

Comparative Analysis of Market Price Provisions  
under the Current Uzbekistan Tax Code

2022-11

International Fiscal Association, Korea

## Authors

---

- Yoon Oh  
Professor, Law School of Hanyang University
  - Seong-hoon Moon  
Professor, Department of Business Administration, Hallym Univeristy
  - Namkyu Kang  
Managing Partner, Gaon Law Group
  - Won Hur  
Professor, The Cyber University of Korea
  - Sim Seo  
Of Counsel, Gaon Law Group
-

# | Contents |

<b>Abstact</b> .....	<b>iii</b>
<b>1. Purpose of study</b> .....	<b>1</b>
<b>2. Key findings and recommendations</b> .....	<b>1</b>
A. Market price provisions .....	1
B. Recommendations .....	1
<b>3. Analysis</b> .....	<b>2</b>
A. Transfer pricing taxation provisions .....	2
i. Current law .....	2
ii. Recommendations .....	8
iii. Laws of other countries .....	9
B. Value Added Tax provisions .....	19
i. Current law .....	19
ii. Recommendations .....	21
iii. Laws of other countries .....	24
C. Corporate tax and individual income tax provisions .....	28
<b>4. Uzbekistan Cabinet Resolutions</b> .....	<b>29</b>
A. Cabinet Resolution VQL-347/21: .....	29

B.	Cabinet Resolution ID-52585(V-4) .....	32
<b>5.</b>	<b>Market price (market value) provisions – ROK, US and UK.....</b>	<b>36</b>
A.	Republic of Korea .....	36
i.	The concept of market price in the tax laws .....	36
ii.	Comparison of the concept of market price and the concept of arm's length price .....	37
B.	The U.S. ....	37
i.	General Overview of the US Tax Framework .....	37
ii.	Overview of Fair Market Value Concept .....	38
C.	The U.K. ....	42
i.	Taxation of Chargeable Gains Act 1992 .....	42
ii.	Inheritance Tax Act 1984.....	44
iii.	Income Tax (Trading and Other Income) Act 2005 .....	44
iv.	Value Added Tax Act 1994.....	45
<b>6.</b>	<b>Anti-avoidance provisions -ROK, U.S., U.K.....</b>	<b>45</b>
A.	Republic of Korea .....	45
B.	The U.S. ....	46
C.	The U.K. ....	48
	<b>요약문 .....</b>	<b>49</b>

## **Abstract**

This study is to review and propose amendments to the market price provisions used in transfer pricing and other taxation provisions under the current tax code of Uzbekistan based on a comparative law analysis of the concept in used in other countries.

The current tax code of Uzbekistan stipulates the provisions of arm's length price under the transfer pricing system, that is, the market price. Such provisions allow the market price to be applied to both domestic and foreign transactions for the imposition of tax.

The transfer pricing method provisions for the current transfer pricing tax system are stipulated to be in accordance with the OECD Transfer Pricing Guidelines.

Transactions subject to the transfer pricing provisions are limited to transactions between related parties, but the market price concept originally developed for transfer pricing and stipulated in the transfer pricing provisions can also be applied to all domestic and foreign transactions.

Currently, the State Tax Committee announces the list of market prices for each good and service by region on a monthly basis. The list is also used for taxation purposes other than transfer pricing.

For the sake of this comparative analysis, the tax laws of the Republic of Korea, the United Kingdom, the United States, Australia and Canada have been reviewed.

In general, the arm's length price provisions may be utilized for the valuation of goods or services if appropriate guidelines for such application are well stipulated in the statutes.

If the current Uzbekistan tax code is reviewed comprehensively, it seems that the application of the arm's length price provisions should be limited to test the transfer pricing of transactions between domestic or foreign related parties.

To use these provisions for other taxation purposes, first, it may be necessary to prepare separate provisions setting forth the requirements and the effect of the application of such arm's length price provisions.

There seem to be no anti-avoidance rules that require the application of the market price concept under the current tax code.

Inheritance tax and gift tax systems, which would require application of valuation provisions, have not yet been introduced.

It may be necessary to carefully review whether the price list of goods and services announced by the Cabinet Resolutions conforms to the internationally accepted arm's length pricing principle internationally accepted.

To provide a possible tool to tackle the evasion of taxes - especially VAT, a provision making use of government price list system has been suggested in terms of the selection of tax audit cases and the burden of proof for 'legitimate business reason'

## **1. Purpose of the study**

This study is to review and propose amendments to the market price provisions used in transfer pricing and other taxation provisions under the current tax code of Uzbekistan based on a comparative law analysis of the concept in used in other countries.

## **2. Key findings and recommendations**

### **A. Market price provisions**

The current tax code of Uzbekistan stipulates the provisions of arm's length price under the transfer pricing system, that is, the market price. Such provisions allow the market price to be applied to both domestic and foreign transactions for the imposition of tax.

The transfer pricing method provisions for the current transfer pricing tax system are stipulated to be in accordance with the OECD Transfer Pricing Guidelines.

Transactions subject to the transfer pricing provisions are limited to transactions between related parties, but the market price concept originally developed for transfer pricing and stipulated in the transfer pricing provisions can also be applied to all domestic and foreign transactions.

Currently, the State Tax Committee announces the list of market prices for each good and service by region on a monthly basis. The list is also used for taxation purposes other than transfer pricing.

For the sake of this comparative analysis, the tax laws of the Republic of Korea, the United Kingdom, the United States, Australia and Canada have been reviewed.

### **B. Recommendations**

In general, the arm's length price provisions may be utilized for the valuation of goods or services if appropriate guidelines for such application are well stipulated in the statutes.

If the current Uzbekistan tax code is reviewed comprehensively, it seems that the application of the arm's length price provisions should be limited to test the transfer pricing of transactions between domestic or foreign related parties.

To use these provisions for other taxation purposes, first, it may be necessary to prepare separate provisions setting forth the requirements and the effect of the application of such arm's length price provisions.

There seem to be no anti-avoidance rules that require the application of the market price concept under the current tax code.

Inheritance tax and gift tax systems, which would require application of valuation provisions, have not yet been introduced.

It may be necessary to carefully review whether the price list of goods and services announced by the Cabinet Resolutions conforms to the internationally accepted arm's length pricing principle internationally accepted.

To provide a possible tool to tackle the evasion of taxes - especially VAT, a provision making use of government price list system has been suggested in terms of the selection of tax audit cases and the burden of proof for 'legitimate business reason'.

### **3. Analysis**

#### **A. Transfer pricing taxation provisions**

##### **i. Current law**

The transfer pricing method provisions are stipulated in accordance with the OECD TP Guideline(Article 186). The arm's length price is referred to as the 'market-conforming price' or 'market price' (Article 178).

The transfer pricing rules are limited to transactions with domestic<sup>1</sup> or foreign related

---

<sup>1</sup> Refer to Articles 176, 178, 180



parties. According to the explanation by the officials from the State Tax Committee during the meeting held on the 12th of October, 2022, with the authors of this report, the transfer pricing taxation provisions of Section VI are basically to be applied to international transactions. And as for domestic transactions only exceptional cases stipulated in Article 180 may also fall under the transfer pricing taxation.

However, the statutory language of Article 176, which defines the term ‘transfer price,’ seems to imply that the market price concept originally developed for transfer pricing taxation can also be applied to all domestic and foreign transactions. The transfer price concept is applied to transactions between unrelated parties as well as to transactions between related parties (Article 176). The transactions between unrelated parties may be subject to the market price provisions when their prices differ from objectively formed prices that would be applied in comparable economic conditions in transactions between independent parties (Article 176).

Article 178 defines the concept of ‘market-conforming price’. According to it, the transaction prices for transactions between independent persons shall be recognized as market-conforming prices unless otherwise provided by the Section VI.

Article 179 provides the meaning of ‘market-conforming price’ of commodities or services under government price regulations. Even between independent parties, the transaction prices may not be regarded as market-conforming if they are not within the price range set by the government. In this context, Article 179 may be understood as an example of “otherwise provided by the Section VI.”, which enables the transfer pricing taxation on transactions between unrelated or independent parties.

Article 178 stipulates that in controlled transactions, the transaction price shall be recognized as market price, unless the State Tax Committee of the Republic of Uzbekistan has proved otherwise, or if the taxpayer did not independently adjust the amounts of tax (loss) in accordance with Article 177. In other words, the taxpayer has to adjust the tax amount by the market-conforming price when the transaction price differs from the market-conforming price.

Article 180 stipulates that controlled transactions shall be understood to mean transactions between interconnected persons with account taken of the special considerations laid down in that Article. A transaction between interconnected persons which are tax residents of the Republic of Uzbekistan is recognized as controlled if the amount of income from transactions (the amount of transaction prices) between the persons concerned for the relevant calendar year exceeds five billion soums is an example of such controlled transactions. The transactions between Uzbekistan related parties also fall under the market price provisions, i.e. transfer pricing provisions (Article 180).

The transfer pricing provisions are applied for purposes of the income tax; personal income tax; tax for the use of subsoil; value added tax; excise tax (Article 176). Such provisions allow for the market price to be applied to both domestic and foreign transactions for the imposition of major tax items. For income taxation under the Section VI the transfer pricing taxation is basically limited to transactions between interconnected or related parties. However, for other taxes such as the Value Added Tax, the term ‘transfer price’ may be applied to transactions between independent or unrelated parties. Such taxation is enabled by Article 248 for VAT taxation. And the definition of ‘transfer price’ under Article 176 supports such taxation.

## ***SECTION VI. TAX CONTROL FOR TRANSFER PRICING***

### ***Chapter 20. General Provisions Concerning Prices and Taxation Where Transfer Pricing Is Applied***

#### ***Article 176. General Provisions Concerning Transfer Pricing***

*For the purposes of this Code, the transfer price shall be understood to mean the price which is established in transactions between interconnected parties<sup>2</sup> and (or) that differs from*

---

<sup>2</sup> **Article 37. Interconnected Persons**

Where the special considerations of relations between persons can affect the conditions and (or) the results of transactions made by them and (or) the economic results of the activities of these persons or the activities of the persons they represent, the persons indicated in this part shall be recognized as interconnected for tax purposes.

