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## Transfer pricing: A European perspective for Ukrainian legislation and practice

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■ **Abstract.** The transfer pricing issue is urgent for Ukraine considering the extreme need to attract funds (including from foreign partners) for the reconstruction of the state in the conditions of martial law and post-war times. Given the above, the purpose of this study was to cover the specific features of the implementation practice and court resolutions regarding the transfer pricing disputes in Ukraine, as well as the prospects for implementing the relevant provisions of supranational directives of the European Union. The formal-logical and concrete-legal tools, including the abstraction, formal legal and comparative legal methods, helped to cover the legal status of participants in legal relations, application of the “arm’s length” principle, corresponding and compensating adjustments, procedure and functional characteristics of transfer pricing, evaluating the documentation, guaranteeing access to information sources of the appropriate quantity and quality, considering the practice of the Supreme Court of Ukraine regarding transfer pricing and the regulations of the European Union Transfer Pricing Directive. The study proved that confirming the amounts of expenses is to be implemented following the legally defined procedure for transfer pricing regarding the obligations to increase the financial result of the tax (reporting) period, proper tax reporting and control, responsibility for non-submission/overdue submission of a report on controlled transactions. The application of the “arm’s length” principle was established considering such imperative criteria as determining the taxable profit and checking the factual price in the relations with non-residents, comparability of economic transactions in the context of assessing the factual controlled transaction. Criteria for the comparability of economic transactions were summarised related to assessing the essential properties of the transaction itself, the nature of assets and risks, goods transferred and/or the services rendered, fundamental and dynamic strategies of behaviour, economic status, performed functions of associated participants in legal relations. The practical value of this study for researchers, law enforcement bodies, and stakeholders lies in the coverage of the European perspective on transfer pricing implementation for Ukraine

■ **Keywords:** the “arm’s length” principle; comparability of transactions; risk analysis; connected entities; associated enterprises

### ■ Introduction

Transactions involving a foreign element correspond to the cross-border context of the current day-to-day economic activity of taxpayers, which calls for a comprehensive investigation of the features of recognising economic transactions as controlled, the application of methods for establishing

the compliance of the conditions of a controlled transaction with the “arm’s length” principle, confirming the amounts of expenses following the legally defined procedure for transfer pricing, prosecution for non-submission/overdue submission of a report on controlled transactions.

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In the Ukrainian doctrine, transfer pricing is considered the pricing process, methods of profit transfer, tools, and means to reduce the tax base. According to O.I. Andrus (2018), the pricing process covers the formation of prices, the lowest of economically substantiated internal prices, at which calculations could be made between different divisions of a single company or between members of a united group of companies. The researcher also singled out the specified relations between structural divisions of the same company or between affiliated companies in case that the object of trade crosses the customs border (Korol *et al.*, 2021), between related parties, during the sale of goods and provision of services and intangible assets between associated enterprises, bringing transaction prices in line with market prices (Hurochkina & Rozhko, 2019). According to K. Malinka & S. Polischuk (2019), methods of profit transfer have been developed in the form of exchange of goods and services between different divisions of the company. V.V. Serzhanov & A.R. Molenda (2023) described such a tool used to minimise taxable income, one of the strategies used by companies in aggressive tax planning to reduce the tax base in countries with high levels of taxation. As indicated by I.V. Zhyhlei *et al.* (2021), means of minimising tax manipulations are possible in settlements with non-residents.

At the same time, transfer pricing has become an inseparable part of price formation by taxpayers, which are usually transnational corporations, specifically, the European ones, which operate on the territory of Ukraine. Currently, a supranational framework of activity in transfer pricing is being implemented in Europe regarding the harmonisation of the principles and format of activity, implementation of the “arm’s length” principle within the entire European Union. In the conditions of martial law and post-war times, the aforementioned thesis is crucial, as it allows integrating the tax system of Ukraine into the general European one, attracting investors, strengthening cooperation with Ukrainian companies by creating favourable conditions for business, and supporting the national producers of goods. The transfer pricing issue is vital for Ukraine considering the extreme need to attract funds (including from foreign partners) for the reconstruction of the state in the conditions of martial law and post-war times.

The European researchers consider transfer pricing in context of appropriate models, a stock-take of transfer pricing (Kumar *et al.*, 2021), a dynamic dimension of such category (Rogers & Oats, 2022), and risk analysis (Buus, 2018). The given definitions indicate the cross-border dimension of transfer pricing. It is worth agreeing that the process of such pricing between the specified participants in legal relations has a methodological basis and an instrumental dimension of implementation. On the other hand, there are risks associated with using such a tool in business

activities, including abuses and violations in the context of tax evasion.

The purpose of this study was to cover the specifics of the implementation practice and court resolutions regarding the transfer pricing disputes in Ukraine, as well as the prospects for implementing the relevant provisions of supranational directives of the European Union.

