



**Transfer pricing regulations  
in Kazakhstan**

Overview and correlation with OECD



## 25 years of Deloitte in Kazakhstan

An ancient Chinese proverb says, “the journey of a thousand miles begins with one step”, and on 14 July 1994, Deloitte took its first step in Kazakhstan by opening an office in Almaty. And now, 25 years later, we are still moving forward, continuing to develop and expand our horizons!

Finding complex solutions, understanding client businesses, presenting innovative approaches to their goals, and extensive professional and sector knowledge all help us perform effectively and serve our clients to the highest level. We are ready to continue as your professional services partner, one that is ready to help your business reach the top!

Thank you for your trust in us and choosing us to be your professional services provider!

# Transfer pricing regulations in Kazakhstan

Kazakh Transfer Pricing Law seeks to protect the tax base of direct or indirect participants of “international business transactions” by setting out series of controls and pricing restrictions to such transactions.

## General overview

Transfer pricing regulations in Kazakhstan are set by the Law № 67-IV “On transfer pricing” dated July 05, 2008 (“TP Law”).

Kazakh transfer pricing regulations apply to the following transactions:

- all cross-border transactions, irrespective of whether they are concluded with related parties or third parties; and
- certain domestic transactions that are “directly linked to subsequent cross-border transactions” (subject to certain criteria being met).

For the above purposes, the term “cross-border transactions” shall mean:

- imports and exports of goods;
- transactions involving the performance of work or provision of services 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 Kazakh residents outside of Kazakhstan.

The TP Law sets out the following control procedures in respect of the mentioned transactions:

- request of annual transaction (monitoring) reports filed with the tax authorities by major taxpayers (named in a specific list);
- requirement to maintain transfer pricing documentation, which should be available for the tax authorities review upon request;
- request of three-tier documentation (if applicable) ;

- mandatory price adjustment for transactions where applied prices do not follow arm's length principles (applies only in situations where such adjustments lead to increase of payable taxes).
- transfer pricing audits;
- other potential control permitted by the law.

### Assessment of arm's length prices

TP Law specifies five pricing methods that should be used for substantiation of arm's length nature of applied prices.

Selection of an applicable method should be in line with a strict hierarchy, as shown below:

- Comparable uncontrolled price method ("CUP");
- Cost plus method;
- Resale price method;
- Profit split method; and
- Transactional net margin method ("TNMM").

Only one pricing method is allowed for any given transaction. Moreover, in order to proceed with less prioritized methods (e.g. TNMM) taxpayers should be able to justify inapplicability of other methods of higher priority.

Taxpayers should use the following sources of information for calculation of the market prices (also in a strict hierarchical order, as shown below):

- Officially recognized sources of information on market prices approved by the Government of Kazakhstan;

- Sources of information on commodity quotes;
- Information from state bodies, authorized bodies of other countries and organizations on prices, differentials, costs, and conditions that affect the deviation of transaction price from the market price;
- Information programs, used for the purposes of transfer pricing, information provided by the parties of the transactions, and other sources of information.

Please also note that Kazakh TP Law establish unfavorable provisions with respect to transactions with the entities registered in low tax jurisdictions (per prescribed list).

### Transfer pricing documentation

Kazakh TP Law states that large taxpayers (in accordance with specific list established by the Government) are subject to monitoring and required to submit monitoring report and a list of supporting documentation to the tax authorities not later than 15th of May of the year following the reporting year.

Further on, all local taxpayers engaged in transactions that are subject to transfer pricing control in Kazakhstan are required to maintain transfer pricing documentation substantiating the arm's length nature of applied prices.

Such documentation could be requested by the tax authorities at any time and, if requested, must be provided within 90 calendar days.

### Advance pricing agreements

Advance pricing agreement ("APA") is a written agreement between the authorized bodies and transaction parties, establishing pricing methodology for any specific transaction to be used for determination of market prices for a specified period of time.

For conclusion of APA local taxpayers are required to submit the following documents to authorized bodies:

- Written notification on conclusion of APA (in any form);
- Copies of statutory and other related documents;
- Copies of contracts for sale and purchase of goods;
- Information on related parties;
- Description of applicable sources of information, pricing method, business strategy and internal pricing policies;
- Other relevant data.



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## Comparison of Kazakh TP Law with OECD Transfer Pricing Guidelines

Though provisions of Kazakh TP Law consider general transfer pricing principles adopted by OECD Transfer Pricing Guidelines, some key differences outlined in a table below should be noted.

At this, having global policies and OECD-compliant documentation in place does not automatically ensure adequate compliance and protection for Kazakhstan transfer pricing purposes.

	OECD	Kazakhstan's TP Law
<b>Scope</b>	Transactions between related parties	All cross-border transactions, and certain domestic transactions that are "directly linked to subsequent cross-border transactions"
<b>Methods of transfer pricing</b>	The most appropriate method	A strict hierarchy of pricing methods exists
<b>APAs</b>	Are widely implemented	No examples of successful use of APA are known
<b>Sources of information for prices</b>	No regulation	A strict hierarchy of applicable sources of information (where officially recognized sources of information should be used in a first place) exists
<b>Adjustments</b>	Adjustments are regulated under local legislations	Tax authorities are entitled to adjust transaction prices
<b>Juridical power</b>	OECD Guidelines have the juridical power in states-members of OECD	OECD Guidelines have no binding effect in Kazakhstan, however, sometimes are referred to by the tax authorities when the resultant analysis would be in favor of the state (rather than taxpayer)
<b>Documentation</b>	Documentation obligation might vary in different jurisdictions.	Kazakhstan's TP Law stipulates certain types of control listed in "Transfer pricing documentation" part of the current article
<b>Applicability of several methods</b>	Possibility to use more than one pricing method	Only one pricing method is allowed for any given transaction

## BEPS requirements

On 25 December 2017, the Kazakhstan tax authorities released final regulations introducing a three-tier documentation requirement (i.e. master file, local file and Country-by-country or CbC report) in accordance with BEPS Action plan 13.

