

APPROVED

by the Order No VA-106 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 21 October 2011 (version of the Order No VA-63 of the Head of the State Tax Inspectorate under the Ministry of Finance of 21 July 2017)

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THE RULES FOR THE SUBMISSION OF THE TAXPAYER'S REQUEST TO APPROVE THE PRINCIPLES OF PRICING OF A FUTURE CONTROLLED TRANSACTION, EXAMINATION OF THE REQUEST, THE ADOPTION AND AMENDMENT OF THE TAX ADMINISTRATOR BINDING DECISION

CHAPTER I GENERAL PROVISIONS

1. The Rules for the submission of the taxpayer's request to approve the principles of pricing of a future controlled transaction, examination of the request, the adoption and amendment of the tax administrator binding decision (hereinafter referred to as the Rules) set forth the procedure of acceptance of the form of the taxpayer's appeal to the tax administrator regarding the Decision concerning the principles of pricing of a future controlled transaction (FR1096 form approved by the Order No VA-106 of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 21 October 2011 "Regarding the approval of the Rules for the submission of the taxpayer's request to approve the principles of pricing of a future controlled transaction, examination of the request, the adoption and amendment of the tax administrator binding decision"; hereinafter referred to as the Decision).

2. The Rules have been prepared in accordance with the Law of the Republic of Lithuania on Tax Administration (hereinafter referred to as the LTA), the Law of the Republic of Lithuania on Public Administration, the Law of the Republic of Lithuania on Corporate Income Tax, the Rules of the implementation of part 2 of the Article 40 of the Law of the Republic of Lithuania on Corporate Income Tax and of part 2 of the Article 15 of the Law of the Republic of Lithuania on Personal Income Tax approved by the Order No 1K-123 of the Minister of Finance of the Republic of Lithuania of 9 April 2004 "Regarding the Rules of the implementation of part 2 of the Article 40 of the Law of the Republic of Lithuania on Corporate Income Tax and of part 2 of the Article 15 of the Law of the Republic of Lithuania on Personal Income Tax", and other legal acts of the Republic of Lithuania.

3. The terms used in the Rules:

3.1. **Future transaction** – the taxpayer's transaction, economic operation or any group thereof that will be started to be carried out after the date on which the request to approve the principles of pricing of a future controlled transaction (hereinafter referred to as the request) was submitted to the tax administrator. When the long-term transaction has been entered into prior to submitting the request to the tax administrator, then the transactions carried out after the date on which the request was submitted to the tax administrator are qualified as future transaction.

3.2. **Alignment of the principles of pricing of a future controlled transaction** – alignment of the principles of pricing of the taxpayer's future controlled transaction, i.e. of the transfer pricing method, comparisons, critical assumptions at which the pricing policy selected is possible, and alignment of other issues related to the justification of the conformity of the future controlled transaction to the arm's length principle with the tax administrator for a certain tax period.

Other terms used in the Rules are consistent with the terms enshrined in the legal acts.

CHAPTER II

SUBMISSION OF THE REQUEST

4. The request can be submitted by a taxpayer or a person authorized on his behalf. When the tax administrator is approached by an authorized person, the authorization supporting documents must be enclosed.

5. A taxpayer may only submit a request for the future controlled transactions. The request cannot include the controlled transactions that have already taken place, i.e. the principles of pricing of controlled transactions that have already taken place cannot be aligned with the tax administrator. The request cannot be submitted regarding the tax amount.

6. The taxpayer must submit the request to the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania (hereinafter referred to as the STI under the MF). The request can be sent by post, via e-mail to vmi@vmi.lt, served directly can be brought by the person or his representative to the STI under the FM, or can be submitted electronically via the field of the authorized electronic services "My STI" of the Internet portal of the State Tax Inspectorate e.VMI

7. The request can be submitted for one or several future controlled transactions. A taxpayer may choose regarding which future controlled transactions he will approach the tax administrator. It is advisable to choose the transactions pricing of which is complicated due to the complexity, uniqueness of transactions, the limited possibilities to find comparable uncontrolled transactions and other circumstances, raises reasonable doubts as to the correctness and reliability of the setting of principles of pricing for such transactions.

A taxpayer, in order to avoid cross-border double taxation due to the possible actions by the tax administrator of another state in the context of the future controlled transaction, should approach the STI under the MF in accordance with the provisions of the relevant Agreement between the Republic of Lithuania and another state for the avoidance of double taxation of income and capital. Upon submission by a taxpayer of the request regarding the alignment of the principles of pricing of a future controlled transaction and entry into agreement with the competent authority of another foreign state, the mutual agreement procedure may be initiated in accordance with the procedure laid down in the legal acts.