## ■ Materials and Methods

The researching methodology of the transfer pricing issues is connected with the use of a complex approach by combining the formal-logical (induction and deduction, analysis and synthesis) and concrete-legal tools (formal-dogmatic method) to fully and exhaustively characterise the specific features of the economic transactions recognition in transfer pricing, the main principles of evaluating the comparability of transactions (about foreign economic business transactions for the sale and/or purchase of goods and/or services through commission agents, i.e., non-residents, business transactions carried out with non-residents registered in the states (territories) included in the list of states (territories) where income tax rates (corporate tax) are 5 or more percentage points lower than in Ukraine), methods of establishing compliance of the controlled operations conditions with the “arm’s length” principle (on the priority of applying the methods of establishing compliance with the conditions of a controlled operation, the method of a comparative uncontrolled price, the application of separate methods of establishing compliance with the conditions of a controlled operation).

The abstraction method helped to cover the issue of confirming the amounts of expenses following the legislatively defined procedure for transfer pricing regarding the implementation of obligations to increase the financial result of the tax (reporting) period by the amount of 30% of the value of goods, if the business operation is not controlled and the amount of such expenses is not confirmed by the taxpayer at prices determined according to the “arm’s length” principle, as well as declaring the decision not to apply adjustments to the financial result before taxation on all differences. The application of the formal-legal method has contributed to the formulation of the author’s vision regarding the prospects for developing the European perspective on transfer pricing for Ukraine related to the implementation of the “soft law” provisions specified in the relevant directives, establishment of the legal status of the participants of the transfer pricing relations, comparison of the price in a controlled transaction, conformity of the value of goods with prices, the decision not to apply adjustments to the financial result, confirmation of the amounts of expenses, implementation of the procedure for providing information, including on comparable uncontrolled transactions, declaration of

the adopted administrative acts considering the adjustments of the financial results, tax reporting and control regarding the implementation of the “arm’s length” principle and powers of the controlling body, conducting tax audits, taking into account the violation of the value criterion, the bringing of taxpayers to financial responsibility, the application of fines in case of non-compliance with the deadlines established by law and/or failure to submit tax reports.

The comparative legal method was used to consider the features of the recently adopted directives of the European Union and ways of their implementation into the national legislation of Ukraine in the context of establishing a supranational legal field and standardised unified procedures for participants in relevant relations involving a foreign element.

The source base of the study included the practice of the Supreme Court regarding transfer pricing (for 2019-2022) and the regulations of the European Union Transfer Pricing Directive<sup>1</sup>. The application of the specified sources of law helped possible to cover the current approaches to the interpretation of the essence and principles of transfer pricing, as well as to make proposals for developing this legal institution in the cross-border dimension.

## ■ Results and Discussion

The transfer pricing relationship is related to the following key aspects (Table 1): recognising transactions as controlled; tax disputes regarding operations with a foreign element; application of the methods based on the “arm’s length” principle; implementation of procedures; tax reporting and control; financial responsibility. The fundamental dimension of the transfer pricing relations is associated with the establishment of their purpose when economic transactions affect the subject of taxation or have the potential to do so (considering the approach outlined in the resolution of the Supreme Court in the case No. П/811/3371/15<sup>2</sup>). As an example, this could include the reflection of other operating income and expenses, amortisation deductions for intangible assets during the calculation of annual income in the context of an increase or decrease in the object of taxation, specifically, in relation to the exchange rate differences (given the approach set forth in the decision of the Supreme Court in the case No. 0740/860/18<sup>3</sup>). That is, the target characteristics of the specified relations have a dynamic nature and factor in the economic characteristics of business operations and financial results that the taxpayer seeks to achieve and achieves.

**Table 1.** Legal relations regarding transfer pricing

|  |  |
|--|--|
| Recognition of business transactions as controlled | <ul style="list-style-type: none"> <li>▪ Signs of a controlled operation;</li> <li>▪ Ownership of corporate rights;</li> <li>▪ Establishment of the characteristics of goods/works/services, etc</li> </ul>                                |
| The “arm’s length” principle                       | <ul style="list-style-type: none"> <li>▪ Priority of applying the methods;</li> <li>▪ Sources of information for pricing, etc</li> </ul>   |
| Tax reporting and control                          | <ul style="list-style-type: none"> <li>▪ Obligation to declare;</li> <li>▪ Report submission procedure, order and reliability of display operations;</li> <li>▪ Authority to send a request for the provision of documents, etc</li> </ul> |
| Responsibility                                     | Application of fines.  |

**Source:** compiled by the author based on the Supreme Court’s practice<sup>4,5,6,7,8,9,10,11</sup>.

<sup>1</sup> Proposal for a Council Directive “On Transfer Pricing”. (2023, September). Retrieved from [https://taxation-customs.ec.europa.eu/system/files/2023-09/COM\\_2023\\_529\\_1\\_EN\\_ACT\\_part1\\_v7.pdf](https://taxation-customs.ec.europa.eu/system/files/2023-09/COM_2023_529_1_EN_ACT_part1_v7.pdf).