The influence that can be exerted due to the participation of one person in the capital of other persons in accordance with the agreement concluded between them shall be taken into account to recognize the

*objectively formed price which would be applied in comparable economic conditions for transactions between independent parties.*

*Transfer pricing for the purposes of this Code means the formation of commercial and (or) financial conditions and (or) results of activities of related parties that differ from the conditions and results that would be obtained in comparable economic conditions by independent persons.*

...

*In exercising tax control for transfer pricing in the manner laid down by this Section, the State Tax Committee of the Republic of Uzbekistan shall check the proper calculation and payment of the following taxes:*

- 1) tax on profit;*
- 2) tax on income of physical persons;*
- 3) tax for the use of subsoil;*
- 4) value added tax;*
- 5) excise tax*

....

*Tax control for transfer pricing with respect to the value added tax and excise tax shall be carried out, where one of the parties to a transaction is a legal entity or an individual entrepreneur which (who) is not a taxpayer of the relevant tax.*

### ***Article 178. General Provisions Concerning Market-Conforming Prices***

*For the purposes of this Code, unless otherwise provided by this Section, transaction prices, income and expenses of the parties to these transactions shall be recognized as market-conforming prices in the following cases:*

---

interconnectedness of persons, or if there is another opportunity for one person to determine the decisions made by other persons. Such influence shall be taken into account irrespective of whether it can be exerted by one person directly and independently or jointly with its interconnected persons, having been recognized as such in accordance with this Article....

1) *transactions between independent persons;*

...

*In controlled transactions, the transaction price shall be recognized as market price, unless the State Tax Committee of the Republic of Uzbekistan has proved otherwise, or if the taxpayer did not independently adjust the amounts of tax (loss) in accordance with Article 177<sup>3</sup> of this Code.*

...

***Article 179. Special Considerations Relating to Recognition of Prices as Market-Conforming Where Prices Are Regulated***

*Where a price regulation is applicable with respect to certain types of transactions by means of the setting of a price, the setting of maximum and (or) minimum prices, the prices of such transactions shall be recognized as market-conforming for taxation purposes with account*

---

<sup>3</sup> ARTICLE 177. INDEPENDENT ADJUSTMENT OF THE TAX BASE BY THE TAXPAYER

Where the transfer pricing has caused amounts of one or more of the taxes (advance and current payments) referred to in part seven of Article 176 of this Code to be understated or the amount of losses to be overstated, the taxpayer shall have the right independently to adjust the tax base and amounts of relevant taxes (losses). This adjustment shall be made after the end of the calendar year which includes the tax period (tax periods) for the taxes for which amounts are to be adjusted.

Information which enables the identification of a transaction in relation to which a taxpayer has independently adjusted the tax base and the amount of tax shall be given in explanations accompanying a corresponding revised tax reporting.

The adjustments referred to in the first part of this Article may be made:

- 1) by legal entities — within the time limits established for the submission of tax reporting for tax on profit;
- 2) by physical persons — within the time limits established for filing a declaration on the aggregate annual income of a physical person.

An amount of unpaid taxes which has been discovered by a taxpayer independently on the basis of an adjustment made in accordance with part three of this Article must be settled not later than the date of payment of tax on profit of legal entities (tax on income of physical persons) for the relevant tax period. In this respect, penalties shall not be charged on the amount of unpaid taxes for the period from the date the tax obligation arises on the submitted revised reporting up to the date of expiry of the established time limit specified in part three of this Article.

For the purposes of calculating taxes (advance and current payments) for tax periods (accounting periods) which end during a calendar year, a taxpayer shall have the right to use the prices which were actually used in those transactions.

*taken of the special considerations established by parts fourth — seventh of this Article.*

*Where a price regulation is applicable with respect to certain types of transactions by means of the setting of maximum and (or) minimum price increments or price discounts or by means of other limitations on profit margins or profit in such transactions, then the prices of such transactions shall be recognized as market-conforming for taxation purposes with account taken of the special considerations established by part eighth of this Article.*

*The special considerations which are specified in parts one and two of this Article shall be taken into account where price regulation is carried out in accordance with the legislation of the Republic of Uzbekistan and the legislation of foreign states, as well as international treaties of the Republic of Uzbekistan.*

*Prices which correspond to the prices which are set and prices which correspond to the price formulas which are agreed shall be recognized as market-conforming prices.*

...

#### **Article 180. Controlled Transactions between Interconnected Parties**

*For the purposes of this Code controlled transactions shall be understood to mean transactions between interconnected persons with account taken of the special considerations laid down in this Article.*

*A transaction between interconnected persons which are the tax residents of the Republic of Uzbekistan shall be recognized as controlled if at least one of the following circumstances exists:*

- 1) the amount of income from transactions (the amount of transaction prices) between the persons concerned for the relevant calendar year exceeds five billion soums;*
- 2) at least one of the parties to the transaction is a taxpayer which applies the special tax regime or is a participant in a special economic zone, while there is among the other persons who are parties to that transaction a person who does not apply those special tax regimes;*
- 3) at least one of the parties to the transaction is exempt from the obligations of a taxpayer of tax on profit, applies a reduced tax rate or other tax incentives, while there is among the other persons who are parties to that transaction a person who is not exempt from paying such tax and does not apply incentives;*
- 4) the subject of the transaction is a mineral which is extracted by one of the parties*

*to the transaction, while an ad valorem tax rate is used for subsoil use tax in relation to this mineral.*

*The transactions provided for in clauses 2-4 of part two of this Article shall be deemed to be controlled if the amount of income from transactions between the persons concerned for the relevant calendar year exceeds five hundred million soums.*

...

***Article 186. General Provisions Concerning Methods to be Used in Tax control With Respect to Transfer Pricing***

*State Tax Committee of the Republic of Uzbekistan shall use the following methods in accordance with the procedure established by this Article in exercising tax control for transfer pricing (including when comparing the commercial and (or) financial conditions of a controlled transaction and the results thereof with the commercial and (or) financial conditions of comparable transactions and the results thereof):*

*1) the comparable market price method;*

*2) the resale price method;*

*3) the cost plus method;*

*4) the comparable profits method;*

*5) the profit split method.*

...

ii. Recommendations

The definition of transfer price should be simplified so as to mean only the ‘price between related parties’ (Article 176).

*Transfer price should be understood as such a price which can be regarded as an arm’s length price under proper conditions.*

The part of Article 176 which permits the application of market price provision under the

transfer pricing taxation to transactions between unrelated parties needs to be deleted (Article 176).

- Current provision

*Article 176. General Provisions Concerning Transfer Pricing*

*For the purposes of this Code, the transfer price shall be understood to mean the price which is established in transactions between interconnected parties and (or) that differs from objectively formed price which would be applied in comparable economic conditions for transactions between independent parties.*

- Draft revision suggested

*Article 176. General Provisions Concerning Transfer Pricing*

*For purposes of this Code, the transfer price shall be understood to mean the price which is established in transactions between related parties.*

When a price is regulated by the government, the concepts of transfer price and the market-conforming price are used even for transactions between unrelated or independent parties. For this purpose Article 176 seems to include “and (or) that differs from objectively formed price which would be applied in comparable economic conditions for transactions between independent parties” in the definition of transfer price. It is recommended that the provision for the taxation in this situation is stipulated in direct use of the term ‘regulated price’ instead of ‘transfer price’ or ‘market-conforming price’ as follows.

- Draft suggested

*Where a price regulation is applicable with respect to certain types of transactions by means of the setting of a price, ..., the prices of such transactions shall be recognized as transaction prices for taxation purposes.*

iii. Laws of other countries

- OECD TP Guideline

- Transfer prices are the price at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises (OECD TP Guideline Preface paragraph 11).
- International Tax Adjustment Act ('ITAA'), Republic of Korea
    - The concept of 'transfer price' is not defined while the concept of 'arm's length price' is defined.
    - 'Arm's length price' is the price that is regarded as being or to be used in an ordinary transactions of a resident, domestic corporation or domestic establishment with unrelated foreign parties(ITAA Article2 subparagraph 5).
    - A resident may ... file to report to the head of district tax office in charge ... the taxable income and tax amount adjusted according to the arm's length price when the transaction price in an international transaction with a foreign related party is either lower or higher than the arm's length price (ITAA Article 6).
  - Taxation (International and Other Provisions) Act 2010 (TIOPA) , the U.K.
    - Subsection 147 (Tax calculations to be based on arm's length, not actual, provision)<sup>4</sup> stipulates the "arm's length provision". The "actual provision" is compared with the "arm's length provision"<sup>5</sup>.
    - Subsection 147 stipulates the "basic pre-condition" as a part of the several requirements for the "actual provision" to be taxed under the transfer pricing taxation rules.
  - Internal Revenue Code Section 482- Transfer Pricing Regulations<sup>6</sup>, the U.S.
    - Section 482 authorizes the Secretary (of the Treasury) to makes adjustments of income, deductions, credits or allowances between parties that are owned or controlled by the same interests if such adjustments are necessary "to prevent the

---

<sup>4</sup> Taxation (International and Other Provisions) Act 2010(TIOPA) Part 4(Transfer pricing)

<sup>5</sup> Here 'provision' means 'transaction' by the OECD TP Guideline.

<sup>6</sup> IRC section 482; Treas. Reg. sections 1.482-0 to 1.482-9.



evasion of taxes or to clearly reflect the income” of such parties.

- Extensive regulations under section 482 provide detailed guidance on how the statute is to be enforced.

As with the structure of other Treasury Regulations, the transfer pricing regulations begins with a discussion of the general principle to be applied, followed by more specific guidance on the factors to be taken into account in implementing the principle, taking into account and addressing the practical difficulties that arise.

Treas. Regulations section 1.482-1(a), which sets forth the overall principles that will be applied throughout the transfer pricing regulations, provides that in determining the true taxable income of a controlled taxpayer,<sup>7</sup> the standard to be applied in every case is that of a taxpayer dealing at arm's length with an uncontrolled taxpayer.<sup>8</sup> Thus, a controlled transaction<sup>9</sup> meets the arm's length standard if the results of the transaction are consistent with the results that would have been realized if uncontrolled taxpayers had engaged in the same transaction under the same circumstances (arm's length result).<sup>10</sup>

---

<sup>7</sup> A “controlled taxpayer” is defined as any one of two or more [taxpayers](#) owned or [controlled](#) directly or indirectly by the same interests, and includes the [taxpayer](#) that owns or [controls](#) the other taxpayers. Treas. Reg. section 1.482-1(i)(5). The regulations provide that the term “controlled” includes any kind of [control](#), direct or indirect, whether legally enforceable or not, and however exercisable or exercised, including [control resulting](#) from the actions of two or more [taxpayers](#) acting in concert or with a common goal or [purpose](#). It is the reality of the [control](#) that is decisive, not its form or the mode of its [exercise](#). A [presumption](#) of [control](#) arises if [income](#) or [deductions](#) have been arbitrarily shifted. Treas. Reg. section 1.482-1(i)(4).