8. Prior to submitting the request, a taxpayer may approach a tax administrator regarding the organisation of the meeting to discuss the issues related to the submission of the request and the alignment of the principles of the future controlled transaction pricing. By approaching a tax administrator regarding the meeting a taxpayer must also provide the information (specify the activity, the transactions that are planned to be included in the request, the participants of the transaction, the principles of the future controlled transaction pricing that are expected to be applied, the period, etc.) that would allow the tax administrator to assess the expediency of the submission of the request, potential problems and risk.

9. The following details must be specified in the request submitted by a taxpayer:

9.1. name, identification number (code), registered office address, contact phone number, e-mail address of the applicant taxpayer;

9.2. name, identification number (code), registered office address (including the name of the state) of each participant of the future controlled transaction for which the request is submitted;

9.3. information on the mutual legal and / or economic relations of the participants of the future controlled transaction (i.e. information on occurrence of relations (change), associated persons, the structure of the group to which the participants in the transaction belong and the mutual relations of the units belonging to the group (percentage of ownership rights, control), description of monetary, financial or other data flows between associated persons, etc.);

9.4. information on the business of the participants of the future controlled transaction (of the group to which the participants of the controlled transaction belong): analysis of the relevant industry and market trends, economic circumstances (crises, pandemics, etc.) that may affect the group's business in the future, the business strategy that is expected to be applied during the period of validity of the alignment of the principles of pricing of a controlled transaction (an activity strategy for the

previous year may also be specified if it differs from the strategy of the future activity). The aforementioned strategy may include various forecasts used for drawing up future plans, information on the expected trends, the potential impact of competition, what will be the marketing, production, research and development strategy, etc.;

9.5. information justifying the complexity of the pricing of the future controlled transaction (e.g., at least one participant in the transactions is a taxpayer registered outside Lithuania, it is difficult to find comparable non-controlled transactions, it is necessary to apply the profit split transfer pricing method, etc.), and other reasons that led to the need for alignment of the principles of pricing of a future controlled transaction;

9.6. information on the future controlled transaction for which the request is submitted:

9.6.1. the subject matter of the transaction;

9.6.2. the functions performed by the parties to (participants of) the transaction;

9.6.3. the risks assumed by the parties to (participants of) the transaction;

9.6.4. the assets used by the parties (participants) to carry out the transaction;

9.7. the reasons for applying for specific types of transactions and the inclusion of specific associated persons;

9.8. the tax period for which a taxpayer wishes to apply the aligned principles of pricing of a future controlled transaction;

9.9. justification of the compliance of the future controlled transaction with the arm's length principle:

9.9.1. the transfer pricing method selected, justification of its selection (the reasons of the selection);

9.9.2. the performed selection and analysis of the possible comparables (by indicating the search criteria, methodology applied, data on the comparable non-controlled transactions and / or companies used and data sources). In cases where the adjustment of differences in comparable transactions has been carried out, the calculations have to be provided showing how this has been done and explaining how such adjustments ensured greater comparability;

9.9.3. application of the transfer pricing method (the calculations and adjustments carried out using the financial information, forecasts provided, as per the comparative and other data);

9.9.4. the value (price) or the interval of values (prices) calculated by applying the transfer pricing method selected which will be considered as compatible with the arm's length principle;

9.10. critical assumptions (terms of validity), i.e. economic, legal, administrative, managerial and other circumstances which determine whether the transfer pricing method selected will allow the prices of the future controlled transaction that are compatible with the arm's length principle to be determined properly, and which determine the validity of the alignment the future controlled transaction. Critical assumptions have to be based on reliable and verifiable data, they have to be adapted to the specific situation considered in the request (type of controlled transactions, transfer pricing methods, business conditions, etc.), they have to be material.

10. A taxpayer may also provide other information and data available to him that are of significance in terms of the alignment of the principles of pricing of a future controlled transaction.

11. A taxpayer has to confirm in the request accuracy of the data (information) provided, has to indicate that all the circumstances that are of significance in terms of the alignment of the principles of pricing of a future controlled transaction are provided. The request has to be signed by the taxpayer or a person authorized on his behalf.

12. A taxpayer must enclose to the request the financial data of three last (prior to submission of request) tax periods of the participants of the future controlled transaction (annual financial statements, the available analysis (tendencies) of the relevant (taking into account the type of the controlled transaction) indicators (e.g., gross, operational profitability)) and inform of the tax disputes that are taking place or have taken place which may affect the determination of the principles of pricing of a future controlled transaction that is subject to the request.

13. The documents or copies (evidences) thereof confirming the circumstances contained in the request and justifying the data provided in the request (e.g. the licensing, sales, marketing and similar

contract, the draft contract, the letter of intent and other documents that have been prepared) has to be enclosed to the request.