<sup>2</sup> Resolution of the Supreme Court in the Case No. П/811/3371/15. (2021, March). Retrieved from <https://reyestr.court.gov.ua/Review/95945862>.

<sup>3</sup> Resolution of the Supreme Court in the Case No. 0740/860/18. (2020, September). Retrieved from <https://reyestr.court.gov.ua/Review/91818225>.

<sup>4</sup> Resolution of the Supreme Court in the Case No. 817/1737/17. (2019, October). Retrieved from <https://reyestr.court.gov.ua/Review/84899759>.

<sup>5</sup> Resolution of the Supreme Court in the Case No. 620/528/19. (2020, January). Retrieved from <https://reyestr.court.gov.ua/Review/87388273>.

<sup>6</sup> Resolution of the Supreme Court in the Case No. 826/2198/18. (2020, September). Retrieved from <https://reyestr.court.gov.ua/Review/91919369>.

<sup>7</sup> Resolution of the Supreme Court in the Case No. 804/2326/16. (2021, January). Retrieved from <https://reyestr.court.gov.ua/Review/94236886>.

<sup>8</sup> Resolution of the Supreme Court in the Case No. 826/12668/17. (2021, February). Retrieved from <https://reyestr.court.gov.ua/Review/95579935>.

<sup>9</sup> Resolution of the Supreme Court in the Case No. 520/4404/19. (2021, June). Retrieved from <https://reyestr.court.gov.ua/Review/97735580>.

<sup>10</sup> Resolution of the Supreme Court in the Case No. 580/2610/19. (2021, November). Retrieved from <https://reyestr.court.gov.ua/Review/101404514>.

<sup>11</sup> Resolution of the Supreme Court in the Case No. 440/1053/19. (2022, June). Retrieved from <https://reyestr.court.gov.ua/Review/105086314>.

The principles of transfer pricing relations, apart from the general principles of taxation, consider the following: the connection of the participants of economic relations, regardless of their status as a resident or non-resident; foreign economic dimension of activity; normative characteristics regarding the inclusion of the state in the relevant list (as confirmed by the conclusions of the Supreme Court in the case No. 200/5682/19-a<sup>1</sup>). The fundamental dimension of transfer pricing focuses on the essential characteristics of economic transactions, and not on the status of participants in legal relations as non-residents or residents. The regulatory framework is also considered, specifically, regarding the favourable economic climate for the activities of taxpayers in the respective country.

Transfer pricing methods are primarily related to the implementation of the “arm’s length” principle when the payer’s income exceeds UAH 150 million and the volume of transactions with counterparties is over UAH 10 million. These are the following principal methods:

- priority of comparative uncontrolled price (taking into account the approaches of the Supreme Court in the cases No. 817/1737/17<sup>2</sup>, No. 826/17841/17<sup>3</sup>) regarding the range of prices, volumes of operations, quality characteristics of costs / services (considering the legal position of the Supreme Court in the case No. 580/2610/19<sup>4</sup>);
- establishing compliance with the conditions of the controlled operation, considering the net profit according to the profitability index of operations and the prices of analogous sales (which was confirmed by the conclusions of the Supreme Court in the case No. 826/17841/17<sup>5</sup>).

The implementation of the “arm’s length” principle is associated with the implementation of relevant calculations of the minimum limit of the economic characteristics of economic operations in relation to the payer’s income and the volume of transactions with counterparties. Tax compliance is significant in the context of evaluating transactions as controlled, accounting profitability index and price similarities.

An example could be the rapeseed sale in the context of comparing the price intervals in the operations (considering the approaches of the Supreme Court in the case No. 1340/3525/18<sup>6</sup>). In this case, EXW and DAP bases were used to adjust the price for transportation costs, factoring in that rapeseed is a commodity. The results of such operation are influenced by the conditions of comparable and controlled operations, including the quantity and quality of goods, terms of execution, conditions of payment and distribution between the parties, risks and benefits, conditions of transportation. The proportionality of the price of the aforementioned goods is to be determined based on the average price on the commodity exchange for a decade before the implementation of the corresponding controlled transaction. Terms of delivery on an EXW basis refer to the adjustment for the cost of transport costs. As a result of concluding a contract on the terms of DAP, the payer has maximum obligations for the delivery of goods on a vehicle ready for unloading. The described functions differ from the FOB delivery terms in that the cost of transshipment of the goods on board the sea vessel is not included in the supplier’s costs.

