

Problems and Risks of Tax Control of Transactions between Related Parties in The Russian Federation

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Abstract

By analyzing the tax control of transactions between related parties, it is possible to reveal certain nuances in its development. So, proceeding from the interpretation of certain provisions of Section V.1 of Part 1 of the Tax Code of the Russian Federation, there are the issues and risks in the development of tax control of transactions between related parties. As a result of the application of analytical methods, classification, generalization, the authors of the article proposed descriptions of the issues of tax control of transactions between related parties: the issue of identifying the controlled transactions in the framework of on-site and off-site tax audits; the issue of the time of consideration of the tax audit materials; the issue of applying the symmetric corrections; the issue in committing the foreign trade transactions; the issue of legislative regulation of all possible cases of interdependence of the transaction participants. Also, the authors of the article proposed classification of the risks of tax control of transactions between related parties that arise both with the tax authorities (low control effectiveness, uncertainty in adjusting the accounting records, deliberate forging the transactions by a taxpayer in order to recognize transactions between related persons as comparable, etc.) and with the taxpayers (risks of failure to provide notifications of controlled transactions, making mistakes in the notification of controlled transactions, mistaken attribution the transaction to controlled, illegal tax control by the tax authorities, etc.).

Key words: Transaction, Interdependent persons, Issues, Risks, 227-FZ.

INTRODUCTION

The issues in the field of tax control of transactions between related parties existed mainly during the period of effect of Articles 20 and 40 of the Tax Code of the Russian Federation. Therefore, it was adopted the Federal Law No. 227-FZ dated July 18, 2011 regulating the issues of tax control of transactions between related parties in order to level the issues of the process of tax control of transactions between related parties. Despite the fact that this law had a significant impact on the development of the tax control system of transactions between related parties, at the same time, some of the issues remained unsolved, the existing gaps in legislation and practical issues in the implementation of the tax control process of transactions

between related parties could lead to the risks both for the taxpayers and the tax authorities.

MATERIALS AND METHODS

According to A.A. Korabelnikov, one of the issues of tax control of transactions between related parties is the detection of controlled transactions within the framework of on-site and off-site tax audits [1, p. 21]. Despite the fact that the audit of price compliance with the market ones in the controlled transactions is within the competence of the Federal Tax Service of Russia, the territorial tax authorities may, in the course of on-site or off-site tax audit, identify the controlled transactions and notify a higher tax authority authorized to control transactions between related parties. However, when a taxpayer makes the transactions the audit of price compliance with the market ones cannot be subject to off-site and on-site tax audits. In the notification sent to the Federal Tax Service of Russia, the tax authority conducting the audit should reflect the relevant information on the controlled transactions of the audited taxpayer. The issues are whether the tax authority has the right to demand the necessary documents from the taxpayer.

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According to Z.M. Kolacheva, the issue of the time of consideration of the tax audit materials remains unsettled [2, p. 9]. According to the Federal Law dated July 23, 2013 No. 248-FZ "On Amendments," the period from the date of receipt of the tax audit certificate for submitting the written objections on the specified certificate to the tax authority by a person or his representative, against which the audit has been conducted, is one month, while according to Article 105.17 of the Tax Code the given period is 20 days, which is the problem.

According to the authors of the article, the possibility of applying the symmetrical corrections [3, Art. 105.18] in cases where the tax authorities have used the method of comparable profitability or the method of profit distribution during the audit is not clear enough. The issue consists also of the impossibility of applying the symmetric adjustments by the related foreign partners of the taxpayer, as well as the Russian representative offices of foreign companies based on the interpretation of the Tax Code of the Russian Federation [3, Art. 105.18].

There are the issues of tax control of transactions between related parties in committing the foreign trade transactions. The Law No. 227-FZ stipulates that all transactions with related parties in the field of foreign trade are controlled without any limitations, but it is unclear how to prove this. At the same time, the foreign trade transactions become controlled only when the boundary is overcome by 60 million roubles. Thus, in fact, it is possible to avoid tax liabilities and shortfalls in the budget by splitting the amounts of transactions by creating a certain number of intermediary organizations [4, p. 22].

There remains the problem of whether the transaction with a representation in a foreign company in the Russian Federation is a transaction in the domestic market. There are two opposite positions on this issue: on the one hand, it is, on the other, it is not, because such representation is a foreign organization in accordance with the Tax Code of the Russian Federation [3, p. 11].