14. The request has to be submitted in the official language. A taxpayer may submit the annexes to the request in non-official language, but in that case a translation of these documents into the official language has to be provided at the request of the tax administrator.

CHAPTER III EXAMINATION OF REQUEST

15. The tax administrator examines the request within 60 calendar days from the date of its receipt.

16. The deadline for examining the request may be extended by a decision of the tax administrator for another 60 calendar days if an additional investigation is required for the examination of the request (for the assessment of the pricing of the future controlled transaction in respect of which the tax administrator is approached, in order to adopt a reasonable decision, it is necessary to assess the information or data additionally provided by the taxpayer and/or that is available in the databases of the tax administrator). A taxpayer or a person authorized on his behalf shall be informed in writing of the extension of the deadline for examination of the request until the end of the deadline set forth in clause 15 of the Rules.

17. The examination of the request shall be suspended in the following cases:

17.1. when tax or other legal disputes are taking place regarding the compatibility of the pricing of the controlled transaction with the arm's length principle and the outcome of the disputes is associated with the determination of the principles of pricing of future controlled transactions and could affect this. Upon receipt of information about the aforementioned disputes the tax administrator shall immediately (but not later than within 10 calendar days) inform the taxpayer in writing on the suspension of the examination of the request. The day on which the official letter has been sent out shall be considered to be the day of the suspension of the request examination process;

17.2. when the tax administrator applies to the applicant taxpayer regarding the receipt of additional information as per the provisions of clauses 20 and 21 of the Rules. The day on which the notice on provision of additional data drawn up by the tax administrator has been sent out shall be considered to be the day of the suspension of the request examination process.

18. The suspended examination of the request shall be resumed when:

18.1. the decision of the authorities adopted on the dispute referred to in sub-clause 17.1 of the Rules enters into force. The day on which the decision of the authorities has been received at the STI under the MF shall be considered to be the day of the resumption of the examination of the request;

18.2. the tax administrator receives all documents and/or data specified in the notice addressed to the taxpayer. The day on which the aforementioned documents and/or data have been received at the STI under the MF shall be considered to be the day of the resumption of the examination of the request.

19. The taxpayer shall have the right during the examination of the request to provide the additional documents necessary for the decision to be adopted. The additional documents have to be submitted to the tax administrator not later than 20 calendar days before the expiration of the deadline for the request to be examined.

20. When examining the request the tax administrator shall have the right to request the taxpayer to provide additional information, documents and / or data necessary for a proper assessment of the taxpayer's position and that can reveal the circumstances that are of significance in terms of the alignment of the principles of pricing of a controlled transaction, to provide explanation, he may also request the taxpayer to provide a brief overview of the prospects of his activity, to organise at its own initiative or at the taxpayer's request the meeting with the taxpayer's representatives to discuss the issues raised.

21. The tax administrator shall specify the data and/or documents to be provided additionally, the deadline for their submission, also shall indicate the documents to be translated and the deadline for the submission of the translated documents in the notification addressed to the taxpayer.

22. If the taxpayer fails to provide within the reasonable deadline specified by the tax administrator the information, documents and/or data and translations requested, the request shall not be further examined. The taxpayer shall be notified thereof in writing not later than within 14 calendar days from the expiration of the deadline for the submission of information, documents and/or data, translation to the tax administrator.

23. The tax administrator shall not examine the request and shall notify the taxpayer thereof in writing not later than within 30 calendar days from the date of the receipt of the request by stating the reasons if:

23.1. the request has been submitted for the value of tax or for the controlled transactions that have already taken place;

23.2. the request does not comply with the other requirements specified in the Rules (in such case it must be specified what requirements the request does not comply with).

CHAPTER IV ADOPTION OF TAX ADMINISTRATOR BINDING DECISION

24. After examining the taxpayer's request, after evaluating the material enclosed to the request the tax administrator shall adopt a decision whereby:

24.1. agrees with the principles of pricing of a future controlled transaction specified in the request;

24.2. disagrees with the principles of pricing of a future controlled transaction specified in the request.

25. The decision whereby the agreement with the taxpayer's principles of pricing of a future controlled transaction is expressed has to specify the following details:

25.1. place and date of the decision adoption, number, the grounds for the decision adoption;

25.2. the name, identification number (code), registered office address of the taxpayer in whose respect the decision is adopted;

25.3. the validity period of the decision;

25.4. information on a future controlled transaction (the participants to the transaction, the subject matter and conditions of the transaction, etc.);

25.5. the information justifying the compatibility of a future controlled transaction with the arm's length principle (transfer pricing method, transaction value (price) calculation formula, comparable data, range of expected results, etc.);

25.6. conditions of validity of a future controlled transaction (critical assumptions).