<sup>8</sup> An “uncontrolled taxpayer” means any one or two or more taxpayers not owned or controlled directly or indirectly by the same interests. Treas. Reg. section 1.482-1(i)(5).

<sup>9</sup> A “controlled transaction” means any transaction or [transfer](#) between two or more [members](#) of the same [group](#) of [controlled](#) taxpayers.

<sup>10</sup> Treas. Reg. section 1.482-1(b)(1).

The Regulations acknowledge, however, that because identical transactions can rarely be located, whether a transaction produces an arm's length result generally will be determined by reference to the results of comparable transactions under comparable circumstances. The Regulations then provide the standard and the factors to be considered when analyzing the comparability of transactions and circumstances between controlled and uncontrolled transactions.

Specifically, the Regulations provide that “to be considered comparable to a controlled transaction, an uncontrolled transaction need not be identical to the controlled transaction, but must be sufficiently similar that it provides a reliable measure of an arm's length result. If there are material differences between the controlled and uncontrolled transactions, adjustments must be made if the effect of such differences on prices or profits can be ascertained with sufficient accuracy to improve the reliability of the results. For purposes of this section, a material difference is one that would materially affect the measure of an arm's length result under the method being applied. If adjustments for material differences cannot be made, the uncontrolled transaction may be used as a measure of an arm's length result, but the reliability of the analysis will be reduced. Generally, such adjustments must be made to the results of the uncontrolled comparable and must be based on commercial practices, economic principles, or statistical analyses. The extent and reliability of any adjustments will affect the relative reliability of the analysis.”<sup>11</sup>

The specific factors to be considered in determining comparability are as follows:

- **Functional Analysis.** Determining the degree of comparability between controlled and uncontrolled transactions requires a comparison of the functions performed, and associated resources employed, by the taxpayers in each transaction.
- **Contractual Terms.** Determining the degree of comparability between the controlled and uncontrolled transactions requires a comparison of the significant contractual terms that could affect the results of the two transactions. These terms include the form of

---

<sup>11</sup> Treas. Reg. section 1.482-1(d)(2).

consideration charged or paid, sales or purchase volume, warranty terms, term of agreement, etc.

- Risk. Determining the degree of comparability between controlled and uncontrolled transactions requires a comparison of the significant risks that could affect the prices that would be charged or paid, or the profit that would be earned, in the two transactions. Relevant risks to consider include market risks, R&D risks, financial risks, credit and collection risks, product liability risks, general business risks associated with ownership of property, plant, and equipment.
- Economic Conditions. Determining the degree of comparability between controlled and uncontrolled transactions requires a comparison of the significant economic conditions that could affect the prices that would be charged or paid, or the profit that would be earned in each of the transactions. These factors include similarity of geographic markets, relative size and overall economic development of market, level of market (wholesale v. retail), market share, etc.
- Special Circumstances, such as:
  - Market Share Strategy. In certain circumstances, taxpayers may adopt strategies to enter new markets or to increase a product's share of an existing market
  - Different Geographic Markets. Uncontrolled comparables<sup>12</sup> ordinarily should be derived from the geographic market in which the controlled taxpayer operates, because there may be significant differences in economic conditions in different markets

The Regulations also provide that although in some cases, application of a pricing method will produce a single result that is the most reliable measure of an arm's length result, application of a method may produce a number of results from which a range of reliable results may be derived.<sup>13</sup> Accordingly, the Regulations provide that a taxpayer will not

---

<sup>12</sup> The term "uncontrolled comparable" means the un[controlled](#) transaction or un [controlled taxpayer](#) that is compared with a [controlled](#) transaction or [taxpayer](#) under any applicable [pricing](#) methodology. Treas. Reg. section 1.482-1(i)(10).

<sup>13</sup> Treas. Reg. section 1.482-1(e).

be subject to adjustment if its results fall within such range (arm's length range).

Subsequent provisions of the Regulations<sup>14</sup> set forth the specific methods to be used to evaluate whether transactions between or among members of the controlled group satisfy the arm's length standard, and if they do not, to determine the arm's length result. The Regulations also provide that in testing the arm's length result of a controlled transaction, the method that will provide the most reliable measure of the arm's length result must be used ("Best Method Rule").<sup>15</sup> The Regulations also provide guidance on the factors to consider when making determining the Best Method. These considerations include the comparability analysis (set forth above) as well as the completeness and accuracy of the available data, and the reliability of assumptions that are made when applying the methods.<sup>16</sup>

#### ITAA - INCOME TAX ASSESSMENT ACT 1997, Australia

The "transfer value" or "transfer pricing" concept in the ITAA is used for only cross-border transactions under non-arm's length condition.<sup>17</sup>

Australia's transfer pricing legislation does not provide a definition of related parties.

---

<sup>14</sup> Treas. Reg. sections 1.482-2 through 1.482-7 and Treas. Reg. section 1.482-9.

<sup>15</sup> Treas. Reg. section 1.482-1(c).

<sup>16</sup> Treas. Reg. section 1.482-1(c)(2).

<sup>17</sup> INCOME TAX ASSESSMENT ACT 1997 - SECT 815.120

When an entity gets a transfer pricing benefit

(1) An entity gets a transfer pricing benefit from conditions that operate between the entity and another entity in connection with their commercial or financial relations if:

- (a) those conditions (the actual conditions) differ from the \* arm's length conditions; and
- (b) the actual conditions satisfy the cross-border test in subsection (3) for the entity; and
- (c) had the arm's length conditions operated, instead of the actual conditions, one or more of the following would, apart from this Subdivision, apply:
  - (i) the amount of the entity's taxable income for an income year would be greater ;
  - (ii) the amount of the entity's loss of a particular \* sort for an income year would be less ;
  - (iii) the amount of the entity's \* tax offsets for an income year would be less ;
  - (iv) an amount of \* withholding tax payable in respect of interest or royalties by the entity would be greater .

Australia's transfer pricing legislation is applicable if an Australian entity gets a tax benefit in Australia from non-arm's length cross-border conditions, regardless of whether the parties are related to one another.

The "transfer value" of an asset means the amount that could be expected to be received from the disposal of the asset in an open market after deducting any costs expected to be incurred in respect of the disposal.

The ITAA does not provide any specific TP guideline<sup>18</sup> for commodities transactions.<sup>19</sup>

The "market value" concept in the ITAA is used for CGT taxation purpose.<sup>20</sup>

#### *ITAA - SECT 995.1 Definitions*

*(1)... "arm's length" : in determining whether parties deal at arm's length , consider any connection between them and any other relevant circumstance.*

*"arm's length capital amount" :*

*(a) for an \* outward investing entity (ADI)--has the meaning given by section 820- 315; and*

*(b) for an \* inward investing entity (ADI)--has the meaning given by section 820- 410.*

*"arm's length conditions" has the meaning given by section 815- 125.*

*"arm's length debt amount" :*

*(a) for an \* outward investing entity (non-ADI)--has the meaning*

---

<sup>18</sup> Paras. 2.18~2.22 OECD TPG

2.18 Subject to the guidance in paragraph 2.2 for selecting the most appropriate transfer pricing method in the circumstances of a particular case, the CUP method would generally be an appropriate transfer pricing method for establishing the arm's length price for the transfer of commodities between associated enterprises. The reference to "commodities" shall be understood to encompass physical products for which a quoted price is used as a reference by independent parties in the industry to set prices in uncontrolled transactions. The term "quoted price" refers to the price of the commodity in the relevant period obtained in an international or domestic commodity exchange market. In this context, a quoted price also includes prices obtained from recognised and transparent price reporting or statistical agencies, or from governmental price-setting agencies, where such indexes are used as a reference by unrelated parties to determine prices in transactions between them.

<sup>19</sup> OECD, Australia Transfer Pricing Country Profile, July 2021

<sup>20</sup> Nicholas Augustinos, The meaning of 'market value' in Australia's Income Tax Assessment Act 1997, The University of Notre Dame Australia, [nicholas.augustinos@nd.edu.au](mailto:nicholas.augustinos@nd.edu.au), 2014

*given by section 820- 105; and*  
(b) *for an \* inward investing entity (non-ADI)--has the meaning given by section 820- 215.*

*"arm's length profits" has the meaning given by section 815- 225.*

...

*"transfer pricing benefit" has the meaning given by sections 815-15, 815-120 and 815-220.*

*"transfer value" of an asset means the amount that could be expected to be received from the disposal of the asset in an open market after deducting any costs expected to be incurred in respect of the disposal.*

- Income Tax Act , Canada

The TP taxation is made on any non-arm's length transactions and the TP taxation rule is one of the anti-avoidance rules just as under the IRC of the US.<sup>21</sup>

The "arm's length transfer price" means, in respect of a transaction, an amount that would have been a transfer price in respect of the transaction if the participants in the transaction had been dealing at arm's length with each other.

Sub-section 251(2) of the ITA defines related persons. Paragraph 251(1)(a) deems related persons not to deal with each other at arm's length. This is the case regardless of how they actually conduct their mutual business transactions.

The "arm's length transfer price" concept may be used for any non-arm's length transactions. The concept in this context is generally used for CGT taxation purpose.<sup>22</sup>

The ITA does not provide any specific TP guideline for commodities transactions.<sup>23</sup>

*the Income Tax Act PART XVI.1 Transfer Pricing*

---

<sup>21</sup> Under section 482 of the Internal Revenue Code of the US, although the parties need not be "affiliated", there is a requirement that they be "owned or controlled" by the same interests.

