

Flash Report

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Sales below cost to related parties



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The Highest Administrative Court of Ukraine issued a clarification on disallowing sales below cost to related parties

The Highest Administrative Court of Ukraine (the Court), considering the Naftogaz vs. Large Taxpayers Office court case, issued Information Letter № 1386/12/13-13 dated 10 October 2013 (the Letter) on how Article 153.2.6 of the Tax Code of Ukraine shall be applied.

The position of the Court is that the expenses in the CPT tax accounting incurred by a taxpayer in connection to the sale of goods to related parties **may not exceed the income from such sale**. “Expenses” shall include all expenses that are subject to tax accounting in connection with sale activities, including the cost of the goods, and not just the distribution expenses. Expenses exceeding the income from the sale of goods and services to the related party shall not be deducted.

Although the Letter clarifies Article 153.2.6 of the Tax Code of Ukraine, which is not effective after 1 September 2013, it also increases the risk that the tax authorities will challenge sales below cost to related parties that were conducted prior to this date.

We will continue to monitor this issue and update you as soon as more information becomes available.