



Transfer Pricing in Kazakhstan
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TP rules in Kazakhstan: highlights

All cross-border transactions are subject to TP control in Kazakhstan (both between related and third parties)



Background

- The TP Law was firstly implemented **in 2001**
- The current TP Law (Law No. 67-IV dated 5 July 2008 On Transfer Pricing) entered in force on **1 January 2009**
- BEPS related amendments were introduced from 2018.



Other aspects

- TP advanced pricing agreement (APA) – stipulated by the TP Law, but rarely applied
- Pricing methodologies – developed for particular industries (oil, uranium and titanium extraction and others)
- TP audits are usually performed as a part of tax and customs audits, as well as based on the results of monitoring of transactions.



Controlled transactions in Kazakhstan:

- all international business operations («IBO» or cross-border transactions («CBT»)), **irrespective of whether they are concluded with related parties or third parties** and
- **certain domestic transactions** “directly linked to subsequent cross-border transactions” (subject to certain criteria being met)

The term “cross-border transactions” means:

- the import and export of goods
- transactions involving work performed or services provided where one of the parties is a non-resident operating in Kazakhstan without creating a permanent establishment
- transactions involving the sale of goods, performance of work, and/or provision of services by Kazakhstan residents outside of Kazakhstan.

For the purposes of Local File, controlled transaction is defined as:

- a transaction concluded by a Local Entity with **related party** subject to transfer pricing control in accordance with the TP Law.



Control methods

Monitoring report

TP documentation

Three-tiered documentation

Tax audits

Subject to control

Largest taxpayers subject to tax monitoring

All taxpayers


Members of multinational enterprises (MNE)

All taxpayers

(1) Закон РК № 67-IV от 5 июля 2008 года «О трансфертном ценообразовании»

Matrix of TP requirements in Kazakhstan

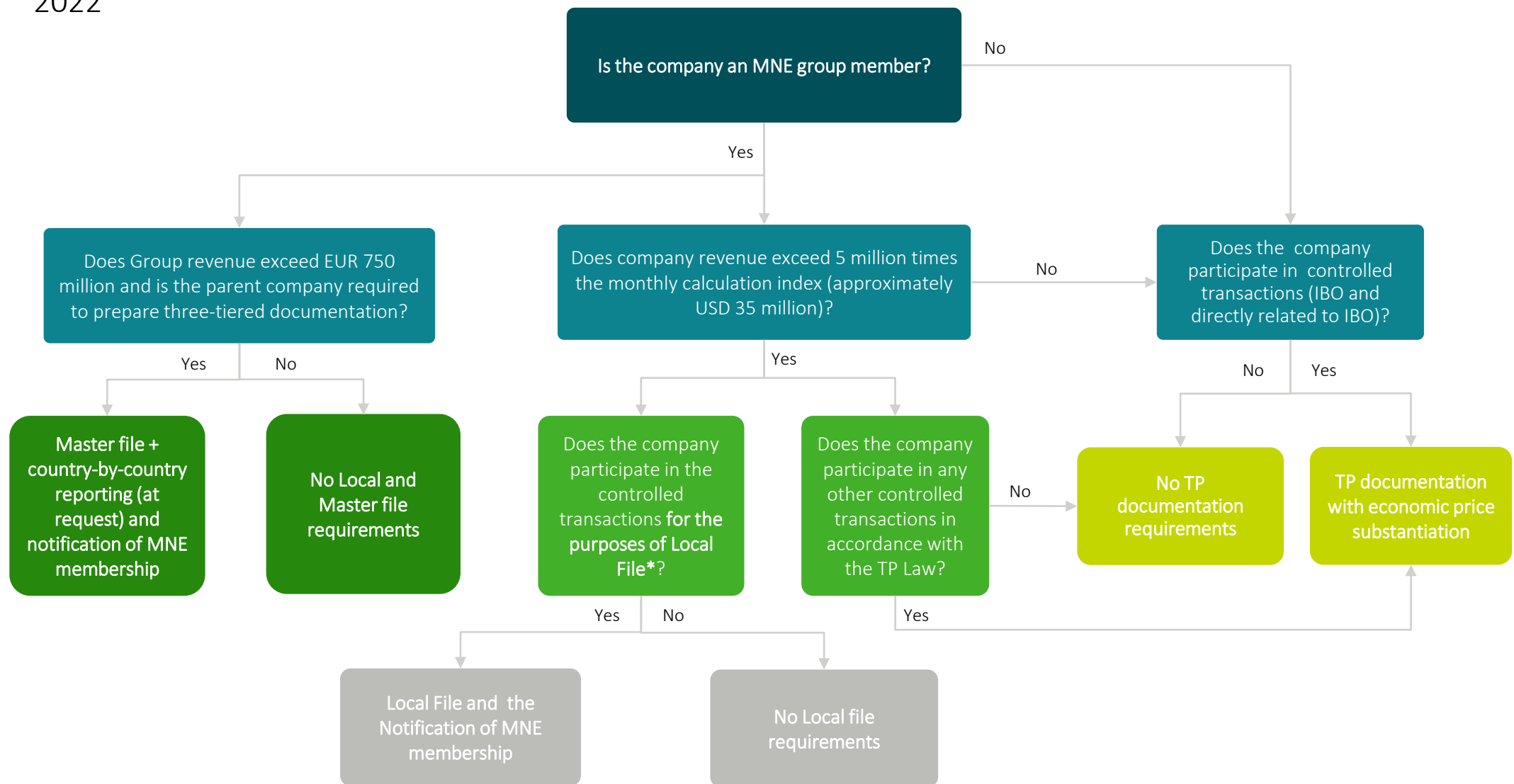
TP Law stipulates six different types of reports