<sup>22</sup> <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/sole-proprietorships-partnerships/report-business-income-expenses/claiming-capital-cost-allowance/non-arms-length-transactions.html>

<sup>23</sup> OECD, Canada Transfer Pricing Country Profile, July 2021

## *Definitions*

*247 (1) The definitions in this subsection apply in this section.*

*arm's length allocation means, in respect of a transaction, an allocation of profit or loss that would have occurred between the participants in the transaction if they had been dealing at arm's length with each other. (attribution de pleine concurrence)*

*arm's length transfer price means, in respect of a transaction, an amount that would have been a transfer price in respect of the transaction if the participants in the transaction had been dealing at arm's length with each other. (prix de transfert de pleine concurrence)*

...

*transfer price means, in respect of a transaction, an amount paid or payable or an amount received or receivable, as the case may be, by a participant in the transaction as a price, a rental, a royalty, a premium or other payment for, or for the use, production or reproduction of, property or as consideration for services (including services provided as an employee and the insurance or reinsurance of risks) as part of the transaction. (prix de transfert)*

...

### *Transfer pricing adjustment*

*(2) Where a taxpayer or a partnership and a non-resident person with whom the taxpayer or the partnership, or a member of the partnership, does not deal at arm's length (or a partnership of which the non-resident person is a member) are participants in a transaction or a series of transactions and*

*(a) the terms or conditions made or imposed, in respect of the transaction or series, between any of the participants in the transaction or series differ from those that would have been made between persons dealing at arm's length, or*

*(b) the transaction or series*

*(i) would not have been entered into between persons dealing at arm's length, and*

*(ii) can reasonably be considered not to have been entered into primarily for bona fide purposes other than to obtain a tax benefit,*

*any amounts (in subsection (2.1) referred to as the “initial amounts”) that would be determined for the purposes of applying the provisions of this Act (if this Act were read without reference to this section and section 245) in respect of the taxpayer or the partnership for a taxation year or fiscal period shall be adjusted (in this section referred to as an “adjustment”) to the quantum or nature of the amounts (in subsection (2.1) referred to as the “adjusted amounts”) that would have been determined if,*

*(c) where only paragraph 247(2)(a) applies, the terms and conditions made or imposed, in respect of the transaction or series, between the participants in the transaction or series had been those that would have been made between persons dealing at arm’s length, or*

*(d) where paragraph 247(2)(b) applies, the transaction or series entered into between the participants had been the transaction or series that would have been entered into between persons dealing at arm’s length, under terms and conditions that would have been made between persons dealing at arm’s length.*

...

#### *Anti-avoidance*

*(9) For the purposes of determining a taxpayer’s gross revenue under subparagraph 247(3)(b)(i) and subsection 247(5), a transaction or series of transactions is deemed not to have occurred, if one of the purposes of the transaction or series was to increase the taxpayer’s gross revenue for the purpose of subsection 247(3)<sup>24</sup>....*

---

<sup>24</sup> Penalty

(3) A taxpayer (other than a taxpayer all of whose taxable income for the year is exempt from tax under Part I) is liable to a penalty for a taxation year equal to 10% of the amount determined under paragraph 247(3)(a) in respect of the taxpayer for the year, where

(a) the amount, if any, by which

(i) the total of

(A) the taxpayer’s transfer pricing capital adjustment for the year, and

(B) the taxpayer’s transfer pricing income adjustment for the year

exceeds the total of

(ii) the total of all amounts each of which is the portion of the taxpayer’s transfer pricing capital adjustment or transfer pricing income adjustment for the year that can reasonably be considered to relate to a particular



## B. Value Added Tax provisions

### i. Current law

The tax base for the VAT is determined according to either the transaction price or the price found by the application of Article 176 for the transfer pricing taxation (Article 248). The taxpayer shall have the right to plead that the transaction price conforms to market prices and is not aimed at tax evasion. In the following cases the VAT taxable base is determined by the market value found according to the procedure of the Cabinet Resolution.

the sale of goods (services) in exchange for other goods (services);

transfer of goods (services) without consideration

The current provision which stipulates that the VAT tax base shall be determined in accordance with Article 176 seems to allow the tax authority to deny the use of transaction price of a transaction between unrelated parties without a reasonable cause. The taxpayer shall have the right to plead that the transaction price conforms to market prices and is not

---

transaction, where

- (A) the transaction is a qualifying cost contribution arrangement in which the taxpayer or a partnership of which the taxpayer is a member is a participant, or
- (B) in any other case, the taxpayer or a partnership of which the taxpayer is a member made reasonable efforts to determine arm's length transfer prices or arm's length allocations in respect of the transaction, and to use those prices or allocations for the purposes of this Act, and
- (iii) the total of all amounts, each of which is the portion of the taxpayer's transfer pricing capital setoff adjustment or transfer pricing income setoff adjustment for the year that can reasonably be considered to relate to a particular transaction, where

- (A) the transaction is a qualifying cost contribution arrangement in which the taxpayer or a partnership of which the taxpayer is a member is a participant, or
- (B) in any other case, the taxpayer or a partnership of which the taxpayer is a member made reasonable efforts to determine arm's length transfer prices or arm's length allocations in respect of the transaction, and to use those prices or allocations for the purposes of this Act,

is greater than

(b) the lesser of

- (i) 10% of the amount that would be the taxpayer's gross revenue for the year if this Act were read without reference to subsection 247(2), subsections 69(1) and 69(1.2) and section 245, and
- (ii) \$5,000,000.

aimed at tax evasion(Article 248). And the transaction prices for the transactions between independent persons shall be recognized as market-conforming prices transactions between independent persons(Article 178). However, the list of market price publicized monthly may have an extraordinarily strong impact on the actual determination of the tax case in individual cases.

In case the transfer pricing taxation is made on transactions with a foreign related party and the price earned by a domestic party is adjusted, the tax base for the VAT will be also adjusted accordingly. There is no need to stipulate a special provision for the VAT tax base adjustment in this context because it is naturally to be adjusted by the mechanism between the income tax and VAT.

Even in case of transactions between domestic related parties, there is also a possibility that the transaction price between the parties may be manipulated for tax avoidance purpose and in response the tax authority might well have an authority to adjust the price for fair taxation. In this context the tax law may stipulate that the transfer pricing taxation provisions shall be applied and therefore the market price provisions in those transfer pricing taxation provisions shall also be applied. Otherwise the government may prepare a separate anti-avoidance provision for the domestic taxation purpose different from the transfer pricing taxation(e.g., ROK). The current tax code of Uzbekistan takes the stance that the transfer pricing taxation provisions may also be applied to the transactions between domestic related parties(e.g., the U.S). Following such an approach, the current tax code of Uzbekistan allows the tax authority to adjust the VAT tax base according to the market price found in accordance with Article 176 of the transfer pricing taxation. What is important is that such a taxation is accomplished by the provision of Article 176 and there is no need to stipulate a separate provision in the part of VAT(SECTION X. VALUE ADDED TAX) for this purpose.

The uncertainty problem which arises when the tax authority applies the market price provision(especially the price list publicized) even on the transactions between unrelated parties may be avoided by the revision of Article 176 as the draft suggested in the above.

## ***SPECIAL PART***

## **SECTION X. VALUE ADDED TAX**

...

### **Article 248. Procedure for Determination of the Tax Base**

*The tax base arising from the sale of goods (services) by a taxpayer shall, unless otherwise provided by this Article, be determined as the value of those goods (services) as calculated on the basis of prices (tariff) which are applied by the parties to the transaction and determined in accordance with Article 176 of this Code, including excise tax (in the case of excisable goods) and excluding tax.*

*The taxpayer who provides discounts (other commercial bonuses) to customers on the date of the sales turnover shall determine the tax base on the basis of the price (tariff) minus such discounts (commercial bonuses).*

*The tax base is determined based on the market value of goods (services) determined in accordance with the procedure approved by the Cabinet of Ministers of the Republic of Uzbekistan, when:*

- 1) the sale of goods (services) in exchange for other goods (services);*
- 2) transfer of goods (services) without consideration, unless otherwise provided by paragraph 2 of part one or paragraph 2 of part two of Article 239 of this Code;*
- 3) the use of the property of a legal entity for personal purposes in accordance with paragraph 6 of part four of Article 239 of this Code, took place.*

*Tax authorities shall have the right to adjust the tax base where the transaction price is lower or higher than the market value of goods (services). The taxpayer shall have the right to challenge such a decision through providing justification that the transaction price conforms to market prices and is not aimed at tax evasion.*

...

#### **ii. Recommendations**

The part of the Article 248 which stipulates that the VAT tax base is determined in

accordance with Article 176 needs to be deleted because it is unnecessary and may be misleading.

- Current provision

***Article 248. Procedure for Determination of the Tax Base***

*The tax base arising from the sale of goods (services) by a taxpayer shall, unless otherwise provided by this Article, be determined as the value of those goods (services) as calculated on the basis of prices (tariff) which are applied by the parties to the transaction and determined in accordance with Article 176 of this Code, including excise tax (in the case of excisable goods) and excluding tax.*

*... Tax authorities shall have the right to adjust the tax base where the transaction price is lower or higher than the market value of goods (services). The taxpayer shall have the right to challenge such a decision through providing justification that the transaction price conforms to market prices and is not aimed at tax evasion.*