Another example is the comparison of the price in a controlled transaction of natural gas sale in the context of a price adjustment, due to the lack of information on comparable uncontrolled transactions in official sources of information during transportation of natural gas, specifically, from the European hub to the territory of Ukraine (which was confirmed by the conclusions of the Supreme Court in the cases No. 826/17841/17<sup>7</sup>, No. 817/1737/17<sup>8</sup>). Considering the priority of the method of comparative uncontrolled price (analogues of sale), the profitability indicator is to be determined in a separate controlled operation or in the aggregate of such operations, and not in relation to the activity of the payer as a whole, despite the available administrative costs in the aggregate for all operations. The determination of the net profitability of the controlled operation and the comparability of the European counterparty companies with the taxpayer is determined considering the

<sup>1</sup> Resolution of the Supreme Court in the Case No. 200/5682/19-a. (2020, February). Retrieved from <https://reyestr.court.gov.ua/Review/87559769>.

<sup>2</sup> Resolution of the Supreme Court in the Case No. 817/1737/17. (2019, October). Retrieved from <https://reyestr.court.gov.ua/Review/84899759>.

<sup>3</sup> Resolution of the Supreme Court in the Case No. 826/17841/17. (2021, January). Retrieved from <https://reyestr.court.gov.ua/Review/94328301>.

<sup>4</sup> Resolution of the Supreme Court in the Case No. 580/2610/19. (2021, November). Retrieved from <https://reyestr.court.gov.ua/Review/101404514>.

<sup>5</sup> Resolution of the Supreme Court in the Case No. 826/17841/17. (2021, January). Retrieved from <https://reyestr.court.gov.ua/Review/94328301>.

<sup>6</sup> Resolution of the Supreme Court in the Case No. 1340/3525/18. (2023, March). Retrieved from <https://reyestr.court.gov.ua/Review/109759320>.

<sup>7</sup> Resolution of the Supreme Court in the Case No. 826/17841/17. (2021, January). Retrieved from <https://reyestr.court.gov.ua/Review/94328301>.

<sup>8</sup> Resolution of the Supreme Court in the Case No. 817/1737/17. (2019, October). Retrieved from <https://reyestr.court.gov.ua/Review/84899759>.

criteria of independence, entry into financial and industrial groups, the possibility of conducting wholesale trade, and the category of the company.

Criteria for the comparability of economic transactions are associated with the economic results of interaction between legal entities and/or individuals, specifically, in the context of the accounting of goods on the customer's balance account and the essence of the sale of such goods (considering the positions of the Supreme Court, cited in the case No. 815/6134/16<sup>1</sup>), ownership of corporate rights and the economic result of the relevant representative relations (as confirmed by the Supreme Court in the case No. 620/528/19<sup>2</sup>), attracting funds into deposits and determining the resident's share in the authorised capital (factoring in the approach outlined in the ruling of the Supreme Court in the case No. 820/2540/16<sup>3</sup>), the application of the "pellet premiums Atlantic blast furnace 65% Fe" approach (considering the legal position of the Supreme Court in the case No. 440/1053/19<sup>4</sup>), accrual and payment of interest under the loan agreement (considering the conclusions of the Supreme Court in the case No. 820/2290/17<sup>5</sup>). Within the described comparative assessment of economic transactions, it is vital to factor in the content of primary documents, conditions, or economic results of activity, indicators of the profitability of the controlled transaction, the amount of taxable profit, financial indicators of comparable transactions, price ranges/intervals.

Confirmation of the amounts of expenses following the legislatively defined procedure for transfer pricing is related to the establishment of the grounds for declaring the decision not to apply adjustments to the financial result, conformity of the value of goods with prices, etc. The financial result and its possible adjustments are factored in (considering the approaches of the Supreme Court in the case No. 826/2198/18<sup>6</sup>),

as well as compliance of the goods value with the determined prices, substantiation of the adopted decision considering the comparability of economic transactions based on economic and comparative analysis, evaluation of information sources (regarding the positions of the Supreme Court in the case No. 620/1040/19<sup>7</sup>). This refers to considering the indicators of the financial result within the reporting tax period, observing the rules of accounting, submitting a report on the valuation of the property as documentation confirming the amount of costs at prices.

Transfer pricing relations are also associated with the establishment of the legal status of the participants of these relations, the specific features of the implementation of the procedure for providing information and reporting, etc. Transfer pricing control relationships are related to the assessment of available tax information, specifically, based on tax monitoring (considering the approach set forth in the decision of the Supreme Court in the case No. 520/4404/19<sup>8</sup>). Submission of the defined information is necessary in case of its absence (considering the conclusions of the Supreme Court in the case No. 818/1786/17<sup>9</sup>). By submitting a report on controlled transactions, the taxpayer acknowledges the existence of such an obligation (regarding the positions of the Supreme Court in the case No. 810/4044/15<sup>10</sup>). Exclusion of a country from the relevant list does not exempt from the obligation to submit the specified reporting (considering the conclusions outlined in the ruling of the Supreme Court in the case No. 826/12668/17<sup>11</sup>). Therefore, the submission of reports within the framework of transfer pricing relations is associated with the assessment of the information provided by taxpayers, considering the criteria defined by the current legislation.

