

Reporting new core activity (NACE code) to tax authority (3/18/17)

One of the general obligations under the Taxes and Duties Act requires that a taxpayer who conducts or starts an economic activity should periodically update or provide information about his core activity. This article explores how this obligation should be carried out.

Statutory requirements

Section 15(1)(15) of the Act states that a taxpayer should give the State Revenue Service (SRS) information about his core activity through the SRS Electronic Declaration System (EDS).

Core activity disclosure

On 13 October 2015, amendments to section 15(1)(15) of the Act came into force, under which –

- a taxpayer who conducts an economic activity is generally required by 1 May to check via the EDS and give the SRS information about his core activity if it changed in the past tax year and is now inconsistent with the information held by the SRS;
- a taxpayer who starts an economic activity is generally required to give the SRS information via the EDS within one month after his economic activity was registered with the Enterprise Registry or the SRS (his core activity may also be stated when registering his economic activity with the SRS).

An information sheet posted on the SRS website says that –

- a registered taxpayer's core activity is determined according to the largest percentage of his total revenue for the tax year;
- for a taxpayer who starts an economic activity, the core activity is determined according to his revenue forecast.

This means that the taxpayer should make annual checks to see whether his economic activity that generated income in the past tax year fits the NACE code describing his core activity and should notify the SRS of any change.

An appropriate NACE code can be selected from the updated classification posted on the Central Statistical Office's website. The taxpayer can provide information about his core activity via the EDS (*Documents/ From Template/ Taxpayer Registration Data Change Templates/ Notice of Taxpayer's Core Activity.*)

The obligation to give true information

Failure to provide information attracts an administrative penalty under the Administrative Offences Code: section 159.9 for giving false information and section 165.2 for giving incorrect particulars.

In practice, though, we have not seen the SRS impose an administrative penalty on a taxpayer after detecting such an offence. To have the taxpayer update his core activity, the SRS will send a warning asking him to file an adjustment within a specified time limit.

Declaring an inappropriate core activity may put the taxpayer to various risks such as transfer pricing risk. When it comes to examining a transaction between related parties for compliance with the arm's length standard, and the company under review has no internal comparables, then various databases will be used for selecting unrelated comparable companies against a set of criteria to compare prices applied in their

transactions. This approach relies on the company's industry (core activity) as a key comparability criterion.

It follows that –

- the set of comparable companies may include companies that have stated an inappropriate core activity, which may significantly affect the arm's length range of prices;
- the taxpayer may have to give the SRS detailed explanations about his real core activity.