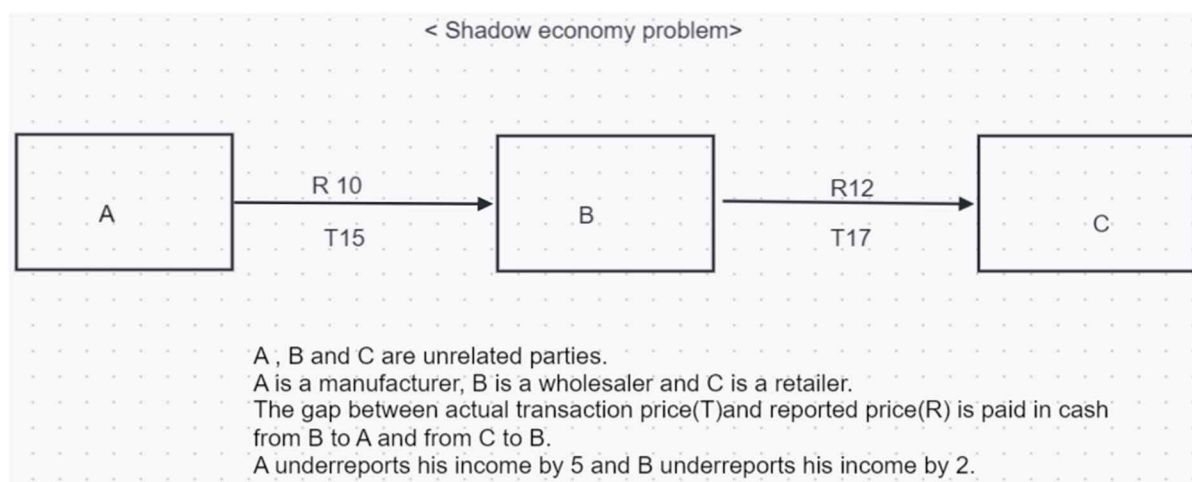
- Draft revision suggested

***Article 248. Procedure for Determination of the Tax Base***

*The tax base arising from the sale of goods (services) by a taxpayer shall, unless otherwise provided by this Article, be determined as the value of those goods (services) as calculated on the basis of prices (tariff) which are applied by the parties to the transaction ~~and determined in accordance with Article 176 of this Code~~, including excise tax (in the case of excisable goods) and excluding tax. ... ~~Tax authorities shall have the right to adjust the tax base where the transaction price is lower or higher than the market value of goods (services). The taxpayer shall have the right to challenge such a decision through providing justification that the transaction price conforms to market prices and is not aimed at tax evasion.~~*

If the government still needs to apply the price list for the specific commodities and services for the determination of VAT and income tax, it is recommended that the government stipulate a specific provision (e.g., a specific anti-avoidance provision) for that purpose instead of making use of the transfer pricing taxation provisions.

In this context, the tax evasion schemes as explained by the officials from the State Tax Committee during the meeting held on the 12th of October, 2022, as below seem to be a serious problem in the tax administration of the Republic of Uzbekistan. The remedial provision needs to be prepared in the tax code.



The above shadow economy situation seems to be one of typical VAT evasion cases and be dealt adequately with the such traditional administrative measures as below.

1. cross-check of tax invoices and comparison of the flows of commodities (or services) and the cash (cash equivalent)
2. obligatory use of credit cards
3. special tax audit

In the process for the selection of taxpayers to be audited for underreporting of VAT, the price list by the government may be used and such a methodology may have a good reason to be supported by a statutory provision having such an effect as below.

*The transaction price between unrelated parties in the VAT tax invoice and VAT tax return is basically accepted for the determination of VAT tax base. However, if such a transaction price of a taxpayer with an unrelated party is significantly lower than the price in the price list announced by the government, the taxpayer has to prove the transaction price reported is true to the fact in such a reasonable way as showing the receipt of the consideration received or the bank transfer note*

*If the transaction price proved with such proofs as the receipt or bank transfer not, etc.*

*is still significantly lower than the listed price, the taxpayer has to explain that there is a legitimate business reason for the discrepancy. One of the business reasons which may be accepted as legitimately reasonable is the actual prices of comparable transactions.*

In this juncture the following provision(Article 35, Paragraph 2) in the Inheritance Tax and Gift Tax Act (R.O.K.) may be considered as a meaningful example.

*Where property is acquired or transferred between unrelated persons at a price significantly lower or higher than the market price without fair reason in the transactional practice, and where the difference between the price actually paid or received and the market price is the same as or more than the standard amount prescribed by Presidential Decree, an amount obtained by subtracting the amount prescribed by Presidential Decree from the difference between the price actually paid or received and the market price, shall be the taxable amount of gifted property to the person who gains profits from such acquisition or transfer on the day of acquisition or the day of transfer of the relevant property as the date of gift.*

About the administrative rulings on the meaning of “fair reason” in the above provision, we cannot say that the National Tax Service of R.O.K has a concrete and clear guideline. A few rulings seem to reiterate the same phrase such as “It is determined if there is a fair reason or not by reviewing the history of the transaction, the relationship between the parties to the transaction and the details of the price determination process, etc.”

iii. Laws of other countries

- Republic of Korea

***Value Added Tax Act(‘VATA’) Article 29 (Tax Bases)***

*(1) The tax base for value-added tax on a supply of goods or services shall be the total value of all supplies of goods or services provided during the relevant taxable period.*

*(2) The tax base for value-added tax on the importation of goods shall be the sum of the taxable value for customs duties and the customs duties, individual consumption tax, liquor tax, education tax, special rural development tax, and traffic, energy and environment tax on such goods.*

*(3) The value of supply referred to in paragraph (1) means each of the following. In such cases, it shall include payments, rates, fees, or all other things of value, whatever their names are, which are provided by recipients of goods or services, but exclude value-added taxes: <Amended by Act No. 15223, Dec. 19, 2017>*

- 1. Where payments are made in money: The payments: Provided, That when payments are made in any foreign currency or other foreign exchange, they mean the value converted in the manner prescribed by Presidential Decree;*
- 2. Where payments other than money are made: The market price of goods or services supplied by the supplier himself or herself;*
- 3. Where a business is closed: The market price of goods in stock at the time of closing the business;*
- 4. Where goods or services are deemed to be supplied under Articles 10 (1), (2), (4) and (5) and 12 (1): The market price of the goods or services supplied by the supplier himself or herself;*
- 5. Where goods are deemed to be supplied under Article 10 (3): The value prescribed by Presidential Decree based on the acquisition value, etc. of the goods;*
- 6. Where goods or services are supplied through credit sales, installment sales, or sales in which payments are settled wholly or partly with mileage, etc. prescribed by Presidential Decree: The value prescribed by Presidential Decree based on the types, etc. of supply.*

*(4) Notwithstanding paragraph (3), if it is likely to unfairly reduce tax burden on goods or services supplied to related persons, in any of the following cases, the market price of the supplied goods or services shall be deemed the value of supply thereof:*

- 1. Where payments for a supply of goods are unfairly low or no payments therefor are made;*
- 2. Where payments for a supply of services are unfairly low;*
- 3. Where no payment is made for a supply of services and the proviso of Article 12 (2) is applicable.*

*(5) None of the following amounts shall be included in the value of supply:*

- 1. The amount of discount made directly on the normal price of goods or services based on their quality, quantity, conditions of delivery, methods of making payments for supply, and other conditions of supply, at the time of supply thereof;*
- 2. The value of returned goods;*
- 3. The value of goods, which are broken, damaged, or lost before they reach a person to whom*

- they are supplied;*
4. *National subsidies and public subsidies not directly related to the supply of goods or services;*
  5. *Overdue interests received due to a delay in payments for supply;*
  6. *The amount of discount by an entrepreneur from the original value of supply on grounds of receiving payments for supply in advance of the agreed date.*
    - (6) *Neither a bounty and other similar subsidy that an entrepreneur pays to a person to whom goods or services are supplied nor a bad debt amount under Article 45 (1) shall be deducted from the tax base.*
    - (7) *Where it is unclear whether payments for goods or services supplied by an entrepreneur include value-added taxes, an amount calculated by multiplying the payments by 100/110 shall be the value of supply.*
    - (8) *Where an entrepreneur supplies any goods common to a taxable business, a tax-free business, and a business of supplying goods or services exempt from value-added tax (hereinafter referred to as “tax-free business, etc.”), an amount calculated according to the formula prescribed by Presidential Decree shall be the value of supply.*
    - (9) *Where an entrepreneur supplies land with buildings, structures, etc. standing thereon, the actual transaction price of such buildings, structures, etc. shall be the value of supply: Provided, That in any of the following cases, the value of supply shall be the amount calculated on a pro rata basis as prescribed by Presidential Decree: <Amended by Act No. 16101, Dec. 31, 2018>*
      1. *Where the distinction between the price of land and the price of any building, structure, etc. in the actual transaction price is unclear;*
      2. *Where a difference of at least 30/100 exists between the price of any land, building, structure, etc. an entrepreneur has determined based on the actual transaction price and the amount calculated on a pro rata basis as prescribed by Presidential Decree:*
        - (10) *Where an entrepreneur leases any of the following real estate, the value of supply shall be an amount calculated according to the formula prescribed by Presidential Decree:*
          1. *Where he or she receives security money for lease on a deposit basis or for lease in return for the lease of the real estate;*
          2. *Where he or she provides a taxable real estate lease along with a tax-free housing lease and so the distinction between the leases or between the rents is unclear;*
          3. *Where he or she leases real estate over at least two taxable periods on conditions of receiving*



*the rents in advance or later.*

*(11) Where any goods deemed a supply of goods under Article 10 (1), (2), and (4) through (6) constitute a depreciable asset prescribed by Presidential Decree (hereinafter referred to as “depreciable asset”), an amount calculated according to the formula prescribed by Presidential Decree shall be the value of supply, notwithstanding paragraph (3) 3 and 4.*

*(12) Matters necessary for calculating market prices and other values of supply and tax bases shall be prescribed by Presidential Decree.*

*Value Added Tax Act Presidential Decree Article 62 (Standard of the market price)*

*The market price according to Article 29 (3) and (4) of the VATA is the price stipulated as follows.*

*1 The price at the transactions made by the businessman continuously with an unrelated party under the similar circumstance to the pertinent transaction or the price charged ordinarily between unrelated parties*

*2 In case there is no such price as stipulated in subparagraph 1., the price of the good or service received as the consideration (It means the price the receiver of pertinent good or service receives as the consideration for the transactions of the good or service in the above made by him continuously with an unrelated party under the similar circumstance to the transaction or the price charged ordinarily between unrelated parties)*

*3 In case there are no such prices as stipulated in subparagraph 1 or 2, or the market price is uncertain, the price found according to Income Tax Act Presidential Decree Article 98(3) and (4) or Corporate Tax Act Presidential Decree Article 89(2) and (4).*

- The U.K.

VATA 1994 Section 19 stipulates on the case when the open market values have to be applied for the determination of VAT tax base.