### CbC reporting

Under new CbC reporting rules, which apply retroactively from 1 January 2016, a multinational enterprises (MNE) being a part of MNE group with consolidated revenue for financial year preceding the reporting year of not less than EUR 750 million (or other threshold set in a jurisdiction of ultimate or surrogate parent entities) are subject to CbC reporting requirements.

The MNE's ultimate parent entity, if a resident of Kazakhstan, and a surrogate parent entity (which has been granted by the MNE's ultimate parent entity the right to file CbC reporting) **have an obligation** to submit CbC report within 12 months from the end of reporting period.

Kazakh residents and non-residents (operating in Kazakhstan through a permanent establishment), that are members of the MNE group and are not ultimate or surrogate parent entities **shall submit CbC report upon request** (within 12 months from such request), if any of below conditions is met:

- the MNE's ultimate and surrogate parent entities are Kazakhstan non-residents and they have no obligation to prepare and submit CbC report in their country of residence,
- the MNE's ultimate and surrogate parent entities have failed to submit a CbC report,
- the country of residence of MNE ultimate and surrogate parent entities has not signed an international agreement with Kazakhstan allowing the automatic exchange of CbC reports information,

- the automatic exchange information on CbC reporting between Kazakhstan and the country of residence of MNE ultimate (or surrogate parent entities) has been suspended.

CbC report should be prepared in Kazakh or Russian and submitted in electronic or paper form. The form of CbC report under Kazakh TP Law requires to disclose the same information as Action plan 13 of BEPS plan.

If ultimate parent entity of MNE group is a non-resident of Kazakhstan, CbC report could be submitted in English.

### Master file

Requirement to prepare and submit Master file has been enacted starting from 1 January 2019.

Such requirement may arise for Kazakh members of MNE group provided below conditions are simultaneously met:

- Kazakh members of MNE group have carried out transactions that are subject to transfer pricing control in Kazakhstan during reporting period;
- consolidated revenue of MNE group for the period preceding the reporting one have reached the threshold of EUR 750 mln.

Master file should be submitted to Kazakh tax authorities **upon request** (within 12 months from such request).

Master file should be prepared in Kazakh or Russian and submitted in electronic or paper form. The form of Master file under Kazakh TP Law requires to disclose the same information as Action plan 13 of BEPS plan.

### Local file

Requirement to prepare and submit Local file has been enacted starting from 1 January 2019.

Such requirement may arise for Kazakh members of MNE group provided below conditions are simultaneously met:

- kazakh members of MNE group have carried out transactions that are subject to transfer pricing control in Kazakhstan during reporting period;
- revenue of Kazakh constituent entity for the fiscal year before the reporting year is not less than ~ EUR 30 million.

Local file should be submitted to Kazakh tax authorities within 12 months from the end of reporting period (in electronic or paper form).

Local file should be prepared in Kazakh or Russian and submitted in electronic or paper form. The form of Local file in Kazakhstan is similar to the form under BEPS Action plan 13. However, the information to be disclosed may deviate due to peculiarities of TP control concept in Kazakhstan, hierarchy of methods and sources of information.

### Notification requirement

From 1 January 2018 (i) MNE ultimate parent entities, (ii) MNE surrogate parent entities, or (iii) other MNE members (i.e. a resident or non-resident operating in Kazakhstan through a permanent establishment) with three-tier reporting obligations or requirement to submit CbC report upon request in Kazakhstan are required to notify the Kazakh tax authorities of their participation in MNE group by 1 September of the year following the reporting year.

Kazakh TP rules provides specific form of such notification as well as related submission rules.



# How Deloitte can help

Deloitte is one of the largest professional services firms in the world and a leading global authority on Transfer Pricing.

Deloitte provides a diverse range of services related to Transfer Pricing, including:

- assistance with preparation of Transfer Pricing documentation to substantiate that the pricing is set at arm's length terms for the purposes of Kazakh tax and transfer pricing legislation;
- localization of global Transfer Pricing policies of large multinationals;
- providing guidance on what additional documentation could be put in place to address current risks faced by companies;
- analysis of pricing methods applied for intra-group and cross-border transactions from a Kazakhstan tax perspective;
- comprehensive defense and consulting in case of lawsuits initiated by the tax authorities analysis of corporate structure and requirements to prepare and file CbC reports;
- preparation and submission of notification for MNE group participation;
- preparation and submission of CbC reports, Master and Local files, if required.

Our input into transfer pricing projects takes many forms, for example:

- experience from previous transfer pricing projects, such as developing methodologies for implementing business processes;
- leveraging extensive industry and technical experience available across Deloitte offices around the world;

- our ability to obtain up-to-date information on any changes in tax law from the Tax Committee;
- our participation in professional associations implying meeting and negotiations with the Ministry of Finance and the Revenue Service representatives — in Kazakhstan;
- support of Deloitte offices located in UK, Germany and Netherlands which received international recognition as offices with the best TP practices;
- ability to obtain clarifications from government bodies related to application of TP legislation.

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