| Report type | Subject to control | Content | Period | Deadlines and submission procedure | Language |
|--------------------------------|---|--|----------------|---|---|
| TP documentation | All taxpayers | Economic substantiation of prices for IBO, and transactions related to IBO | Calendar year | Submitted by request (within 90 days) or during a tax audit | |
| TP Monitoring report | Largest taxpayers subject to tax monitoring | Transactions subject to monitoring | | Obligatory submission by 15 May of the year following the reporting year | |
| Notification of MNE membership | | Information about MNE member | | Obligatory submission by 1 September of the year following the reporting year | Kazakh or Russian |
| Local file | | Controlled transactions with related parties | Financial year | Obligatory submission within 12 months of the reporting financial year | |
| Master File | MNE members | | |  <i>If the company's financial year end on 31 December, then the report is submitted by 31 December of the next year</i> | |
| Country-by-country reporting | | Information about MNE group activities | | Submitted by request (within 12 months) <ul style="list-style-type: none"> For MNE ultimate or surrogate parent entity – Kazakhstan residents: obligatory submission within 12 months of the reporting year. Other MNE members: by request within 12 months of the moment a request is received | Kazakh or Russian / English if the parent entity is a Kazakhstan non-resident (notary certified copy is sufficient) |

If you have a presence in other jurisdictions we recommend making sure of compliance with three-tiered documentation requirements, to avoid significant fines and criminal liability as set out in many jurisdictions

Three-tiered documentation – your actions

MNE members will prepare and submit a local file in Kazakhstan by 31 December 2023 for Financial Year 2022



**A controlled transaction for the purposes of Local File reporting is a material category of controlled transactions with related parties, the total amount of income / expenses and (or) liabilities in the reporting financial year is at least 250,000 MCI as of January 1 of the reporting financial year (about \$1,650,000).*

Three-tiered documentation - defining the perimeter of the international group

MNE group participants are subject to the three-tiered documentation requirements



Three-tiered documentation: key dates

- 2016/ Country-by-country reporting introduced retrospectively in Kazakhstan
- 2018/ Three-tiered documentation requirements introduced into the TP Law
- 2019/ Local and master file requirements became effective
- 2020/ Local file should be submitted for the first time by 31 December 2020

We recommend defining MNE group constituents according to the TP Law since it deviates from that established under OECD Action plan 13



Consequences of non-compliance with TP requirements

| | | |
|----------------------------|--|--|
| Fines in Kazakhstan | Failure or refusal to provide documentation | USD 3 300 approximately |
| | Actions (or lack of action) committed repeatedly | USD 6 600 approximately |
| | Understatement of tax liabilities | Up to 80% of additionally accrued tax + interest + criminal / administrative liability |