### ***19 Value of supply of goods or services.***

*(1) For the purposes of this Act the value of any supply of goods or services shall, except as otherwise provided by or under this Act, be determined in accordance with this section and Schedule 6, and for those purposes subsections (2) to (4) below have effect subject to that Schedule.*

*(2) If the supply is for a consideration in money its value shall be taken to be such amount as, with the addition of the VAT chargeable, is equal to the consideration.*

*(3) If the supply is for a consideration not consisting or not wholly consisting of money, its value shall be taken to be such amount in money as, with the addition of the VAT chargeable, is equivalent to the consideration.*

*(4) Where a supply of any goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.*

*(5) For the purposes of this Act the open market value of a supply of goods or services shall be taken to be the amount that would fall to be taken as its value under subsection (2) above if the supply were for such consideration in money as would be payable by a person standing in no such relationship with any person as would affect that consideration.*

Open market value is no longer employed as a basis for valuing a non-monetary consideration (see paragraph 1.9). It is used principally in Notices of Direction issued under the first two sections of Schedule 6. These are when supplies are made to connected persons (Paragraph 1 of Schedule 6) or via a direct selling arrangement (Paragraph 2 of Schedule 6).<sup>25</sup> Detailed guideline may be referred to in the homepage of the HMRC.<sup>26</sup>

#### C. Corporate tax and individual income tax provisions

In case Article 176 is applicable, the taxable income must be adjusted accordingly. Article 296 stipulates to that effect.

## **SECTION XII. TAX ON PROFIT**

...

### **Article 296. Tax Base**

---

<sup>25</sup> <https://www.gov.uk/hmrc-internal-manuals/vat-valuation/vatval07200>

<sup>26</sup> VATVAL07300 - Special valuation provisions: connected persons - Paragraph 1, Schedule 6, VATA 1994

*The tax base shall be taxable amount of profit, which is determined in accordance with Article 295 of this Code. Where the tax base is determined in the manner and under the conditions established by this Section, certain types of income and (or) expenses (losses) of the taxpayer may be excluded or included according to special rules. The taxpayer shall maintain separate records of income (expenses) for operations for which a non-standard procedure for accounting for profit and losses is prescribed.*

*The tax base shall be determined on a cumulative total from the beginning of the tax period, unless otherwise provided by Chapters 48 and 50 of this Code. For tax purposes, losses which are made by a taxpayer in the reporting (tax) period, shall reduce the tax base in the manner and under the conditions established by Chapter 46 of this Code. The tax base shall also include the total profit of controlled foreign companies which is determined in accordance with Section VII and Article 331 of this Code. The tax base shall be adjusted in the cases and in the manner prescribed by this Section.*

*In the cases provided for in Section VI of this Code, income and (or) expenses (losses) of the taxpayer shall be adjusted. Income and expenses in kind shall be accounted for by the taxpayer on the basis of the actual transaction price, unless otherwise provided by this Article Where the price of goods (services) in such a transaction differs from their market price and such a difference leads to a decrease in the tax base or an increase in the taxpayer's loss, the tax base shall be determined on the basis of their market prices determined in accordance with Section VI of this Code.*

#### **4. Uzbekistan Cabinet Resolutions**

##### **A. Cabinet Resolution VQL-347/21:**

The Cabinet Resolution VQL-347/21 which has taken effect in 2022 stipulates the procedures the State Tax Committee follows to determine the market price, i.e. market value according to the tax code provisions(Article 176, Article 248, Article 296) which has authorized the tax authorities to determine the tax base by the market price.

This Cabinet Resolution makes it clear that the taxation by the market price intends to

sanction the tax evasion.

The market value of goods (services) is formed for each region (city, district), posted on the official website of the State Tax Committee and updated monthly. The published prices are applied by the tax officials and presumed to be the market prices.

The adjustment of the tax base in accordance with the market price by the tax authority may not result in levying penalty unless the under-reporting becomes a tax evasion (Article 223, Article 224).

The taxpayer has the right to dispute the decision of the tax authority to amend the tax base by providing the grounds that the value of goods (services) corresponds to market prices and is not aimed at tax evasion.

*(At present, a proposal is being considered to use transfer pricing methods fixed by legislation when determining the market price. At the same time, it is proposed to add an additional list of goods.)*

*RESOLUTION OF THE CABINET OF MINISTERS OF THE REPUBLIC OF UZBEKISTAN On measures to determine the price of goods (services) based on the market value in determining the tax base VQL-347/21*

*In order to prepare for the establishment of the tax base on the basis of transfer prices provided for in the Tax Code of the Republic of Uzbekistan and to reduce the shadow economy, the Cabinet of Ministers decides: ...*

***Regulation on the procedure for determining the price of goods (services) in determining the tax base based on market conditions***

*Chapter 1. General rules*

*1. This Regulation determines the procedure for determining the price of goods (services) based*

*on market conditions when calculating the tax base in tax audits.*

*2. The tax base is determined by the price of goods (services) based on market conditions: in the wholesale and retail sale of goods (services) by business entities;*

*in the provision (provision) of goods (services) free of charge, unless otherwise provided by paragraph 2 of the first part of Article 239 of the Tax Code of the Republic of Uzbekistan (hereinafter - the Tax Code) or paragraph 2 of the second part of this article. In this case, in the cases provided for in this paragraph, the value of goods (services) does not apply when it is higher than the value posted on the official website of the State Tax Committee....*

#### *Chapter 2 Procedure for determining the market value of goods (services) when calculating and paying the tax base*

*5. In tax audits conducted by the tax authorities on the correct calculation of the tax base, the tax base is studied on the basis of the market value of goods (services).*

*6. Tax base is a unit posted on the official website of the State Tax Committee the market value of the goods (services) is calculated by the taxpayer in relation to the product of the volume of products sold in the reporting period.*

*The tax base to be calculated shall be calculated separately based on the market value of goods (services) determined for each region and month determined in accordance with paragraph 7 of this Regulation.*

*Until the opposite is proven, this value is assumed to correspond to market prices.*

*7. When carrying out the operations provided for in paragraph 4 of this Regulation, the market value of goods (services) can be determined using the following:*

*through review by inspectors. In this case, if the goods (services) sold are similar goods, but prices differ sharply due to different quality, in determining the tax base, the price is formed on the basis of exactly the same goods, determined in accordance with Article 45 of the Tax Code;*

*through prices formed on commodity exchanges;*

*through prices formed on the basis of codes of goods (services) (in the center of the region and in remote areas) recorded on the online NCM and virtual cashier's checks;*

*prices are formed on the basis of identification codes specified in the invoices and barcodes of products sold.*

*8. The market value of goods (services) is formed for each region (city, district), posted on the official website of the State Tax Committee and updated monthly.*

*The bodies of the State Tax Service have the right to make adjustments to the tax base in cases where it is determined that the value of goods (services) is lower than the market value of a unit of goods (services) posted on the official website of the State Tax Committee.*

...

*10. The decision of the tax authority to adjust the value of goods (services) in accordance with this Regulation based on the minimum market value of one unit of goods (services) posted on the official website of the State Tax Committee, provided for in Article 223 or 224 does not lead to the imposition of fines.*

*11. The taxpayer has the right to dispute the decision of the tax authority to amend the tax base by providing the grounds that the value of goods (services) corresponds to market prices and is not aimed at tax evasion.*

...

#### B. Cabinet Resolution ID-52585(V-4)

Cabinet Resolution ID-52585(V-4) revised the former Cabinet Resolution VQL-347/21 and made public the market price list of 14 items of commodities.

This resolution stipulates on the procedures for the determination of tax base as well as market price.

This resolution states that it intends to prepare for the establishment of the tax base on the basis of transfer prices provided for in the Tax Code. But it is to be carefully reviewed whether the determination of each and individual market price of the commodities satisfies the arm's length principle and transfer pricing method provisions.

A few countries such as Brazil have the arm's length price provision which lets the prices formed in the exchange be regarded as the arm's length price, i.e., market price for the

transfer pricing taxation especially in such a case of transactions of raw materials.

***RESOLUTION OF THE CABINET OF MINISTERS OF THE REPUBLIC OF UZBEKISTAN On additional measures to create a competitive environment for business entities and protect the rights of bona fide taxpayers***

*In order to prepare for the establishment of the tax base on the basis of transfer prices provided for in the Tax Code of the Republic of Uzbekistan and to reduce the shadow economy, **the Cabinet of Ministers decides:***

*1. Take into consideration that according to the Tax Code of the Republic of Uzbekistan, tax authorities have the right to adjust the tax base for certain types of taxes if the transaction price is lower or higher than the market value of goods (services).*

*2. Approve:*

*Regulation on the procedure for determining the market value of goods (services) for tax purposes in accordance with Annex 1 to this Resolution;*

*the list of goods for the sale of which the determination of the tax base for certain types of taxes is carried out based on the market value determined by the tax authorities **from April 1, 2022**, in accordance with Annex 2 to this resolution.*

*3. To establish that the effect of this resolution:*

***from April 1, 2022** - applies to all goods subject to mandatory digital labeling by means of digital identification;*

***from July 1, 2022** - applies to all goods sold on the stock exchange and (or) electronic platforms for public procurement.*

*4. Provide the Ministry of Finance and the State Tax Committee of the Republic of Uzbekistan the right, based on the decision of the Special Commission for the Reduction of the Shadow Economy, to revise the list of goods (services) and real estate objects, during the sale of which the determination of the tax base for certain types of taxes is carried out based on the market value determined by the tax authorities....*

***Regulation on the procedure for determining the price of goods (services) in determining the tax base based on market conditions***

***Chapter 1. General rules***

*1. This Regulation establishes the procedure for determining the market value of goods (services) in order to determine the tax base for value added tax, income tax and turnover tax ....*

*3. This provision applies if the price level applied by taxpayers to goods (services) of the same property or kind, during a calendar month for more than 20 percent differs from the level of prices prevailing in the market with the corresponding transactions for the same goods (services).*

*4. The market value of goods (services) may be determined with using:*

*data from information systems of tax authorities; ...*

*5. When determining the market value of goods (services) for the purposes of calculating value added tax, profit tax and turnover tax (hereinafter referred to as for tax purposes), tax authorities may use the following methods of determining the market value:*

*the method of determining the weighted average value;*

*method of subsequent implementation;*

*the method of adding up the cost....*

***Chapter 2 Procedure for determining the market value of goods (services) for tax purposes***

...

