

Tax disputes on transfer pricing issues

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1. Exporter against one of the Tax department in the Western Kazakhstan

Tax audit period: 2008 - 2012

Date of audit: 2014

Type of audit: thematic tax audit

Court instance: appeal judicial court

Major issues: transfer pricing (“TP”) adjustments

Description of situation:

The tax authorities assessed additional corporate income tax (“CIT”) and excess profit tax (“EPT”) liabilities due to the decrease of the differential by excluding/reducing of the following components:

- discount for quality,
- insurance expenses,
- expenses on the letter of credit,
- expenses on operator remuneration.

The position of the tax authorities:

- Discount for quality

The tax authorities ignored the fact that the taxpayer had data from official source supporting differential. This component was disallowed by the tax authorities on the basis that the taxpayer did not provide primary documents confirming expenses of the buyer and other arguments that were not supported by actual facts.

- Insurance expenses

The expenses were partially disallowed from the differential as the tax authorities applied lower insurance rate. Arguments of the taxpayer that these expenses are supported by documents and the rate applied by the tax authorities does not take into account all aspects of the taxpayer's business were not considered by the tax authorities.

- Expenses on the letter of credit

Inclusion of expenses on the letter of credit was claimed by the tax authorities unjustified since Platt's information do not reflect data on these expenses.

- Expenses on operators remuneration

The tax authorities excluded expenses on operator's remuneration supported by the data from official information source, without providing any reasonable explanation.

The position of the court:

The court of the first instance and further courts decided in favor of the tax authorities with no respect to the taxpayer position.

The Supreme Court decided in favor of a retrial at the appeal instance.

Appeal instance made a decision in favor of the taxpayer on the basis that the tax authorities did not provide to the court technically reasonable proof of their conclusions.

Appeal instance made decision to invalidate the tax notification and obliged the tax authorities to recalculate taxes payable.

2. Exporter against one of the Tax departments in the Western Kazakhstan

Tax audit period: 2009 - 2013

Date of audit: 2014

Type of audit: Thematic tax audit

Court instance: appeal judicial court

Major issues: TP adjustments

Description of situation:

The tax authorities assessed additional CIT and EPT liabilities due to the decrease of the differential by excluding/reducing the following components:

- expenses on the letter of credit,
- CIF discount,
- trader's mark up,
- freight expenses,
- insurance expenses,
- inspection expenses,
- port dues.

The position of the tax authorities:

- Expenses on the letter of credit

The tax authorities claimed that expenses on the letter of credit do not affect market price. Furthermore, data on corresponding expenses were not reflected in the reports published by the Platts and, therefore, shall be excluded from the differential.

- CIF discount

Based on the position of the tax authorities, CIF discount represents expenses of the buyer at further resale of crude oil which is not envisaged by comparable uncontrolled price method.

- Trader's mark up
- Freight expenses
- Insurance expenses
- Inspection expenses

The tax authorities decreased the above expenses to the minimum amount reported in the official source.

- Port dues

Port dues were not treated as expenses of the buyer since corresponding invoices were issued at the name of third parties.

The position of the court:

The court of the first and second instances decided in favor of the tax authorities with no respect to the taxpayer position.

Cassation instance court decided in favor of the retrial at the appeal instance.

The appeal instance court concluded that:

1. Provision of a discount to the buyer in connection to the letter of credit is justified, documentary supported and shall affect the price based on provisions of Article 13.7.(2) of the law on Transfer pricing.
2. Provision of CIF discount by the taxpayer is justified, documentary supported and shall be included in the differential.
3. Data from primary documents should be used in cases where documentary supported expenses are within the range of prices from official sources.

Appeal instance made a decision to invalidate the tax notification and obliged the tax authorities to recalculate taxes payable.

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