The decision may also specify other information of significance in terms of the justification of compliance of the principles of a future controlled transaction with the arm's length principle and information on the actions to be taken by the taxpayer in the event of changes to the information specified in the application and/or critical assumptions on the basis of which the decision is made.

26. In the event that a decision is adopted to disagree with the principles of pricing of a future controlled transaction, the decision shall specify:

26.1. place and date of the decision adoption, number, the grounds for the decision adoption;

26.2. the name, identification number (code), registered office address of the taxpayer in whose respect the decision is adopted;

26.3. reasons (circumstances) leading to the adoption of such a decision.

27. The decision shall be signed by the Head of the STI under the MF or the person authorized on his behalf.

28. The decision is given to a taxpayer in the ways set forth in the Article 164 paragraph 1 of the LTA. The original request and other documents relating thereto shall remain with the tax administrator.

29. The County State Tax Inspectorates and the STI under the MF must abide to the decision adopted, but the decision is not binding for the taxpayer.

30. The County State Tax Inspectorates and the STI under the MF shall undertake to abide to a coordinated position only with respect to the applicant taxpayer taking into account the restrictions set forth in clauses 34-36 of these Rules.

CHAPTER V VALIDITY AND MAINTENANCE OF TAX ADMINISTRATOR BINDING DECISION

31. The decision shall enter into force from the date of its adoption and shall be valid during the ongoing life of the transaction, but not longer than the current and five calendar years from the date of the decision.

32. The County State Tax Inspectorates and the STI under the MF have the right, in accordance with the procedure established by legal acts, to check whether the taxpayer follows the principles of the pricing of a future controlled transaction approved by the decision or ask the taxpayer to provide information about the actual compliance with the principles of pricing of the aligned controlled transaction.

33. The County State Tax Inspectorates and the STI under the MF shall not be obliged to apply the decision referred to in sub-clause 24.1 of the Rules if:

33.1. it turns out that the information/data on a future controlled transaction contained in the taxpayer's request is incorrect, inaccurate or incomplete or that the taxpayer made an incomplete presentation of the circumstances that are of importance in terms of the assessment of the principles of pricing of a future controlled transaction that were relevant for the assessment of the taxpayer's position;

33.2. the actual circumstances surrounding the transaction that had a material impact on the adoption of the decision on the principles of pricing of a future controlled transaction do not match the circumstances specified in the taxpayer's request;

33.3. it is established that critical assumptions, business conditions, economic circumstances or other conditions agreed with the tax administrator regarding the determination of the prices of the controlled transaction have changed, unless a taxpayer proves that these changes were not likely to affect and / or did not affect the principles for the determination of price of a controlled transaction.

33-1. The taxpayer must immediately inform the tax administrator about a significant change in the information specified in the request and/or critical assumptions on the basis of which the decision was made, so that the tax administrator can assess the validity of the further application of the decision.

34. In the event that during the period of validity of the decision changes are made to the provisions of tax legislation directly related to it and that directly affect the decision, the decision shall cease to apply from the date of entry into force of the new tax legislation.

35. If, after the decision has been adopted, the interpretations of laws and other tax legislation of the Supreme Administrative Court of Lithuania or the judicial authorities of the European Union that are contrary to the decision are announced in the Bulletin of the Supreme Administrative Court of Lithuania or in the official publication of the European Union, the decision shall be valid until the date of publication of such interpretations. The tax administrator informs a taxpayer thereof in writing by specifying the expiry date of the decision if the decision has not expired.

36. The decision shall be valid only for a future controlled transaction specified in the taxpayer's request.

CHAPTER VI FINAL PROVISIONS

37. Upon submission of the request by a taxpayer regarding the alignment of the principles of pricing of future controlled transactions and entry into the agreement with the competent authority of

another foreign state, for the examination of which the mutual agreement procedure will be initiated, the provisions of these Rules shall apply to the extent that they do not contradict the double taxation conventions entered into by the Republic of Lithuania and other international legal acts.

38. The requests are examined in accordance with the established procedure by the Large Taxpayers Monitoring and Consulting Department of the STI under the MF. The requests are examined and decisions are adopted in accordance with tax laws, international treaties, the principles of justice, reasonableness, equality between taxpayers and non-discrimination, and independence.

39 If the civil servant of the Large Taxpayers Monitoring and Consulting Department of the STI under the MF may have a conflict of private interests regarding the taxpayer whose request is being examined or there are other circumstances that raise doubts as the civil servant's impartiality, the civil servant must recuse himself from the examination of such a request and the preparation, consideration and adoption of a decision in accordance with the procedure established by the Law of the Republic of Lithuania on the Alignment of Public and Private Interests in the Public Service.
