

# Introduction of changes to transfer pricing legislation

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### List of Commodities

On 9 December 2020, the Cabinet of Ministers of Ukraine approved the [List of Commodities for transfer pricing purposes](#) (hereinafter referred to as the "List"), based on the [List of Goods with Exchange Quotations](#) (currently expired). The List comes into force on 1 January 2021.

New commodity groups have been added to the List (for example, wheat flour (1101 00), mineral fertilizers (3103, 3104, 3105), sunflower and safflower oil (1512 11), ferroalloys (7202), etc.). In addition, certain commodity subgroups have been expanded to groups (for example, oil or petroleum products (2710), coffee (0901), ores and iron concentrates (2601), etc.). At the same time, some commodities included into the previous [List](#) of Goods with Exchange Quotations were not included into the new List (for example, cattle (0102 29), cardamom (0908 31 00 00, 0908 32 00 00), etc.).

The full content of the List of Commodities can be found at the [link](#).

Let us remind that according to subparagraph 39.3.3.4 of the Tax Code of Ukraine (hereinafter referred to as the "TCU"), establishing the arm's length nature of controlled transactions with commodities is carried out via comparable uncontrolled price method based on prices of comparable uncontrolled transactions performed by taxpayer or other persons with unrelated persons, and/or with quoted prices.

The State Tax Service of Ukraine publishes the recommended (non-exclusive) list of information sources for obtaining quoted prices on its web portal by the beginning of the reporting year. Currently, such list has not been published yet.

### Notification on Forward, Futures or Commodities Contract Conclusion

The Ministry of Finance of Ukraine has published a draft order amending the [form](#) and [submitting procedure](#) for a Notification on Forward, Futures or Commodities Contract Conclusion (hereinafter referred to as the "Notification").

In case of signing this order, terms of payment, claim amounts and amounts of discounts/bonuses would also need to be disclosed in the Notification.

Let us remind that according to subparagraph 39.3.3.3 of the TCU, in case a controlled transaction is performed by means of a forward or futures contract the price comparison must be based on forward or futures prices as of the date closest to the date of the relevant forward or futures contract (provided that the taxpayer shall notify the central executive body, which implements the tax policy, on the conclusion of such a contract by electronic means in electronic form within 10 business days from the date of conclusion of the relevant forward or futures contract).

At the same time, in accordance with subparagraph 39.3.3.5 of the TCU, the taxpayer carrying out controlled transactions with commodities shall notify the central executive body, which implements the tax policy, on the conclusion of the relevant agreement (contract) in the form and manner provided by subparagraph 39.3.3.3 of subparagraph 39.3.3 of the TCU.

If the information specified in the Notification is consistent with the actual parties conduct or with other facts of controlled transaction, the comparison of controlled transaction price and quoted prices is performed as of the date closest to the pricing date agreed by controlled transaction parties.

#### **Report on Controlled Transactions**

The Ministry of Finance of Ukraine has published a draft order amending the [form](#) and [preparation procedure](#) for the Report on Controlled Transactions (hereinafter referred to as the “**Report**”).

In case of signing this order, the information sources used to establish the arm’s length nature of controlled transactions (type code and source name) will also need to be indicated in the Report.

#### **Notification on the Membership in a Multinational Enterprise Group**

The Ministry of Finance of Ukraine has published a draft order approving the [form](#) and [preparation procedure](#) for the Notification on the Membership in a Multinational Enterprise Group (hereinafter referred to as the “**Notification**”).

In case of signing this order, the general information on the taxpayer, data about the parent company and the company that submits Country-by-Country Report (in case of submission) / countries whose legislation does not prescribe for the submission of Country-by-Country Report will need to be indicated in the Notification.

Let us remind that such Notification is submitted in electronic form by 1 October of the year following the reporting year. The first Notification is submitted in 2021 for 2020.

#### **Form and Filing Procedure for the Country-by-Country Report**

The Ministry of Finance of Ukraine has published a draft order approving the [form](#) and [filing procedure](#) the Country-by-Country Report (hereinafter referred to as the “**CbCR**”).

In case of signing this order, the general information on the taxpayer and the MNE group, income, tax and business activity allocation in terms of respective

states (territories), list of members of the MNE group in terms of respective states (territories) will need to be indicated in the CbCR.

Let us remind that the CbCR is submitted if the total consolidated income of the MNE group for the financial year preceding the reporting year exceeds the equivalent of EUR 750 million and one of the following conditions is met:

- ▶ The taxpayer is the parent company of MNE group
- ▶ The parent company authorizes the resident of Ukraine to submit the CbCR
- ▶ CbCR submission is not required, and the parent company does not authorize another group member to submit it
- ▶ An agreement on the exchange of tax information has been signed between Ukraine and the jurisdiction of the parent company or a group member authorized to submit the CbCR, but the procedure for CbCR exchange has not been entered into force or there are facts of a systematic non-compliance

The CbCR is submitted within 12 months after the MNE group financial year end.

The first CbCR is submitted for the financial year ending in 2021, but no earlier than the year in which the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports was concluded.

#### **Amendments to the Procedure for Monitoring Controlled Transactions and the Procedure for Surveying Authorized Personnel, Officials and/or Taxpayers' Employees on Transfer Pricing**

The Ministry of Finance of Ukraine has published a draft order amending the [Procedure](#) for Monitoring Controlled Transactions and the [Procedure](#) for Surveying Authorized Personnel, Officials and/or Taxpayers' Employees on Transfer Pricing.

Such amendments are due to the need of bringing these regulations in accordance with the provisions of the TCU, in particular, the legal norms introduced by the Law of Ukraine as of 16 January 2020 No.466-IX “On Amendments to the Tax Code of Ukraine Regarding the Improvement of Tax Administration, Eliminate Technical and Logical Inconsistencies in Tax Legislation”.

#### **Amendments to the Procedure for Conducting Transfer Pricing Audit**

The Ministry of Finance of Ukraine has published a draft order amending the [Procedure](#) for Conducting Transfer Pricing Audit.

Such amendments are due to the need of bringing these regulations in accordance with the provisions of the TCU, in particular, the legal norms introduced by the Law of Ukraine as of 16 January 2020 No.466-IX “On Amendments to the Tax Code of Ukraine Regarding the Improvement of Tax Administration, Eliminate Technical and Logical Inconsistencies in Tax Legislation”.

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