

8 July 2019

Global Tax Alert

News from Transfer Pricing

Belarusian tax authorities to begin requesting transfer pricing documentation for 2018 as of 1 June 2019

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The Law of the Republic of Belarus "On amendments and additions to certain laws of the Republic of Belarus" No. 159-3 of 30 December 2018 came into force on 1 January 2019.

The Law sets forth significant amendments to the Tax Code of the Republic of Belarus (the 2019 Tax Code) related to the transfer pricing rules.

Among others, beginning from 2019, Belarusian tax authorities are entitled to request transfer pricing documentation during tax audits but **no earlier than 1 June** of the year following the tax period during which the transaction is completed. Therefore, it is expected that tax authorities will start to request transfer pricing documentation for 2018 from taxpayers as of 1 June 2019.

Moreover, the 2019 Tax Code requires special forms of transfer pricing (TP) documentation to be prepared by taxpayers and provided to tax authorities. The forms are approved by Decree of the Ministry of Taxes and Duties dated 3 January 2019, No. 2 "On certain issues related to the calculation and payment of taxes (duties), other payments, control over the calculation and payment of which is carried out by the tax authorities," and entered into force on 16 February 2019. Prior to 1 January 2019, TP reports could be provided to the tax authorities in any format, but they had to include all information required by the Tax Code. Therefore, in 2019, tax authorities will start requesting TP documentation prepared using special forms, as stipulated by the 2019 Tax Code.

Other significant amendments pertaining to the TP rules, which became effective in Belarus as of 1 January 2019 are as follows:

- ▶ The 2019 Tax Code reduced the controlled transactions list by raising value thresholds and excluding certain transactions from the list.
- ▶ The 2019 Tax Code revised/specified the description of TP methods so that the current application of the TP methods in Belarus (as of 2019) would be aligned to the TP methods applied in accordance with the OECD¹ TP Guidelines. In addition, starting from 2019, a combination of two or more methods may be applied, whereas the previous edition of the Tax Code did not provide for the application of more than one method.
- ▶ The 2019 Tax Code removed the possibility of a 20% deviation from the range of arm's-length prices/profitability. Therefore, beginning from 2019, the arm's-length range is based on the minimum and maximum values of the arm's-length range of prices (profit level indicators).
- ▶ The 2019 Tax Code allows grouping of transactions for TP purposes, which was not allowed previously.
- ▶ For the purposes of the transactional net margin method, the selection of a tested party in a transaction was introduced starting from 2019.
- ▶ Beginning 1 January 2019, the search strategy for comparable companies has been amended. Specifically, a company may be deemed comparable in the event that it simultaneously meets all the following criteria: conducts comparable operations; has positive net assets on 31 December of the final year in the period for which the profitability is calculated; has not registered a loss from sales for more than one year in the three-year period; is independent; does not have transactions with related parties.
- ▶ The 2019 Tax Code established the calculation of a weighted-average arm's-length profitability range, which was not previously provided.
- ▶ Starting 1 January 2019, the advance pricing agreement (APA) program is available for large taxpayers and taxpayers in Belarus who have conducted controlled transactions in the amount exceeding BYN2 million per year. The Tax Code does not envisage the possibility of concluding multilateral APAs.

For more details regarding changes in Belarusian TP rules, see EY's publication, [Transfer pricing rules in Belarus: Overview of the Main Amendments in 2019](#).

Endnote

1. Organisation for Economic Co-operation and Development.

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EYG no. 002224-19GbI

1508-1600216 NY
ED None

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