***Chapter 3 Procedure for determining the tax base based on the market price of goods (services)***

...



to the Resolution of the Cabinet of Ministers

No. \_\_\_\_ of 20\_\_ “ \_\_\_\_ ” \_\_\_\_\_

*The list of goods for the sale of which the determination of the tax base for certain types of taxes is carried out based on the market value determined by the tax authorities from April 1, 2022*

<i>№</i>	<i>Products</i>
<b><i>Real estate objects</i></b>	
1.	<i>Non-residential buildings</i>
2.	<i>Residential premises (apartments, houses)</i>
<b><i>Alcoholic products</i></b>	
3.	<i>Vodka</i>
4.	<i>Wine</i>
5.	<i>Cognac</i>
6.	<i>Beer</i>
7.	<i>Alcohol</i>
<b><i>Petroleum products</i></b>	
8.	<i>Gasoline</i>
9.	<i>Diesel</i>
10.	<i>Compressed gas</i>
11.	<i>Liquefied gas</i>
<b><i>Building materials</i></b>	
12.	<i>Cement</i>
13.	<i>Tree</i>

14.	<i>Chipboard</i>
15.	<i>LMDF</i>

## 5. Market price (market value) provisions – ROK, US and UK

### A. Republic of Korea

#### i. The concept of market price in the tax laws

Each of the Inheritance Tax and Gift Tax Act, the Corporate Tax Act and the Value Added Tax Act has its own provisions on market price for its own specific purposes.

The 3 acts do not have any definition clause for the concept of ‘market price’. The Income Tax Act applies the provisions of the Inheritance Tax and Gift Tax Act and the Corporate Tax Act *mutatis mutandis*.

In the Inheritance Tax and Gift Tax Act, the market price provision is prepared for the valuation of the inherited or gifted properties. In the 3 other acts it works as a tool concept to fight against tax avoidances through the transactions between related parties.

The Unfair Transaction Adjustment Provision is stipulated in the 3 other acts as a specific anti-avoidance provision which regulates the tax avoidance in use of transactions between related parties.<sup>27</sup> Among those 3 acts the provisions for this purpose are intertwined and use not a few *mutatis mutandis* provisions.

---

<sup>27</sup> (Example) Income Tax Act Article 101 (Calculation of Capital Gains by Unfair Acts)

- (1) If it is deemed that any act or calculation of a resident with capital gains reduces the burden of taxation on such income unfairly due to transactions with a person related to the resident, the head of a tax office or the commissioner of a regional tax office having jurisdiction over the place for tax payment may calculate the amount of income in the relevant taxable period, irrespective of such act or calculation of the resident.  
<Amended by Act No. 11146, Jan. 1, 2012>
- (2) ...

ii. Comparison of the concept of market price and the concept of arm's length price

- Commonalities

- The non-existing virtual price is used as the standard to determine the tax base both for the Unfair Transaction Adjustment through the use of market price provision and the transfer pricing taxation through the use of arm's length price provision.
- The original form of transfer pricing taxation provisions started in the Unfair Transaction Adjustment Provision.

- Differences

- The Unfair Transaction Adjustment Provision requires the "unfair decrease of tax liability" for its application while the transfer pricing taxation provision does not.
- The former is in principle only applied to domestic transactions.

B. The U.S.

i. General Overview of the US Tax Framework

The tax system in the US is a combination of statutory and regulatory framework which are enhanced by (and sometimes complicated by) judicial interpretations of the provisions. Accordingly, although this paper addresses mostly the relevant statute and regulations, a complete analysis of the relevant US tax provisions would also include a review of related court cases addressing the same provisions.

The Internal Revenue Code ("Code" or "IRC")<sup>28</sup> is the domestic portion of the federal statutory tax law in the United States and covers all revenue related provisions, including Income Taxes, Estate and Gift Taxes, Employment Taxes, etc. The Treasury Regulations

---

<sup>28</sup> Title 26 of the United States Code.

("Regulations") are the tax regulations that interpret the Code, which are issued by the Department of Treasury (comprising the Internal Revenue Service ("IRS")). The IRS also publishes revenue rulings and revenue procedures that provide further IRS interpretations of the Code or Regulations and/or guidance for more specific situations.

As a general matter, the overall structure of the US tax statutory and regulatory provisions is that the general principle is given and then specific examples and/or exceptions or modifications to the general provision are provided to address specific issues or abuses. The provision of the general principle is helpful because the principle provides the overall framework for what may or may not be permissible if there are no specific provisions to address a particular situation.

## ii. Overview of Fair Market Value Concept

### ● Principle/Definition

The term "fair market value" is used throughout the Code<sup>29</sup> and the Treasury Regulations thereunder. The various provisions that reference the fair market value ("FMV") of property or services received include the Income Tax provisions, such as those dealing with corporate reorganizations, allocation of purchase price of a business to assets, stock dividends, partnerships, general deductions, as well as Employment Tax provisions, such as compensation in kind, and Estate and Gift Tax provisions.<sup>30 31</sup>

---

<sup>29</sup> Reference is to the Internal Revenue Code of 1986, as amended.

<sup>30</sup> Although reference is made to "Estate and Gift Taxes", there are separate statutory and regulatory provisions for estate taxes (IRC sections 2001-2201) and for gift taxes (IRC sections 2501-2524). However, for purposes of the FMV discussion herein, the provisions are generally identical.

<sup>31</sup> The specific areas in which the taxpayer needs to determine the fair market value of property or services received, include the provisions dealing with compensation in kind for services provided under IRC section 61 (Definition of Gross Income) and section 83 (Property Transferred in Connection with Performance of Services) and the regulations thereunder; defining the capital gain or loss from property transactions under IRC section 1001(b) (Determination of Amount of and Recognition of Gain or Loss) and the regulations thereunder; and IRC section 1060 and the regulations thereunder requiring allocation of the purchase price of a business to assets other than goodwill and going concern value in proportion to their fair market values.

Although frequently referenced throughout the Code and the Regulations, the term is not defined by the Code itself and the Regulations themselves do not provide definitions in all contexts. The definition of FMV was first provided in the Treasury Regulations, and additional guidance most fully developed in the context of Estate and Gift Taxes. Fair market value is defined as “the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.”<sup>32</sup>

It should be noted that, although the principle and definition of fair market value provided in the Estate and Gift Tax context have generally been adopted for taxation purposes, there may be slight differences in specific provisions or the manner of implementation, e.g., the types of valuations methods used to determine the fair market value, in other areas of taxation. These differences in the FMV guidance often reflect the different context in which the term FMV is being applied and the different considerations that the need to take into account. These considerations include:

- i. Context in which FMV concept is being applied
- ii. Object of FMV analysis
  - a. Specific asset
  - b. Specific transactions
    - i. One time?
    - ii. On-going?
- iii. Timing of valuation
  - a. At time of transfer?
  - b. At time of death?
  - c. Timing of on-going transactions
- iv. Valuation methods

- Specific Provisions

---

<sup>32</sup> Treas. Reg. section 20.2031-1(b); Treas. Reg. section 25.2512-1.

## Fair Market Value for Estate and Gift Taxes

The definition of fair market value under the Estate Tax Regulations is:

*The price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includible in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate... All relevant facts and elements of value as of the applicable valuation date shall be considered in every case. (Emphasis added)*<sup>33</sup>

The analysis of the FMV is not mechanical and fixed; rather as the Regulations above provide, the analysis will be flexible, taking into account the facts and circumstances of the relevant situation.

The Estate Tax Regulations provide valuation methodologies for specific asset classes, including for stocks and bonds, interests in businesses, shares in an open-end investment company.<sup>34</sup>

Generally, the beginning point of an FMV analysis is the price of the asset in the open market. For instance, the Estate Tax Regulations provide that in general, if there is a market for stocks or bonds, on a stock exchange, in an over-the-counter market, or otherwise, the mean between the highest and lowest quoted selling prices on the valuation date is the fair market value per share or bond.<sup>35</sup> The Regulations provide guidance on what constitutes a “selling price,” how to determine if there is a “market,” how to take into

---

<sup>33</sup> Treas. Reg. section 20.2031-1(b).

<sup>34</sup> Treas. Reg. section 20.2031-2 through 20.2031-9.

<sup>35</sup> Treas. Reg. section 20.2031-2(b).

account special circumstances, etc.

However, the regulations also acknowledge that there may be many cases where the market valuations may not be available because the requirements that define the market may not be satisfied. Accordingly, the regulations sometimes provide alternative guidance for how to determine the FMV. For instance, the regulations provide guidance for how to determine the fair market value where there is no public market for a stock and no other actual sales data by setting forth a number of factors that must be considered in applying the willing buyer-willing seller standard to determine fair market value.<sup>36</sup> These factors include:

- The company's net worth, prospective earning power, and dividend-paying capacity;
- The goodwill associated with the business;
- The economic outlook of the particular industry;
- The company's position in the industry;
- The company's management;
- The degree of control represented by the block of stock to be valued;
- The value of actively traded securities of corporations engaged in similar lines of business;
- Any proceeds of life insurance policies payable to or for the benefit of the company;
- Any restrictions or options on the sale of such securities;
- “Other relevant factors.”<sup>37</sup>

Closely held corporations are, by definition, corporations of which the shares are owned by a relatively limited number of stockholders. Accordingly, there may never be an established market for these shares, and in most instances, there will rarely be bid and asked prices or actual third-party sales that would represent an ascertainable basis for determining the fair market value of the stock under the rules generally applicable to

---

<sup>36</sup> Guidance on alternative means of determining the FMV in the absence of market data for other asset classes may not be as fully developed as those for stocks. In such situations, the taxpayer usually extrapolates from the existing guidance of other areas/asset classes.

<sup>37</sup> Treas. Reg. section 20.2031-2(f).

publicly traded stock. Fortunately, the IRS issued guidance regarding the general nature of the valuation process with respect to closely held stock.

In a revenue ruling,<sup>38</sup> the IRS provided the factors and methods to be used for valuing closely held securities. The eight “intrinsic factors” that must be considered in determining value are:

- The nature of the business and the history of the enterprise from its inception;
- The general economic outlook and the condition and outlook of the specific industry in particular;
- The book value of the stock and the financial condition of the business;
- The company's earning capacity;
- Its dividend-paying capacity;
- The existence or absence of goodwill or other intangible assets;
- Sales of the stock and the size of the block of the stock to be valued; and
- The market price of stocks of corporations engaged in the same or similar lines of business having their stock actively traded in the free and open market, either on an exchange or over-the-counter.

Although the guidance is provided in the context of closely held stock for estate and gift taxes, the factors can be used to determine the FMV of shares in a closely held corporation for other tax areas as well.