Ukrainian transfer pricing standards do not fully factor in the European approaches. Specifically,

<sup>1</sup> Resolution of the Supreme Court in the Case No. 815/6134/16. (2020, July). Retrieved from <https://reyestr.court.gov.ua/Review/90497867>.

<sup>2</sup> Resolution of the Supreme Court in the Case No. 620/528/19. (2020, January). Retrieved from <https://reyestr.court.gov.ua/Review/87388273>.

<sup>3</sup> Resolution of the Supreme Court in the Case No. 820/2540/16. (2020, December). Retrieved from <https://reyestr.court.gov.ua/Review/93859349>.

<sup>4</sup> Resolution of the Supreme Court in the Case No. 440/1053/19. (2022, June). Retrieved from <https://reyestr.court.gov.ua/Review/105086314>.

<sup>5</sup> Resolution of the Supreme Court in the Case No. 820/2290/17. (2020, December). Retrieved from <https://reyestr.court.gov.ua/Review/93595492>.

<sup>6</sup> Resolution of the Supreme Court in the Case No. 826/2198/18. (2020, September). Retrieved from <https://reyestr.court.gov.ua/Review/91919369>.

<sup>7</sup> Resolution of the Supreme Court in the Case No. 620/1040/19. (2020, January). Retrieved from <https://reyestr.court.gov.ua/Review/87453779>.

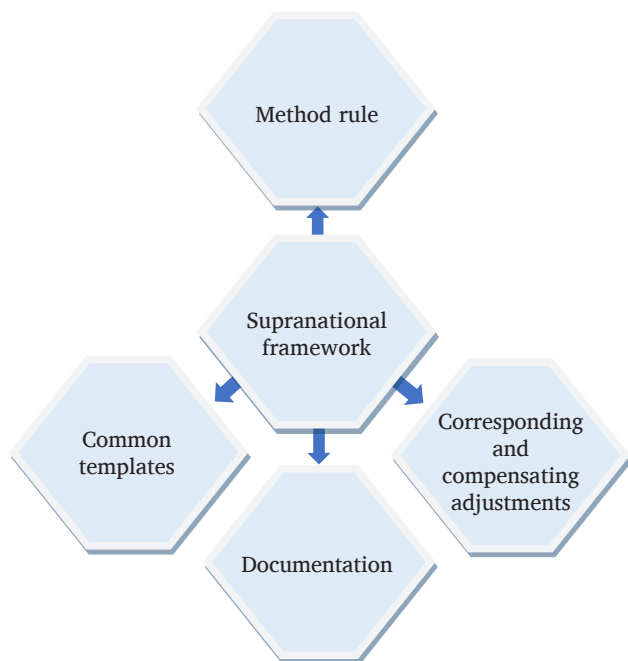
<sup>8</sup> Resolution of the Supreme Court in the Case No. 520/4404/19. (2021, June). Retrieved from <https://reyestr.court.gov.ua/Review/97735580>.

<sup>9</sup> Resolution of the Supreme Court in the Case No. 818/1786/17. (2019, December). Retrieved from <https://reyestr.court.gov.ua/Review/86551772>.

<sup>10</sup> Resolution of the Supreme Court in the Case No. 810/4044/15. (2023, June). Retrieved from <https://reyestr.court.gov.ua/Review/111663168>.

<sup>11</sup> Resolution of the Supreme Court in the Case No. 826/12668/17. (2021, February). Retrieved from <https://reyestr.court.gov.ua/Review/95579935>.

the European Union Transfer Pricing Directive<sup>1</sup> refers to the supranational dimension of such relations (Fig. 1). This refers to methodological, institutional, organisational, and documentary dimensions of transfer pricing, considering typical European practices.



**Figure 1.** The European dimension of transfer pricing.

**Source:** compiled by the author of this study based on the European Union Transfer Pricing Directive<sup>2</sup>.

The prescriptions of the specified directive are necessary for the implementation at the national level regarding the intergroup transactions driven by the common interests of the group as a whole with the proper tax calculations, selection of the most appropriate method, avoidance of double taxation and over-taxation, plans and monitoring, evaluation and reporting arrangements, etc. In summary, transfer pricing has a cross-border nature and a procedural dimension, is characterised by interpersonal interaction of taxpayers, and is determined by the set goals and the achieved economic result. In this context, managerial, economic, and social characteristics of transfer pricing, sub-specialism within tax practice, risk, and profit allocation between strategy and routine could be considered useful for application.