The issue of tax control of transactions between related parties is also the fact that the Tax Code of the Russian Federation does not regulate all possible cases of relation of the transaction participants. The Law No. 227-FZ stipulates 11 criteria for recognizing the parties as related, and their list remains open. So, the court actually can recognize the parties as related on other grounds not stipulated in the Law No. 227-FZ [5, Art. 105.1]. It is not clear what other grounds the court will use when recognizing the parties as related. At the same time, there is a danger of incorrect use of this legislative norm by the tax authorities, for which it may become a mechanism for recognizing the persons as

related, if it has not been possible to do so on the grounds foreseen.

As for the tax risks arising in the tax control of transactions between related parties, the tax risk for a taxpayer is recognized as the probability of paying the additional taxes and penalties by him and, based on the tax audit results, as the completeness of calculating and paying taxes in connection with the transactions between related parties because of disagreements between the taxpayers and the tax authorities as a result of gaps in the tax legislation [6, p. 65].

The tax risk for the state is recognized as the likelihood of tax payment shortage to the budget and state extra-budgetary funds because of the possible application of the schemes for minimizing taxation by the taxpayers due to the presence of gaps in the tax legislation [6, p. 65].

At the preparatory stage and the decision-making stage on the audit conduct, the risks for the taxpayers consist of the failure to submit notifications of the controlled transactions due to the lack of knowledge of the legislation, which may subsequently lead to an audit by the tax authority with a subsequent charging of taxes, fines, penalties, as well as of the possibility of making mistakes in filling the notifications by the taxpayer or mistaken assignment of the taxpayer's transactions to the controlled ones with the subsequent mistaken submission of the notification of the controlled transactions. According to V.N. Zasko, there is a risk of undue tax control as a result of an unclear separation of powers to control transactions (between related parties) between the territorial tax authorities and the Interregional Inspectorate of the Federal Tax Service of Russia on pricing at this stage [7, p. 27].

There is a large number of risks associated with the issues in the legislation at the stages of audit, identification of violations at the end of the audit and decision-making on audit for the taxpayers. The main risk for the taxpayers consists of the uncertainty of the composition and volume of the information required for submission to the tax authorities at this stage. On the one hand, the Tax Code of the Russian Federation defines a list of documents (drawn up in an arbitrary form) for submission by the taxpayer to the tax authority for the tax purposes of transactions between related parties [3, Art. 105.15]. On the other hand, the taxpayer has the right to provide other information confirming that the commercial and (or) financial terms of the controlled transactions correspond to the terms of comparable transactions, taking into account the necessary adjustments to achieve such comparability. Therefore, a large amount of documents and additional information necessary for the tax authorities to correctly conduct the tax control of transactions between related parties may lead

to the risks of increasing the taxpayer's time and costs to establish a department for the preparation of reporting on transactions between related parties.

According to O.V. Gordeyeva, there is also the risk of different interpretation of the concept of "official sources" by the courts [8, p. 35]. There are the cases in the judicial practice on tax control of transactions between related parties in which, for example, the certificates of vehicle price forensic examination, information from the information database of the state authorities and local self-government, data on average rental rates provided by the real estate agency, etc. have not been recognized as the official source of information. In these cases the courts motivated their decisions by the fact that the market price calculation based on the average prices, and not on the prices of comparable transactions, was not justified. However, there is a practice of admitting the unofficial sources of information as acceptable. To level this risk in some countries, there are extensive databases that can be used to obtain information on the comparable transactions and persons, for example, there is Diane database for the general financial and economic data on companies in France, Belfirst database - in Belgium and Luxembourg, Amadeus database - for the rest of the European companies.

It should be noted that the risks of tax authorities in the process of tax control of transactions between related parties coincide with the taxpayer risks to some extent, while there are specific risks for the tax authorities.

At the preparatory stage and the decision-making stage on the audit conduct, the risks both for the tax authorities and the taxpayers consist of the failure to submit notifications of the controlled transactions due to the lack of knowledge of the legislation, which may subsequently lead to an audit by the tax authority with a subsequent charging of taxes, fines, penalties, as well as of the possibility of making mistakes in filling the notifications by the taxpayer or mistaken assignment of the taxpayer's transactions to the controlled ones with the subsequent mistaken submission of the notification of the controlled transactions.

