



The Association of European Businesses

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Transfer Pricing Law : quo vadis?

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Association of European Businesses in the  
Russian Federation



# **New Russian Transfer Pricing Law AEB Position Paper**

**AEB TP Working Group**

**18 October 2011**

New Russian TP Law

# **STATUS AND KEY CHANGES**

# TP Reform: Status

- New law #227-FZ signed 18 July 2011
- More OECD alignment than in previous drafts
- Introduction date – 1 January 2012
  - with 2012-2013 being transition years

# TP Reform: Key Changes

- Introduction of the arm's length principle
- Substance-over-form approach
- Controlled transactions:
  - Cross-border related parties – all
  - Cross-border / third-party
    - “Black-listed” jurisdiction
    - Certain commodity groups
  - Domestic / related party
    - Large volume (exceptions apply)
    - Some other criteria

# TP Reform: Key Changes

- Arm's length range
- Five TP methods
- TP documentation / reporting requirements
- Dedicated TP audits
- Corresponding adjustments
  - domestic transactions
- TP penalty
- APA program for largest Russian companies

New Russian TP Law

# **AEB POSITION PAPER**

October 18th, 2011

# Transactions subject to control

- Uncertainty:
  - transactions with IP rights, financial transactions and some other
  - Income vs. expense side of transactions
- Provide certainty
- What exactly is subject to TP law?



# Intangibles

## Issue

- Choice of TP method depends on existence of valuable intangibles in a transaction
- Intangibles are not defined
- Economic ownership vs. legal ownership

## Suggestion

- Provide certainty

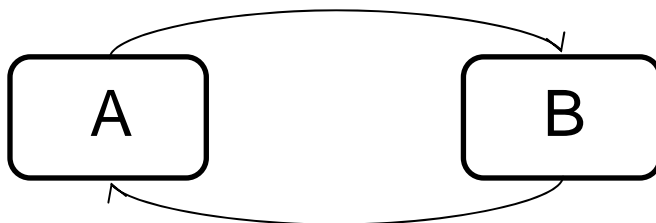
# Financial thresholds (1)

## Issue

- How to calculate the sum of income (prices) per year?

## Suggestion

- Provide certainty



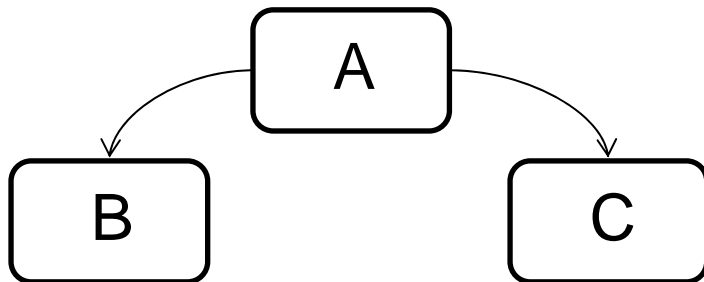
# Financial thresholds (2)

## Issue

- Homogeneous transactions with a number of group entities?

## Suggestion

- Provide certainty



# Financial thresholds (3)

## Issue

- Balance-sheet items:
  - Loan amount (other than interest)?
  - Income of a principal (other than agency fee)?
- Do they count in the threshold calculation?

## Suggestion

- Provide certainty

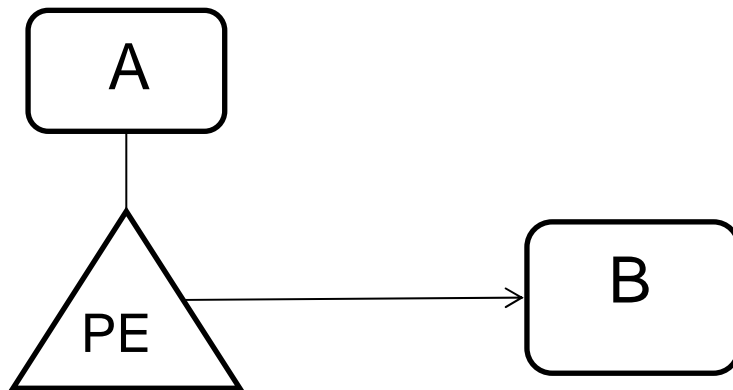
# Financial thresholds (4)

## Issue

- Does the 3b RUR threshold apply to transactions between a PE and a RLE?

## Suggestion

- Provide certainty



# Correlation with general tax rules

## Issue

- Links in other tax chapters to TP law:
  - Free-of-charge supply
  - VAT base
  - Other
- Implications?
- Which tax authority will audit this?

## Suggestion

- Provide certainty
- Prevent regular tax audits to test TP, even for the purposes of calculation of taxes covered by the audit

# TP methods

## Issue

- The Resale Minus method is given a priority for a distributor
- Not consistent with OECD principles
- Does not reflect the functional profile of a distributor

## Suggestion

- Remove priority status for the Resale Minus
- Equal status with other TP methods

# Regulated prices

## Issue

- Requirement to comply with the arm's length principle, i.e. to calculate the arm's length range
- Difficult to comply in practice
- Extra burden on top of pricing regulations

## Suggestion

- Exclude the arm's length range calculation requirement for regulated prices
- Exempt intra-group transactions from control if end-prices are regulated



# Grouping of transactions

## Issue

- TNMM and PSM allow analysis of margins only for a group of 'homogeneous' transactions
- Worst case scenario – product by product analysis / not consistent with OECD principles

## Suggestion

- Allow grouping of transactions for TNMM and PSM for a group of interrelated transactions

# Retrospective TP adjustments

## Issue

- Not stipulated by law (although common in OECD countries)
- Downward adjustments are specifically prohibited
- Practical difficulties to apply TNMM / PSM
- Potential double taxation

## Suggestion

- Allow taxpayers to adjust sales/ expenses for TP purposes and submit revised tax returns without triggering tax audits

# Correlative adjustments

## Issue

- Adjustments are allowed only for Russian legal entities
- Possible only upon a tax audit

## Suggestion

- Allow voluntary correlative adjustments
- Allow corellative adjustments for foreign legal entities

# Cost allocation / sharing

## Issue

- No rules on cost allocation for determining service fees
- Is allocation using turnover and headcount + other ratios of service recipients allowed?

## Suggestion

- Provide certainty and allow using cost allocation

# PE allocation

## Issue

- Little guidance on profit allocation to PE
- No link between TP methods and PE allocation
- Direct method of allocation is still required (art. 307 TC)

## Suggestion

- Provide clarity
- Allow paying profits tax for PE by dependent agent

# APA

## Issue

- Currently allowed only for RLEs, not for PEs of foreign legal entities
- Attribution of profit to a PE is a grey area and requires the same treatment as other pricing arrangements

## Suggestion

- Allow APAs to PEs of foreign legal entities

# Interest deductibility

## Issue

- Non-market thresholds for interest deductibility in art. 269 TC
- Potential risk of double taxation (if market rate is higher than threshold)

## Suggestion

- Align art. 269 with new transfer pricing rules

# TP vs. Customs

## Issue

- Contradictory interests of tax and customs authorities
- Customs adjustments are not acceptable for tax purposes and vice versa

## Suggestion

- Align customs and transfer pricing regulations
- Allow using prices adjusted by customs authorities for tax purposes





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