The interpretation of the essence, order of applying the principles and comparability of operations within the framework of transfer pricing relations are still a debatable issue. It is worrisome that transfer

pricing is still considered a negative phenomenon in the doctrine, despite the statutory consolidation of this legal category as a lawful behaviour of taxpayers, subject to compliance with established requirements. P. Pavone (2020) distinguishes legal transfer pricing from the manipulative one in terms of the logic of reciprocity and interdependence, tax authorities' perspective, tax audit activities, symptoms of manipulation. S.K. Padhi (2019) proposed the following basic doctrinal approaches regarding legal transfer pricing: empirical studies; theoretical approaches, covering economic theory, mathematical programming, accounting theory, organisational behaviour theory, strategic management theory. This primarily refers to the status of associated enterprises and controlled transactions according to the methods (Gorgieva-Trajkovska *et al.*, 2019): traditional (comparable uncontrolled price, resale price, cost plus) and transactional profit methods (net margin, profit split). The economic basis of transfer pricing and its psychological dimension determined by the economic-corporate motives, needs and interests of taxpayers emerge from the aforementioned approaches.

The above suggests that the world's leading models of transfer pricing are a legitimate form of behaviour of a participant in legal relations, subject to compliance with the requirements regarding principles and methods, conducting monitoring and control measures to assess the results of activities. The contemporary doctrine reveals national transfer pricing models presented in such countries as Austria, Belgium, Brazil, Cyprus, Denmark, Germany, Greece, India, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, Nigeria, Poland, Portugal, Spain, Switzerland, the United Kingdom, the United States, Venezuela, and others (Edge & Robertson, 2020). One can agree with the view on a stocktake of transfer pricing standing together with strategic tools, compliance, and management considering business conglomerates and multinational enterprises (Kumar *et al.*, 2021). T. Buus (2018) and H. Rogers & L. Oats (2022) rightly noted a dynamic dimension of such category considering Bourdieusian concepts, transfer pricing risk analysis targets and tools. In the latest doctrine, transfer pricing gravitates more towards legitimate methods of behaviour, factoring in the nature of transactions and the strategic purpose of taxpayers' activities as an indicator of a company's market power. It is possible to support the research approaches that highlight the specific features of the dynamic dimension of transfer pricing, considering the laws of the market economy based on strategic

<sup>1</sup> Proposal for a Council Directive "On Transfer Pricing". (2023, September). Retrieved from [https://taxation-customs.ec.europa.eu/system/files/2023-09/COM\\_2023\\_529\\_1\\_EN\\_ACT\\_part1\\_v7.pdf](https://taxation-customs.ec.europa.eu/system/files/2023-09/COM_2023_529_1_EN_ACT_part1_v7.pdf).

<sup>2</sup> Proposal for a Council Directive on transfer pricing. (2023, September). Retrieved from [https://taxation-customs.ec.europa.eu/system/files/2023-09/COM\\_2023\\_529\\_1\\_EN\\_ACT\\_part1\\_v7.pdf](https://taxation-customs.ec.europa.eu/system/files/2023-09/COM_2023_529_1_EN_ACT_part1_v7.pdf).

planning and the motivational component of the legal activity of the taxpayer.

At the same time, the administrative dimension of transfer pricing at the state and non-state levels stays an unresolved issue. It is appropriate to support the approach proposed by S. Favourate *et al.* (2022), according to which transfer pricing is both economic and political issue separating the economic decisions from the political economy of taxation. J.L. Blouin *et al.* (2018) emphasise governmental corporate coordination. J. van Dijck (2020) proposed governing models in line with private platforms and public values. J. Demko-Rihter *et al.* (2023) discuss market-based, cost-based, and negotiated models. The described scientific approaches illustrate the intergroup managerial and financial dimension of transfer pricing, according to which the legal corporate strategy of the taxpayer determines the process of formation of the transfer price between a certain group of related private law entities, specifically, with the transfer of tax bases between countries and the redistribution of profits. The proposed public and private management models minimise “shadow schemes” and avoid double taxation by reducing part of the costs and bringing transfer prices to market prices.

The innovative dimension of transfer pricing, highlighted by N. Capatina-Verdes *et al.* (2022), covers the following research subjects: ethics, sustainability, algorithmic pricing (Li, 2022), digital finance (Pavlidis, 2021). In terms of these approaches in practical application, it is necessary to consider the globalisation and decentralisation of activities of taxpayers, strengthening competitive advantages, enhanced cooperation and information exchange, reevaluating and reviewing motives and values of multidivisional companies, reducing corruption. S. Favourate *et al.* (2022) developed focused recommendations on transfer pricing which could be implemented worldwide:

- legislative – creating effective and robust dispute resolution mechanism; restriction of service fees to parent companies, as well as the deductibility of interest; encouragement of transparency on cross border transactions, country-by-country reporting requirements, coordination activities, and information sharing;

- administrative – capacity building; stakeholder engagement; thin capitalisation rules, withholding taxes on certain incomes; effective audit; risk identification and management; comparable data; tax education.