According to G.N. Pletneva, a significant risk may consist of the low effectiveness of controlling transactions between related parties at the stages of the audit, identification of violations at the end of the audit and decision-making on the violations detected [9, p. 72]. This is due to the fact that the Russian legislation has introduced new mechanisms of price control on transactions that are close to the international principles, that is, it is carried out a detailed economic and legal analysis of participants in the analyzed and comparable transaction and the financial and commercial conditions for its implementation in the following areas:

- functional analysis;
- risk analysis;
- analysis of the availability and use of tangible and intangible assets in the interaction process between the parties;
- analysis of commercial terms of transactions;
- analysis of the characteristics of goods, works and services that are the transaction subject;
- analysis of the market of goods, works, services;
- analysis of the parties' commercial strategies.

However, it is impossible to reconcile all the factors and assess their final impact on pricing in the transactions in practice. The methods of the new control mechanism introduced are not formalized, they require detailed analysis in each specific case, that is, a great of time and labor costs.

It should also be noted that according to Yu.P. Olofinskaya, there is a risk of concluding transactions by a taxpayer with the non-related parties, deliberately planning a price for further conclusion of transactions with a related party, as one transaction with a non-related party is sufficient to prove the compliance of the prices applied with the market prices for transactions [10, p. 54].

RESULTS AND DISCUSSION

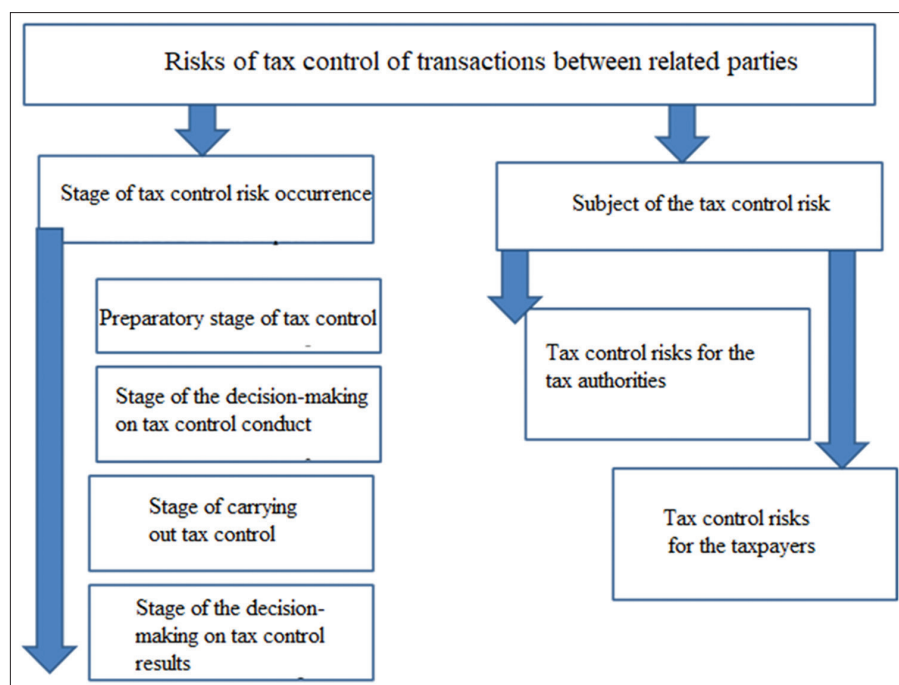
The authors of the article propose a classification of risks (Figure 1) arising in the process of tax control of transactions between related parties, both for the taxpayers and the tax authorities. Obviously, this classification of risks will be built on the basis of dependence of transactions between related parties on the stage of tax control process, that is, there will be certain risks inherent in this stage at each stage of the tax control process of transactions between related parties.

During the tax control of transactions between related parties, based on the previous scheme, it is possible to identify the taxpayer risks inherent in each phase of tax control, which are presented in Table 1.

The classification of risks of the tax authorities at each stage of the process of tax control of transactions between related parties is presented in Table 2.

