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Application of Article 33 of Income Tax Law



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Circular 2016/15, which was issued by the Tax Department on November 24 2016, clarifies the application of Article 33 of the Income Tax Law 2002 following the amendments made by Law 187(I)/2015. Article 33 allows the tax authorities to adjust transactions between related parties on terms which, in the opinion of the authorities, deviate from those which would apply in similar transactions between independent enterprises on an arm's-length basis.

The original Article 33 allowed the tax authorities to make an upward adjustment to the taxable profit of an enterprise only in order to tax a profit that should have accrued to the enterprise on an arm's-length basis.

The amending law – which was adopted in December 2015 and is effective for the 2015 tax year and subsequent years – provides that if the taxable profits of a resident enterprise or of a permanent establishment of a non-resident enterprise are increased to adjust a transaction with another resident enterprise or permanent establishment of a non-resident enterprise on an arm's-length basis, the taxable profits of the second enterprise or permanent enterprise should be reduced by a corresponding amount.

The adjustments on an arm's-length basis may be proposed by the taxpayers concerned, in which case the Tax Department will accept adjustments for inclusion of the notional additional revenue and the corresponding notional cost that restate the transaction concerned on an arm's-length basis.

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