
Transfer pricing: Topical issues 2018

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Rules and regulations applicable in 2018

- Key rule: If commercial or financial conditions different from market conditions are provided in transactions between related parties, then the revenues that could have been derived (but were not because of these different conditions) are taken into account for tax purposes (unless this results in a smaller amount of payable taxes).
- Penalty for non-payment of tax due to prices not in line with market prices:
 - 2015- 2016 - 20% of unpaid tax amount
 - 2017-... - 40% of unpaid tax amount
- Audits:
 - 2015 – up until May 20, 2018
 - 2016 – up until May 20, 2019
 - 2017 – up until May 20, 2020

Calendar 2018

Up until March 28, 2018

- Companies are entitled to adjust profit tax for 2017

Up until May 20, 2018

- Submission of reports on controlled transactions for 2017

From June 01, 2018

- Beginning of tax audits for 2017

Within 30 days of request

- Submission of transfer pricing documentation

Time periods for audit appointment

Audit decisions are issued no later than 2 years from the date of:

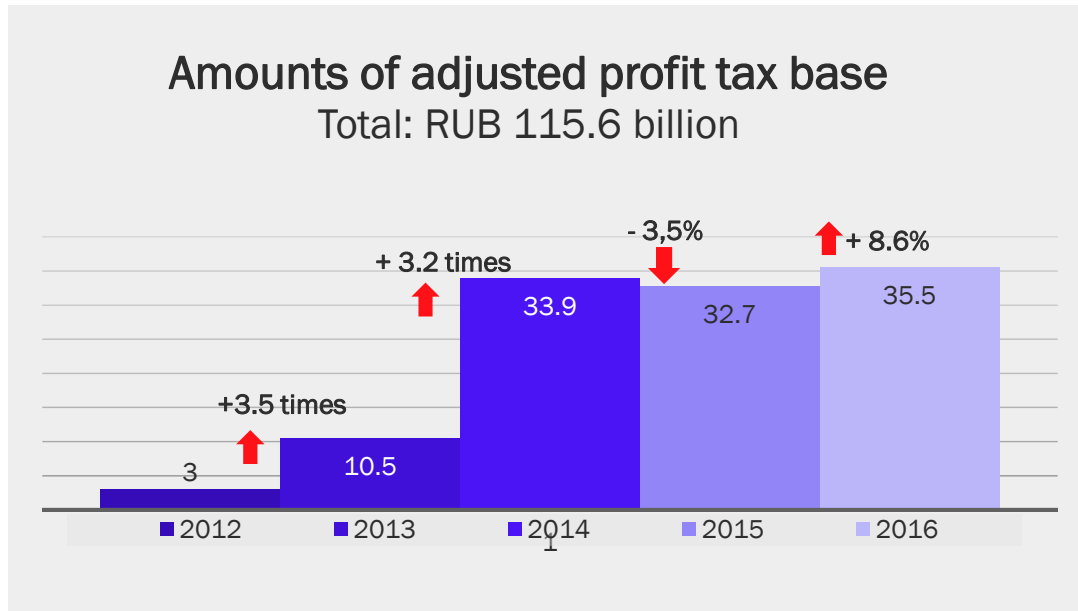
- Receipt of **report** on controlled transactions;
 - 2014 – up until May 20, 2017
 - 2015 – up until May 20, 2018
 - 2016 – up until May 20, 2018, etc.
- Receipt of **notice** from the tax authority that conducted the audit;
- Submission of a **revised tax return** with a smaller tax amount accrued after transfer pricing adjustments.

