the transaction will be subject to certain transactions between related parties.

According to the legislation of the Republic of Kazakhstan adjustment of object of taxation will be made for any deviation from a market price, except for agricultural products.

Conclusions and prospects for further research. The article intends to draw attention to the nature of transfer pricing, which promotes tax payments evasion. Tax evasion affects, as known, the distribution of income, wealth, risks, the welfare and quality of life, as well as the level of business social responsibility.

The emergence of offshore tax regions is creating new challenges for transfer pricing. There are many schemes of withdrawal of capital through offshore. To solve this problem, the study of various mechanisms of state control of adjustment of income for any deviation from the market price is needed.

The authors of this paper see the prospects for further research in the following areas:

- the need for critical review of the effects of transfer pricing and tax regulations;
- desirability of tax mechanisms that prevent overpricing in international business transactions.

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