



## Tax Alert on Transfer Pricing, February 2022

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**Armenian Government introduces law to amend and supplement the RA Tax Code changing transfer pricing regulations**

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### Facts

On 18 October 2021, the Government of the Republic of Armenia initiated a draft law (the “Law”) introducing changes to the Tax Code involving a change of transfer pricing regulation in the country. On 3 February 2022, the Armenian National Assembly Standing Committee on Economic Affairs debated the Law on amendments and additions to the RA Tax Code in the first reading and endorsed the initiative. The Law was included on the agenda of the Armenian National Assembly’s third session on 8 February, and the Law was adopted in the first reading on 9 February. The Law will enter into force after it will be adopted in second reading and official publication, which is planned in the first half of the March.

The adoption of the Law was driven by the need for full and effective implementation of transfer pricing regulations, as well as the establishment of appropriate legal regulations for their application. In general, the aim of the project is to bring the already established regulations into line with international approaches, as well as to establish tax control procedures.

The main changes that the Law includes are:

1. Excluding the application of transfer pricing regulations to value-added tax.
2. Clarifying the concept of offshore countries in the transfer pricing regulation scope.
3. Implementation of the concepts of a “person” (a physical person, a legal entity, or a trust or legal entity that does not have the status of a legal entity under foreign law) and “Multinational Corporations”.
4. Revising the concept of related parties, by replacing the concept of related taxpayers with related persons, which corresponds to the essence of the term envisaged by double taxation agreement treaties.
5. Including transactions involving the provision (receipt) of the right to use intangible assets, provision (receipt) of loans, concession (transfer) of the right to monetary claim, and alienation of financial assets in the scope of controlled transactions.
6. Excluding most financial transactions and operations from the scope of controlled transactions when performed by banks, specialized participants in the securities market, or credit organizations.
7. The scope of application of transfer pricing regulations has been clarified, including the specific features of the application of transfer pricing to non-resident profit taxpayers operating in the Republic of Armenia through a permanent establishment.
8. Implementing median values (instead of average) provided by the tax authorities in cases where the financial performance

of a combined controlled transaction is not at arm’s length.

9. Clarifying the sources of reliable information (including financial and transfer pricing policies posted on official web pages of companies and information published by metal and stock exchanges).
10. Implementation of the third point of three-model Competent Authority Agreements of BEPS Action 13 (Tax Information Exchange Agreements between countries) and introducing the option to obtain advance pricing agreements with the tax authorities.
11. Defining the type of transfer pricing control and procedures carried out by the tax authorities, implementation dates, features and tax consequences.

Tax audit frequency has been introduced depending on riskiness of the taxpayer:

- ▶ in case of high risk, not more often than once in three consecutive tax years,
- ▶ in case of medium risk, not more often than once in four consecutive tax years,
- ▶ in case of low risk, not more often than once in five consecutive tax years.

A tax penalties and fines system was also introduced in respect of the violation of transfer pricing rules. It includes:

- ▶ a penalty of AMD 500 thousand in case of failure to include full information on controlled transactions in notifications to the tax authorities,
- ▶ a penalty for not submitting a notification on time, depending on turnover of the company in the previous tax year:
  - in case of turnover above AMD 2 billion, the penalty will be AMD 5 million,
  - in case of turnover above AMD 1 billion, the penalty will be AMD 3 million,

- in case of turnover below AMD 1 billion, the penalty will be AMD 1 million,
  - ▶ the penalty and fine for not submitting transfer pricing documentation on time after a request by the tax authorities shall be a penalty of 10 percent of the sum of all controlled transactions and a fine of 0.04 percent of the penalty for each day in case of late payment.
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## Who's affected?

All Armenian taxpayers which have controlled transactions over AMD 200 million during a tax year, in particular:

- ▶ Companies having transactions with low tax (offshore) jurisdictions
  - ▶ Companies licensing intangible assets
  - ▶ Companies transacting with permanent establishments non-residents
  - ▶ Companies submitting transfer pricing notifications and documentation
  - ▶ Companies belonging to multinational corporations
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## How EY can help?

To assist clients in understanding and meeting the upcoming new requirements of transfer pricing regulation arising after adoption of the Law, we offer:

- ▶ Support with determining related parties and preparing the list of transactions subject to transfer pricing control
- ▶ Undertaking functional analysis to confirm the appropriate transfer pricing method
- ▶ Preparing an annual transfer pricing notification
- ▶ Conducting comparability analysis of prices/profitability, preparing a list of supporting documents
- ▶ Preparing annual transfer pricing documentation
- ▶ Assessments of transfer pricing risks

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