Federal Tax Service statistics

- **16,092** reports on controlled transactions filed in 2016 (↑ **16%** compared to 2015)
- **124 million** – number of controlled transactions in 2016 specified in reports (↑ **27%** compared to 2015)
- **RUB 344 trillion** – total of controlled transactions completed in 2016
- **Over 3,000** notices generated by tax authorities during field and desk tax audits
- **RUB 117 billion** – self-adjustment of tax base
- **RUB 16.8 billion**– voluntary additional payment of taxes, including
- **RUB 2.1 billion**– adjustments based on audit results

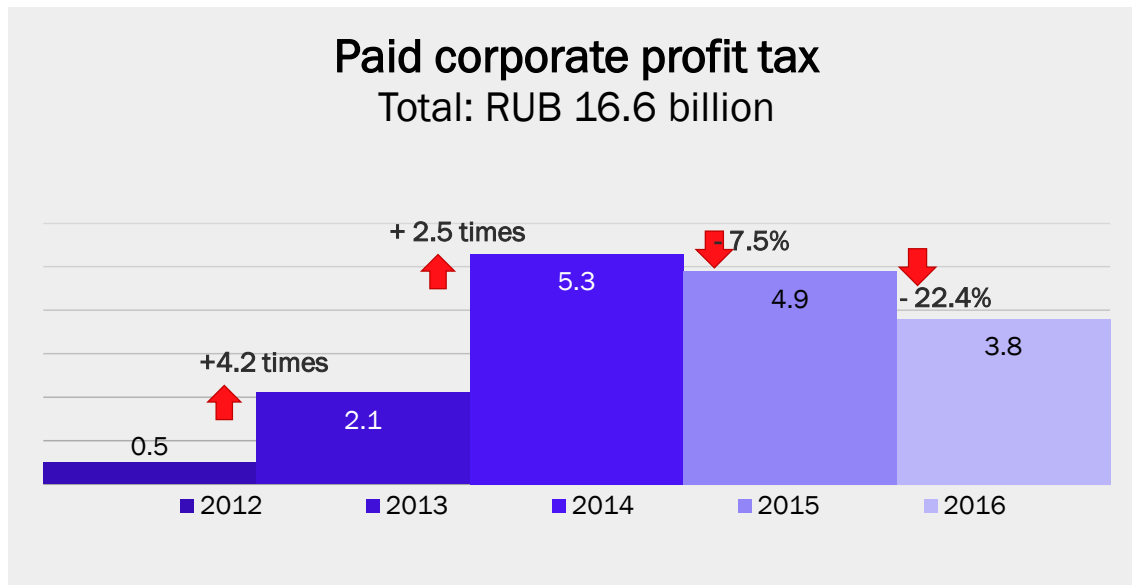
Self-adjustments of tax base

- Over the period 2012-2016, taxpayers themselves increased their tax base by **more than RUB 117 billion** of which **RUB 115.6 in profit tax**.



Self-adjustments: Additional payment of tax

- Over the period 2012-2016, taxpayers accrued and paid **RUB 16.8 billion in additional tax** of which **RUB 16.6 billion** in corporate profit tax.



Changes in 2018: 3-level documentation system

Documentation for international groups of companies

- Chapter 14.4-1 Provision of Documentation for International Groups of Companies added in the Russian Tax Code
(Federal Law N 340-FZ dated November 27, 2017)
- Rules in Section V.1 of the Russian Tax Code remain in force

Who will be affected by these changes?

New rules apply to:

- Russian organizations;
- Permanent establishments of foreign companies in the Russian Federation;

Part of international groups of companies preparing consolidated financial statements;

Group annual turnover for the previous financial year equals or exceeds:

- **RUB 50 billion** if the group parent company is located in the Russian Federation;

or

- **The amount of consolidated revenues** set by the country in which the group parent company is located.

New requirements will apply to financial years starting from **2017**.

- **Reporting period** is the financial year following the year in which these figures are achieved

Notice of participation in international group of companies

- **Submission deadline** – no later than 8 months after the end of the financial year
- **Notice format** is approved by the Federal Tax Service
- **Information included in notice**
 - Name, OGRN, INN, KPP
 - Information about parent company and authorized shareholder
 - Date – last day of reporting period
- **Right** to provide a **revised notice**
- **Fine** for failure to meet the notice submission deadline or for submitting inaccurate information – RUB 50,000
- **Transitional provisions**: no fines for offenses identified for reporting periods starting in 2017, 2018, 2019

Country-by-Country information

- Global file
- Local file
- Country-by-Country report

Country-by-Country report (CbC)