Based on the results of classification of the risks both for the taxpayers and the tax authorities in the course of tax control of transactions between related persons, the authors of the article propose a conceptual scheme for classifying the risks both for the taxpayers and the tax authorities, presented in Figure 2, at the:

- preparatory stage;
- decision-making stage on the audit conduct;



The preparatory stage and the decision-making stage on the audit conduct

Taxpayer risks:

The risk of failure to notify of the controlled transactions by the taxpayer;
 The risk of making mistakes in the notification of the controlled transactions by the taxpayer;
 The risk of mistaken assignment of the transactions to the controlled ones by the taxpayer
 The risk of undue tax control by the tax authorities

Risks for the tax authorities:

The risk of failure to notify of the controlled transactions by the taxpayer;
 The risk of making mistakes in the notification of the controlled transactions by the taxpayer;
 The risk of mistaken assignment of the transactions to the controlled ones by the taxpayer
 The stages of audit, identification of violations at the end of the audit and decision-making on the violations detected

Taxpayer risks:

The risk of uncertainty of the composition and volume of the information required for submission to the tax authorities
 The risk of different interpretation of the concept of "official sources" by the courts
 The risk of increasing the time and financial costs due to the information analysis in the markets as to the audits and disputes with the tax authorities

Risks for the tax authorities:

The risk of poor performance of controlling transactions between related parties
 The risk of uncertainty in adjusting the accounting (financial) statements
 The risk of deliberate forging the transactions by a taxpayer in order to recognize transactions between related parties as comparable
 The risk of ineffectiveness of conducting separate tax audits of transactions between related parties

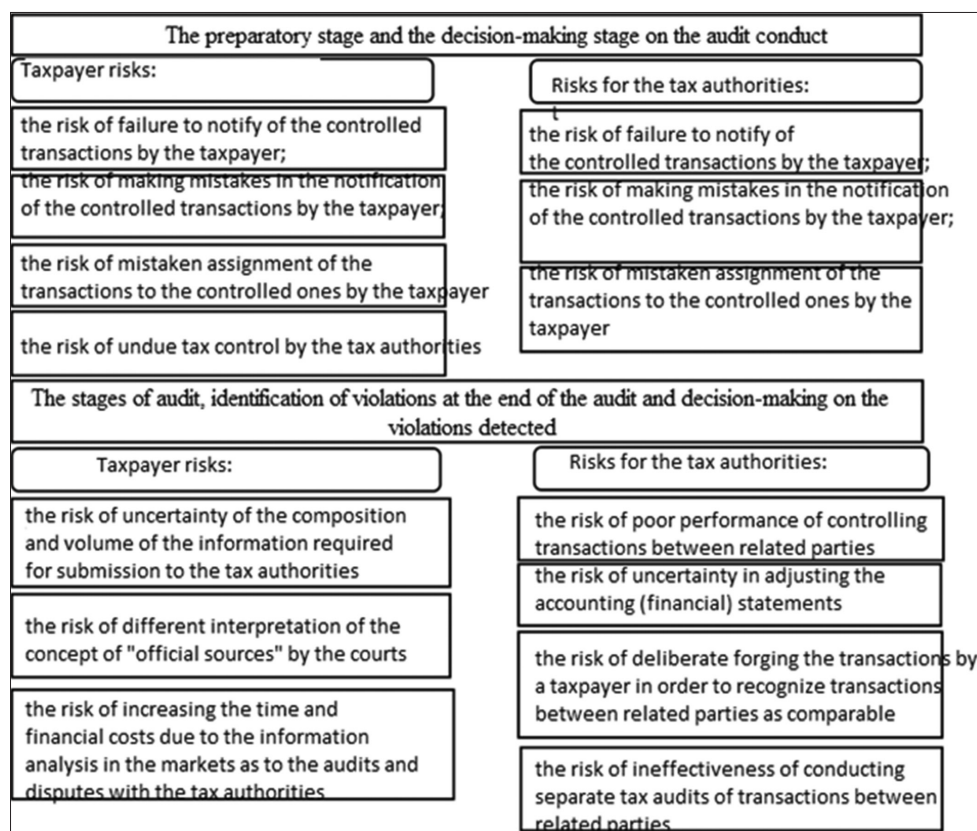
Figure 1: Algorithm for the classification of risks both for the taxpayers and the tax authorities in the tax control of transactions between related parties

Table 1: The taxpayer risks in the process of tax control of transactions between related parties

The stage of tax control of transactions between related parties	The risks inherent in the stage of tax control of transactions between related parties
The preparatory stage and the decision-making stage on the audit conduct	a) The risk of failure to notify of the controlled transactions by the taxpayer; b) The risk of making mistakes in the notification of the controlled transactions by the taxpayer; c) The risk of mistaken assignment of the transactions to the controlled ones by the taxpayer; d) The risk of undue tax control by the tax authorities
The stages of audit, identification of violations at the end of the audit and decision-making on the violations detected	a) The risk of uncertainty of the composition and volume of the information required for submission to the tax authorities; b) The risk of different interpretation of the concept of "official sources" by the courts; c) The risk of increasing the time and financial costs due to the information analysis in the markets as to the audits and disputes with the tax authorities