Consequently, for the proper implementation of transfer pricing in the cross-border dimension, a significant role is played by the ethical legal and organisational framework of economic activity and cooperation between related companies with a focus on the concept of sustainable development. A correctly

selected system of redistribution of financial resources could become a reference point for decision-making within the limits of taxpayers’ foreign economic activities, considering profitability indicators and the market price range. Determination of the clear legality limits of such activity allows reducing corruption risks and criminal manifestations of behaviour in financial relations, as well as promoting the integration of markets and legal systems in contemporary processes of globalisation.

## ■ Conclusions

Thus, the European perspective on transfer pricing for Ukraine is related to the implementation of the “soft law” provisions specified in the relevant directives on corresponding and compensating adjustments; legal status of participants in legal relations, including peculiarities of association “enterprises” functioning, considering the intergroup orientation of economic entities behaviour; functional characteristics, specifically, increased application of the “arm’s length” principle within economic transactions, guaranteeing access to information sources of the appropriate quantity and quality in the context of forming and evaluating the documentation from participants in legal relations, as well as avoidance of double taxation.

Application of the “arm’s length” principle has an imperative and facultative focus on transfer pricing. In terms of the approaches consolidated in the tax legislation of Ukraine, the following imperative criteria are to be considered: determination of the taxable profit; verification of the factual price. The relations are to be with non-residents (permanent representative offices, registered in countries with a low level of taxation, etc.), when the payer’s income exceeds UAH 150 million and the volume of transactions with counterparties over UAH 10 million. Optional is the situation in case of an alternative to such enforcement of adjusting the financial result before taxation, when the transactions are not controlled.

Criteria for the comparability of economic transactions are to be primarily related to assessing the factual controlled transaction regarding: essential properties of the transaction itself, the nature of assets and risks, goods transferred and/or the services provided; fundamental and dynamic strategies of behaviour, economic status, performed functions of associated participants in legal relations. The second stage of assessment should be characterised by a comparison of controlled and uncontrolled transactions based on economic relevance in the individual subject-territorial dimension, i.e., in a concrete situation of law enforcement by the third-party economic entities.

Prospects for further research on the European context of transfer pricing are related to the substantiation of the national strategy and the plan of

measures for its implementation, considering national characteristics during the formulation of specific implementation steps, developing a comprehensive vision for the integration of national and supranational legal systems.

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#### ■ Conflict of Interest

None.