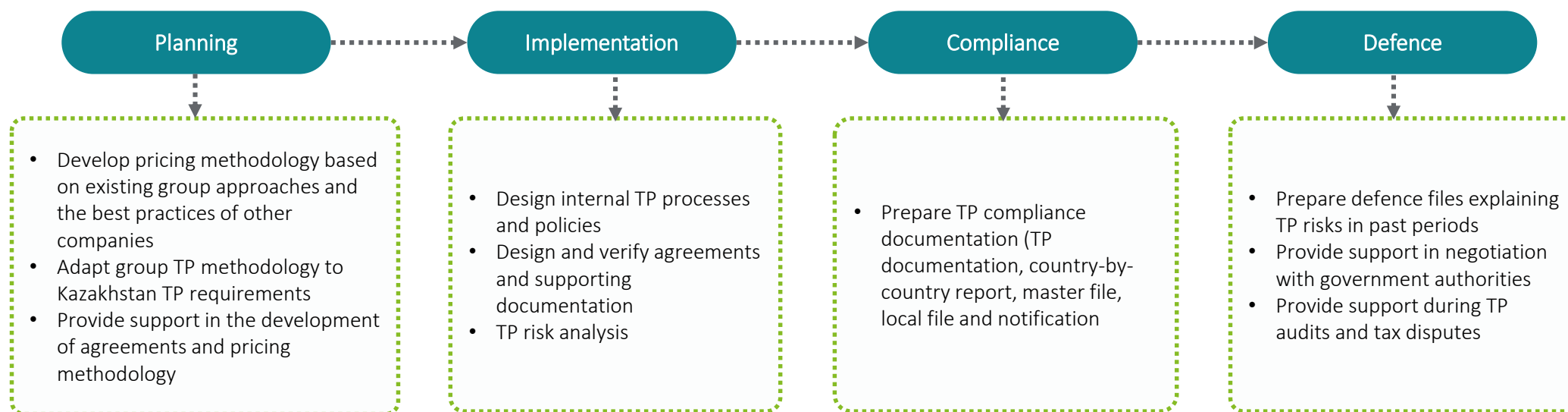
Key TP differences: Kazakhstan, Russia and OECD countries

A wider control concept, strict hierarchy of methods and sources of information distinguish TP rules in Kazakhstan from most jurisdictions





| | Kazakhstan | OECD |
|------------------------|--|--|
| Control | All international business operations (cross-border transactions), as well as some transactions within the Republic of Kazakhstan. For Local File purposes - IBOs with related parties. | Transactions between interrelated parties, in most countries – cross-border transactions |
| TP methods | A strict hierarchy of pricing methods, where The Comparable Uncontrolled Price (CUP) method has the highest priority | The most appropriate method |
| Adjustments | Downward adjustments are not permitted in Kazakhstan | Adjustments are permitted |
| Legislation sources | TP legislation. OECD references are acceptable, but non-binding in Kazakhstan | OECD + Local TP rules |
| Requirements | For MNE: Country-by-country reporting, master file, local file For non-MNE: TP documentation, TP monitoring | Defined by local legislation |
| Sources of information | A strict hierarchy of sources of information | Defined by local legislation |

How we can help

We will be happy to assist you; from the planning stage to the development of a defense strategy



Why choose the Deloitte Kazakhstan TP team?

-  **Synergy**
Strong cooperation with international TP experts allows us to provide results that would work not only in Kazakhstan, but worldwide
-  **Efficiency**
We always try to implement existing pricing approaches and methodologies developed at the group level
-  **Most importantly, we are tax specialists**
Our expertise allows us identify tax risks not directly related to transfer pricing, such as
 - the beneficial ownership concept in transactions for IP rights or financial transactions
 - issues related to cost base verification in service transactions
-  **Team that wins**
 - A dedicated transfer pricing team since 2009
 - We have experience supporting our clients during TP audits

Our core team members

Over 12 years of experience in the transfer pricing market



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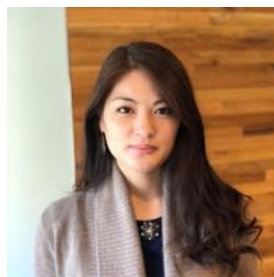
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