- **Submitted by Russian companies if**
 - a) They are group parent company
 - b) They are an authorized group shareholder
 - c) Russia does not exchange information with the country in which the Country-by-Country report is submitted
- **Submission deadline:** within 12 months of the end of the reporting period
- **Format:** approved by the Federal Tax Service
- **Content:**
 - Gross profit (loss) for the reporting period;
 - Accrued profit tax for the reporting period;
 - Paid profit tax for the reporting period.
- **Fine** for failure to meet submission deadline or for non-submission: RUB 100,000
- **Transitional provisions:** no fines for violations in 2017-2019

Automatic exchange of Country-by-Country reports

International legal framework:

- Convention on Mutual Administrative Assistance in Tax Matters (concluded in Strasbourg on January 25, 1988) applied in the Russian Federation since July 01, 2015 for periods starting from 2016
- Multilateral Agreement of competent authorities on automatic exchange of Country-by-Country reports dated January 27, 2016 signed by the Federal Tax Service of Russia on January 26, 2017

List of countries

- Draft Order of the Federal Tax Service of Russia Approving the List of Foreign Countries (Territories) with Competent Authorities which Automatically Exchange Country-by-Country Reports (as of December 29, 2017) prepared by the Federal Tax Service of Russia

List of countries with which the Russian Federation plans to exchange data

Argentina	New Zealand	Guernsey	Cyprus
Denmark	Finland	Hungary	Malta
Colombia	South Africa	Spain	Slovenia
Mexico	Belgium	Mauritius	Switzerland
United Kingdom	Ireland	Portugal	Isle of Man
Sweden	Liechtenstein	Czech Republic	
Australia	Norway	Jersey	
India	France	Germany	
Korea	Japan	Italy	
Netherlands	Brazil	Malaysia	
Uruguay	Iceland	Slovakia	
Estonia	Luxembourg	Chile	
Austria	Poland	Cayman Islands	
Indonesia	Croatia	Greece	

Global file

- **Submitted at the request** of tax authorities
- **Request** may be sent no earlier than 12 months and no later than 36 months after the end of the financial year. For example, documentation for 2017: January 01, 2019-December 31, 2020.
- **Submission deadline:** within 3 months of request receipt date
- No set **format**. Documentation **content:**
 - Structure of equity participation, control of international group of companies;
 - Markets in which the shareholders of international group of companies operate;
 - Activity of international group of companies;
 - Intangible assets of international group of companies;
 - Financial activities of international group of companies.
- Right to submit **revised documentation**
- **Fine** for failure to meet submission deadline: RUB 100,000
- **Transitional provisions:** no sanctions for offenses in 2017-2019

Local File

- Submitted **at the request** of tax authorities
- **Request** may be sent no earlier than June 01 of the year following the calendar year in which controlled transactions were completed
- **Transitional provisions:** Documentation for transactions under which revenues/expenses are recognized in 2018-2019 may be requested no earlier than December 31, 2019 and December 31, 2020 respectively
- **Submission deadline:** within 30 days of request receipt date
- No set **format. Content:**
 - Structure of management bodies;
 - Activities performed by taxpayer, market strategy;
 - Main reasons for concluding that the price applied in controlled transaction is in line with market price.
- Right to submit **revised documentation**
- **Fine** for failure to meet submission deadline: RUB 100,000. No transitional provisions.

Action plan for 2018

- Format of notice of participation in international group of companies is expected.
- Notification should be submitted to tax authorities no later than August 31, 2018*
- Determining whether Russian companies should submit a Country-by-Country report.
 - If so, wait for format and submit report before December 31, 2018*
 - If not, provide the group with information to prepare the Country-by-Country report.
- Request Global File from group and adapt it for use in the Russian Federation.
- Prepare Local File in accordance with transfer pricing policies of the group and the Russian Tax Code:
 - Verification of data from functional analysis of transactions with participation of Russian company;
 - Application of general approaches of transfer pricing analysis for the same transactions;
 - Benchmark analysis of transactions where a Russian company is the party under review.

* For companies whose financial year coincides with the calendar year