### C. The U.K.

#### i. Taxation of Chargeable Gains Act 1992

---

<sup>38</sup> Rev. Rul. 59-60, 1959-1 C.B. 237.



- (1) In this Act “market value” in relation to any assets means the price which those assets might reasonably be expected to fetch on a sale in the open market.*
- (2) In estimating the market value of any assets no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at one and the same time.*
- (3) Subject to subsection (4) below, the market value of shares or securities listed in The Stock Exchange Daily Official List shall, except where in consequence of special circumstances prices quoted in that List are by themselves not a proper measure of market value, be as follows—*
  - (a) the lower of the 2 prices shown in the quotations for the shares or securities in The Stock Exchange Daily Official List on the relevant date plus one-quarter of the difference between those 2 figures, or*
  - (b) halfway between the highest and lowest prices at which bargains, other than bargains done at special prices, were recorded in the shares or securities for the relevant date, choosing the amount under paragraph (a), if less than that under paragraph (b), or if no such bargains were recorded for the relevant date, and choosing the amount under paragraph (b) if less than that under paragraph (a).*
- (4) Subsection (3) shall not apply to shares or securities for which The Stock Exchange provides a more active market elsewhere than on the London trading floor; and, if the London trading floor is closed on the relevant date, the market value shall be ascertained by reference to the latest previous date or earliest subsequent date on which it is open, whichever affords the lower market value.*
- (5) In this Act “market value” in relation to any rights of unit holders in any unit trust scheme the buying and selling prices of which are published regularly by the managers of the scheme shall mean an amount equal to the buying price (that is the lower price) so published on the relevant date, or if none were published on that date, on the latest date before.*
- (6) The provisions of this section, with sections 273 and 274, have effect subject to Part I of Schedule 11.*

- (1) *The provisions of subsection (3) below shall have effect in any case where, in relation to an asset to which this section applies, there falls to be determined by virtue of section 272(1) the price which the asset might reasonably be expected to fetch on a sale in the open market.*
- (2) *The assets to which this section applies are shares and securities which are not quoted on a recognised stock exchange at the time as at which their market value for the purposes of tax on chargeable gains falls to be determined.*
- (3) *For the purposes of a determination falling within subsection (1) above, it shall be assumed that, in the open market which is postulated for the purposes of that determination, there is available to any prospective purchaser of the asset in question all the information which a prudent prospective purchaser of the asset might reasonably require if he were proposing to purchase it from a willing vendor by private treaty and at arm's length.*

ii. Inheritance Tax Act 1984

*PART VI VALUATION*

*CHAPTER I GENERAL*

160 *Market value.*

*Except as otherwise provided by this Act, the value at any time of any property shall for the purposes of this Act be the price which the property might reasonably be expected to fetch if sold in the open market at that time; but that price shall not be assumed to be reduced on the ground that the whole property is to be placed on the market at one and the same time.*

iii. Income Tax (Trading and Other Income) Act 2005

The following chapter of ITTOIA 2005 stipulates provisions that include the concept of 'market value'.

*Part 2 Trading income*

*Chapter 6 Trade profits: receipts,*

*Chapter 8 Trade profits: herd basis rules,*

*Chapter 10A Leases of plant or machinery: special rules for long funding leases,*

*Chapter 11 Trade profits: other specific trades,*

*Chapter 12 Trade profits: valuation of stock and work in progress on cessation of trade,*

*Chapter 16A Oil activities*

*Part 4 Savings and investment income*

*Chapter 8 Profits from deeply discounted securities,*

*Chapter 9 Gains from contracts for life insurance etc.*

iv. Value Added Tax Act 1994

- *The following sections of VATA 1994 stipulates about 'determination of value'.*

*19. Value of supply of goods or services.*

*20. Valuation of acquisitions from other member States.*

*21. Value of imported goods.*

*22. Value of certain goods.*

*23. Value of supplies involving relevant machine games*

*23A. Meaning of "relevant machine game"*

## **6. Anti-avoidance provisions -ROK, U.S., U.K.**

### A. Republic of Korea

The Article 14 of the National Tax Basic Act is understood as a quasi-general anti-avoidance rule which resembles the step transaction rule developed in the U.S. as one of common law principles. It does not require the concept of 'market price' for its application.

*National Tax Basic Act Article 14 (Substantial Taxation)*

*(1) If any ownership of an income, profit, property, act or transaction which is subject to taxation, is just nominal, and there is other person to whom such income, etc., belongs, the other person shall be liable to pay taxes and tax-related statutes shall apply, accordingly.*

*(2) The provisions pertaining to the computation of tax base in the tax-related statutes shall be applied to a substantial income, profit, property, act or transaction, regardless of its title or form. <Amended on Jun. 9, 2020>*

*(3) Where it is recognized as a method of receiving unfair benefit pursuant to this Act or tax-related statutes, such as an indirect method through a third party or a method of involving two or more activities or transactions, this Act or tax-related statutes shall apply as if the relevant parties have made a direct transaction or have conducted an activity or transaction in succession, according to the economic substance of such activity or transaction.*

As one of the many specific anti-avoidance provisions, the Unfair Transaction Adjustment Provision in the Income Tax Act needs the application of concept of ‘market price’.

*Income Tax Act Article 101 (Calculation of Capital Gains by Unfair Acts)*

*(1) If it is deemed that any act or calculation of a resident with capital gains reduces the burden of taxation on such income unfairly due to transactions with a person related to the resident, the head of a tax office or the commissioner of a regional tax office having jurisdiction over the place for tax payment may calculate the amount of income in the relevant taxable period, irrespective of such act or calculation of the resident. <Amended by Act No. 11146, Jan. 1, 2012>*

*(2) ...*

B. The U.S.

The US does not have statutory general anti-abuse provisions that address fair market value. Rather, most of the anti-abuse doctrines have been developed by case law and the focus of these judicial doctrines is on the disallowance of specific tax benefits sought by the

taxpayers in entering into transactions. Among the judicial anti-abuse doctrines used to disallow the tax results of transactions are:

- Economic Substance Doctrine<sup>39</sup>: Generally, the doctrine provides that the tax results of a transaction can be disregarded if the transaction lacks economic substance (i.e., profit potential) or a business purpose other than the tax benefits to be derived from the transaction.
- Substance over Form Doctrine: The substance-over-form doctrine provides that the substance rather than the form of a transaction governs when determining the tax consequences of a transaction.
- Sham Transactions Doctrine: In some cases, taxpayers not only have adopted transaction forms that differ from the true substance of the underlying transactions but also have presented false or incomplete facts about those transactions. The IRS may invoke the sham-transaction doctrine in such cases, declare that a particular transaction or some part of it is merely a sham, and disallow the associated tax benefits. A relevant factor in identifying a sham transaction has been the absence of arm's-length negotiations over price and the relationship between the stated price and the fair market value of the underlying transaction.
- Step Transaction Doctrine: Under the step-transaction doctrine, separate transactions or steps may be treated as a single, unified transaction for tax purposes. Courts apply the step transaction doctrine in cases where taxing the individual steps of a transaction rather than the transaction as a whole would eviscerate the substance of the transaction resulting in improper tax treatment of the whole transaction. As a result, such individual steps would be disregarded for tax purposes, and the transaction would be taxed as a single unified transaction as opposed to separate steps.

---

<sup>39</sup> Although initially developed in case law, the economic substance doctrine was ultimately codified into the IRC section 7701(o). The statute provides that in the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if (a) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and (b) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.

### C. The U.K.

The U.K. introduced a general anti-avoidance provision by the Finance Act 2013 in February 2013(Section 206~215). Such provisions do not apply any statutory market price provisions.

## 요약문

본 연구는 현행 우즈베키스탄세법상 이전가격세제 및 기타 과세조항에 적용되는 시가규정을 주요국의 입법례와 비교하여 검토하고 개정안을 제안하기 위한 것이다.

우즈베키스탄의 현행 세법은 이전가격세제상의 정상가격, 즉 시장가격에 관한 규정을 주요 세목의 조세 부과에 있어서 국내외 모든 거래에 대해 적용하도록 규정하고 있다. 우즈베키스탄의 이전가격세제상 정상가격산정 규정은 OECD TP Guideline에 부합하도록 규정되어 있다. 이전가격세제의 적용대상이 되는 거래는 특수관계자 간 거래에 한정되지만, 정상가격산정을 위해 도입되고 규정된 이전가격세제상의 시가는 모든 국내외 거래에도 적용될 수 있다. 현재 STC(State Tax Committee)는 정상가격 외에 각 세목의 조세 부과를 위해 매월 지역별로 각 재화 및 용역에 대한 시장가격을 산정하여 공표하고 있다.

본 연구에서는 주요국 입법례의 비교법적 분석을 위해 한국과 영국, 미국, 호주, 캐나다의 세법을 검토하였다. 일반적으로 법령에 적합한 적용지침이 잘 규정되어 있는 경우에는 정상가격규정을 재화나 용역의 평가에 활용할 수 있다. 현행 우즈베키스탄 세법을 종합적으로 검토해보면, 국내외 특수관계자 간 거래에 적용되는 이전가격세제상의 정상가격 규정은 제한적으로 적용되어야 할 것으로 보인다.

동 규정들을 다른 과세목적으로 사용하기 위해서는 우선 그러한 정상가격산정 규정의 적용요건과 효과를 규정하는 별도의 규정을 마련할 필요가 있을 것이다. 그리고 현행 세법상 통상적 조세 회피방지규정을 운영하기 위한 시가 규정은 필요하지 않은 것으로 판단된다. 또한 상속세 및 증여세가 도입되어 있지 않아 그것을 위한 시가 규정도 필요하지 않은 것으로 판단된다.

현행 우즈베키스탄 세법상 국무회의 결의(Cabinet Resolutions)에 의해 공표된 재화 및 용역의 가격 리스트에 대해서는 국제적 이전가격세제 원칙에 부합하는지 여부를 신중하게 검토할 필요가 있다. 또한 탈세, 특히 부가가치세 탈루를 방지하기 위해서는 정부가 가격제도를 운영함에 있어 세무 조사를 통한 사실 확인 및 '정당한 사유(legitimate business reason)'에 대한 입증책임의 인정제도를 두는 것이 필요하다.