#### ■ References

- [1] Andrus, O.I. (2018). [The transfer pricing in Ukraine: The problems and the prospects of development](#). *Modern Problems of Economics and Business*, 22, 6-13.
- [2] Blouin, J.L., Robinson, L.A., & Seidman, J.K. (2018). Conflicting transfer pricing incentives and the role of coordination. *Contemporary Accounting Research*, 35(1), 87-116. [doi: 10.1111/1911-3846.12375](#).
- [3] Buus, T. (2018). Risks and transfer pricing regulation at the multinational enterprises' routine units: A literature review. *Prague Economic Papers*, 27(6), 621-636. [doi: 10.18267/j.pep.678](#).
- [4] Capatina-Verdes, N. (2022). Transfer pricing and related party transactions: A bibliometric analysis. *Central European Economic Journal*, 9(56), 237-253. [doi: 10.2478/ceej-2022-0014](#).
- [5] Demko-Rihter, J., Sekerez, V., Spasić, D., & Conić, N. (2023). The neglected focus on managerial aspect of transfer pricing policy in multidivisional companies – case of Serbia. *Systems*, 11(5), article number 257. [doi: 10.3390/systems11050257](#).
- [6] Edge, S., & Robertson, D. (Eds.). (2020). [The transfer pricing law review. Fourth edition](#). London: Meridian House.
- [7] Favourate, S., Mashiri, E., & Warima, S. (2022). Enhancing the effectiveness of transfer pricing regulation enforcement in reducing base erosion and profit shifting in African countries. A scoping review. *Journal of Accounting, Finance and Auditing Studies*, 8(1), 99-131. [doi: 10.32602/jafas.2022.005](#).
- [8] Gorgieva-Trajkovska, O., Georgieva Svrtinov, V., Dimitrova, J., & Koleva, B. (2019). [Transfer pricing – definition and methods](#). *Knowledge – International Journal, Scientific Papers*, 35(1), 167-173.
- [9] Hurochkina, V., & Rozhko, Y. (2019). Transfer pricing: Judicial Ukrainian practice and evaluation methods of tax rights. *Economics and Enterprise Management*, 6(74), 45-57. [doi: 10.32782/2520-2200/2019-6-32](#).
- [10] Korol, S.Y., Umantsiv, H.V., & Shushakova, I.K. (2021). Development of transfer pricing in the conditions of globalization. *Economic Theory and Law*, 2(45), 87-100. [doi: 10.31359/2411-5584-2021-45-2-87](#).
- [11] Kumar, S., Pandey, N., Lim, W.M., Chatterjee, A.N., & Pandey, N. (2021). What do we know about transfer pricing? Insights from bibliometric analysis. *Journal of Business Research*, 134, 275-287. [doi: 10.1016/j.jbusres.2021.05.041](#).
- [12] Li, Z. (2022). Affinity-based algorithmic pricing: A dilemma for EU data protection law. *Computer Law & Security Review*, 46, article number 105705. [doi: 10.1016/j.clsr.2022.105705](#).
- [13] Malinka, K., & Polischuk, S. (2019). [Problems of transfer price functioning in Ukraine and its improvement in the conditions of economic unemployment](#). *Market Infrastructure*, 27, 53-59.
- [14] Padhi, S.K. (2019). [Transfer pricing a review of literature](#). *International Journal of Advanced Research in Management*, 10(1), 1-7.
- [15] Pavlidis, G. (2021). Europe in the digital age: Regulating digital finance without suffocating innovation. *Law, Innovation and Technology*, 13(2), 464-477. [doi: 10.1080/17579961.2021.1977222](#).
- [16] Pavone, P. (2020). [Transfer pricing: Business or tax process? Difficult equilibrium between two dimensions](#). *Revista Espacios*, 41(5), 21-30.
- [17] Rogers, H., & Oats, L. (2022). Transfer pricing: Changing views in changing times. *Accounting Forum*, 46(1), 83-107. [doi: 10.1080/01559982.2021.1926778](#).
- [18] Serzhanov, V.V., & Molenda, A.R. (2023). Motives for the use of transfer pricing by enterprises. *Uzhhorod National University Herald*, 1(61), 121-127. [doi: 10.24144/2409-6857.2023.1\(61\).121-127](#).
- [19] Van Dijck, J. (2020). Governing digital societies: Private platforms, public values. *Computer Law & Security Review*, 36, article number 105377. [doi: 10.1016/j.clsr.2019.105377](#).
- [20] Zhyhlei, I.V., Lehenchuk, S.F., & Orlov, I.V. (2021). Transfer pricing as a means of minimizing tax manipulations in settlements with non-residents. *Problems of Theory and Methodology of Accounting, Control and Analysis*, 3(50), 14-22. [doi: 10.26642/pbo-2021-3\(50\)-14-22](#).

## Трансфертне ціноутворення: європейська перспектива для українського законодавства та практики

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■ **Анотація.** Питання трансфертного ціноутворення є актуальним для України з огляду на необхідність залучення коштів (зокрема від іноземних партнерів) для відбудови держави в умовах воєнного стану та післявоєнного часу. З огляду на викладене, дослідження має на меті виявити специфіку практики реалізації та судових рішень щодо спорів у сфері трансфертного ціноутворення в Україні, а також перспективи імплементації відповідних положень наднаціональних директив Європейського Союзу. Формально-логічний та конкретно-юридичний інструментарій (а саме абстракція, формальний та порівняльно-правовий методи) дав змогу висвітлити правовий статус учасників правовідносин, застосування принципу «витагнутої руки», відповідні компенсаційні коригування, порядок та функціональні характеристики трансфертного ціноутворення, оцінку документації, забезпечення доступу до джерел інформації належної кількості та якості в контексті практики Верховного Суду щодо трансфертного ціноутворення та норм Директиви Європейського Союзу про трансфертне ціноутворення. Доведено, що підтвердження сум витрат слід здійснювати відповідно до законодавчо визначеного порядку трансфертного ціноутворення щодо зобов'язань стосовно збільшення фінансового результату податкового (звітного) періоду, належного податкового звітування та контролю, відповідальності за невиконання зобов'язань щодо підвищення фінансового результату податкового (звітного) періоду, подання/несвоєчасного подання звіту про контрольовані операції. Проаналізовано застосування принципу «витагнутої руки» з огляду на такі імперативні критерії, як визначення оподатковуваного прибутку та перевірка фактичної ціни у відносинах із нерезидентами, зіставність господарських операцій у контексті оцінки фактичної контрольованої операції. Узагальнено критерії порівнянності економічних операцій, пов'язані з оцінкою основних властивостей операції, характеру активів і ризиків, товарів, які передають, та/або наданих послуг, фундаментальних і динамічних стратегій поведінки, економічного статусу, виконуваних функцій асоційованих учасників правовідносин. Практична значущість статті для дослідників, правозастосовних органів і зацікавлених сторін полягає у висвітленні європейської перспективи впровадження трансфертного ціноутворення в Україні

■ **Ключові слова:** принцип витагнутої руки; зіставність операцій; аналіз ризиків; пов'язані особи; асоційовані підприємства