



Round table
**“Transfer pricing –
the price of the deal”**

31 March 2010



Round table «Transfer pricing – price of the deal»

**Amendments to Part 1 and 2 of the
Tax Code of RF related to
development of transfer pricing
principles for tax purposes**

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1. Controlled transactions.

General position

- Consider applying TP control only to cross-border transactions between related parties, i.e.
- Exclude the following transactions from the TP control:
 - Transactions within Russia, except for cases when one of the parties has a right to apply a special tax regime or derated tax regime
 - Cross-border transactions between third parties irrespective of subject of transaction and / or location of a party of transaction

1. Controlled transactions.

Documentation requirements

- Not to apply TP documentation requirements to the following transactions:
 - Third-party cross-border transactions
 - Transactions at regulated prices
 - Transactions involving tax agents

1. Controlled transactions.

Control over VAT payments

- Exclude control over VAT payments in domestic transactions between related parties:
 - VAT payments go into united federal budget
 - Attractiveness of consolidated taxpayer regime will increase (the current version of the draft law on consolidated taxpayer regime does not apply to VAT)

2. Transfer pricing methods

- Align TP methods with OECD principles to a maximum extent:
 - Remove Secondary Processing Method
 - Remove limitations for the use of certain TP methods in specific transactions
 - Clarify some practical issues related to application of TP methods
 - Allow year-end true ups / true downs for TP adjustment purposes

3. Quantity of comparable transactions

- Reduce the necessary quantity of comparable transactions from four to one for the purposes of application of TP methods:
 - Use the inter-quartile range of prices (profitability range) if four or more comparable transactions are available
 - If less than four comparable transactions are available – use the full range of available data

4. Sources of information

- Extend the list of information which may be used for comparability analysis:
 - Ascertain that the list of information sources is open
 - Allow using information from foreign sources (foreign comparables)
 - Allow using information about transactions between taxpayer and third parties (internal comparables)
 - Specify that only information that equally available to both taxpayer and the tax authorities may be used

5. Transition rules

- Confirm whether the new TP rules will apply to the transactions concluded before introduction of the TP law but effected after its introduction:
 - Uncertainty in definition of a “transaction” (Contract? Invoice? Delivery?)
 - Contract signed before 1.01.2011, but valid over several years (both before and after 1.01.2011)

6. Penalty provisions

- TP documentation should guarantee a penalty protection
- Submission of unreliable data should not result in penalty application in case the tax authorities get access to new data not available for a taxpayer at the moment of preparation of TP documentation
- Define the conditions for applying penalty in respect of tax agents
- Stipulate standard penalty size and procedures established by Art. 122 of RF TC
- Apply penalty only to the amount of actual underpayment of tax (taking into account correlative adjustments)
- Introduce a transition period over which penalty will not be applicable

7. Notification about controlled transactions

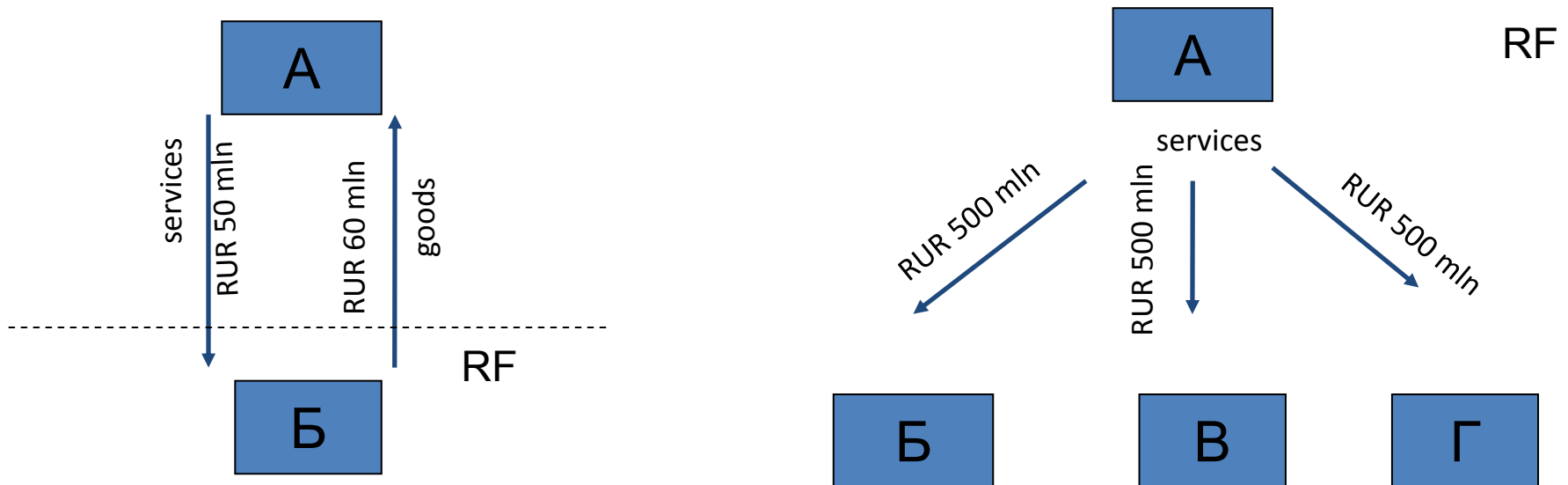
- Exclude a requirement to submit notifications about controlled transactions
- Or require notifications only in respect of cross-border transactions between related parties and within established thresholds
- Exclude a requirement to provide information on prices and profitability of a “unit” of goods (works, services)

8. Court authority

- Limit court authority to recognize parties as related based only on grounds prescribed by other legislative acts
- Or set an exclusive list of conditions for recognizing parties as related

9. Financial thresholds

- Clarify the approach for calculation of financial thresholds, i.e.:
 - RUR 1 bln – for defining controllable transactions
 - RUR 100 mln – for defining transactions subject to TP documentation



10. Advanced Pricing Agreements

- Consider APA for all taxpayers (not only large taxpayers)
- Establish more clear administrative procedures for entering into APA
- Consider possibility to deduct expenses related to entering into APA for profits tax purposes

11. Tax control

- Apply general procedure of tax control specified by Part I of RF TC for the purposes of the TP control
- Or establish a procedure allowing simultaneous special TP audit for all parties of a transaction

12. Correlative adjustments

- Clarify the mechanism for correlative adjustments:
 - Notification procedure for another party to a transaction
 - Tax period for recognition of a correlative adjustment
 - Necessity to submit amended tax returns
- Allow correlative adjustments not only for domestic transactions, but also for cross-border transactions
- Possibility to return overpaid income tax for a foreign entity in case of a TP adjustment for a Russian tax agent

13. Cost Contribution Arrangements

- Cost Contribution Arrangements are widely used by multinational enterprises in their activities
- Such arrangements are not regulated by the current legislation
- Consider allowing Cost Contribution Arrangements consistent with OECD Guidelines

14. Profit of a permanent establishment

- RF TC does not contain a clear mechanism of profit attribution to a permanent establishment (PE) of foreign entity => risk of double taxation
- Consider applying TP principles reflected in the TP law for the purposes of profit attribution to a PE (amendments to both the TP law and Chapter 25 of RF TC will be required).



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THANK YOU!