Table 2: The risks of tax authorities in the process of tax control of transactions between related parties

Tax control stage	The risks inherent in the stage of tax control of transactions between related parties
The preparatory stage and the decision-making stage on the audit conduct	a) The risk of failure to notify of the controlled transactions by the taxpayer; b) The risk of making mistakes in the notification of the controlled transactions by the taxpayer; c) The risk of mistaken assignment of the transactions to the controlled ones by the taxpayer
The stages of audit, identification of violations at the end of the audit and decision-making on the violations detected	a) The risk of poor performance of controlling transactions between related parties; b) The risk of uncertainty in adjusting the accounting (financial) statements; c) The risk of deliberate forging the transactions by a taxpayer in order to recognize transactions between related parties as comparable;

**Figure 2: The classification of risks for both the taxpayers and the tax authorities in the process of tax control of transactions between related parties**

- stages of audit, identification of violations at the end of the audit;
- stage of decision-making on the revealed violations of the process of tax control of transactions between related parties.

CONCLUSIONS

According to the research results, the authors of the article classified and proposed the risks of tax control of transactions between related parties for both the tax

authorities and the taxpayers. Based on this classification, the authors of the article developed a conceptual scheme of the risks for both the taxpayers and the tax authorities in the course of tax control of transactions between related parties, based on the stages of tax control of transactions between related parties. It should also be noted that the authors of the article have described the main gaps in the legislation in the field of tax control of transactions between related parties, which is a good support for further analysis of the ways of development of the tax control system of transactions between related parties.

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REFERENCES

1. Grinkevich L.S. Introduction of the Risk Management Methodology of Price Control of Transactions in the Practical Activities of the Russian Business/L.S. Grinkevich, Yu.P. Olofinskaya//Bulletin of the Tomsk State University. Economics. - 2014. - No. 4. - P. 87-94.
2. Kolacheva Z.M. Transfer Pricing: Analysis of Innovations/Z.M. Kolacheva, M.I. Migunova//Accounting, Analysis, Audit: Issues of the Theory and Practice: Collection of Scientific Papers./Siberian State Aerospace University - Krasnoyarsk, 2011. - Series 7. - P. 8-10.
3. The Tax Code of the Russian Federation (Part One). Approved by the order of the Ministry of Finance of the Russian Federation dated July 13, 1998. No. 146-FZ (as amended by June 8, 2015)//SPS "Consultant Plus". - Legislation: Professional Version. - Access mode: <http://base.consultant.ru> (access date: May 1, 2017).
4. Korabelnikov A.A. Transfer Pricing: New Opportunities and Threats/A.A. Korabelnikov, E.A. Nikolaeva//Managerial Accounting and Finance. - 2012. - No. 1. - P. 18-25.
5. On Introduction of Amendments to Certain Legislative Acts of the Russian Federation due to Improving the Principles of Price Determining for the Taxation Purposes: Federal Law No. 227-FZ dated July 18, 2011//SPS "Consultant Plus". - Legislation: Professional Version. - Access mode: <http://base.consultant.ru> (access date: May 1, 2017).
6. Lobanov A.V. State Tax Risks Associated with the Application of Tax Control Methods of Price Level in the Transactions between Related Parties.//Economy. Taxes, Law. - 2014. - No. 1. - P. 62-67.
7. Zasko V.N. Transfer Pricing: Risks both for the Taxpayers and the Tax Authorities/V.N. Zasko, D.Yu. Shakirova/Tax Policy and Practice. - 2012. - No. 1. - P. 25-31.
8. Gordeyeva O.V. Price Factor of Tax Risks: Transfer Pricing//Finance. - 2012. - No. 3. - P. 33-37.
9. Pletneva G.N. Controversial Issues of the Penalty Application in the Implementation of Tax Administration of Transfer Pricing//Scientific and Theoretical Journal. - 2014. - No. 4. - P. 70-73.
10. Olofinskaya Yu.P. Control of Transaction Prices by the Tax Authorities: Classification of Administrative Risks//Bulletin of the Baikal State University - 2014. - No. 4. - P. 51-58.

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