

Transfer Pricing: how we can help you

Specialized transfer pricing legislation exists in Kazakhstan since 2001. The current version of the Law on Transfer Pricing №67-IV 3PK is in effect since 2009 (the “TP Law”).

Scope of transfer pricing regulations

Transfer pricing rules apply to cross-border and, under certain circumstances, domestic transactions linked to cross-border transactions.

In practice, transfer pricing audits in Kazakhstan generally cover not only intra-group transactions, but all cross-border transactions, since the rules permit tax authorities to claim a relationship between parties in case the tax authorities suspect deviation of a transaction price from market prices

The arm’s length principle

Basically, the TP Law includes a concept of the arm’s-length principle, but its use is not sufficiently clear considering that transactions can be challenged regardless of the relationship between transactions’ parties. In fact, there have been numerous transfer pricing audits in Kazakhstan where tax authorities imposed tax assessments in respect of unrelated-party transactions.

Transfer pricing methods

Similar to the OECD’s Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (“OECD Guidelines”), the TP Law provides for the five methods for transfer pricing analysis, but their use should be according to the following hierarchy:

- Comparable uncontrolled price (“CUP”) method;
- Cost plus method;
- Resale price method;
- Profit split method;
- Transactional net margin method;

Guidance on application of these methods in the TP Law is very limited, except for the CUP method that is described in detail and is widely applied by the tax authorities in Kazakhstan.

“Three-tiered” Transfer Pricing documentation

According to the amendments introduced in December 2017, multinational enterprise groups (“MNE Group(s)”) conducting business in Kazakhstan are obliged under certain conditions to file a notification of the participation in an MNE Group on an annual basis and the following documents with the Kazakhstan tax authorities:

- a Country-by-Country Report (applied retrospectively from 1 January 2016);
- a Master file (applies from 1 January 2019);
- a Local file (applies from 1 January 2019).

Transfer pricing documentation and monitoring requirements

Transfer pricing documentation could be requested for all transactions subject to transfer pricing rules and should be presented to the tax authorities upon their request in Kazakh or Russian language.

300 largest taxpayers are additionally required to submit to the tax authorities transfer pricing monitoring reports on an annual basis relative to certain types of transactions. Monitoring reports should be prepared using a prescribed tabular format disclosing detailed data on a transaction-by-transaction basis and information that is more common for transfer pricing documentation.

The use of global/regional transfer pricing documentation

In certain aspects, Kazakhstan transfer pricing rules significantly depart from the key principles outlined in the OECD Guidelines.

Key deviations, inter alia, relate to application of the transfer pricing methods. In particular, the TP Law stipulates preference for external comparables over internal comparables, establishes very detailed and restrictive rules for application of the CUP method and contains insufficient guidance for application of the methods testing profitability. That is why tailoring of global/regional transfer pricing documentation for Kazakhstan purposes is required.

Statute of limitation

Starting from 1 January 2020, a general statute of limitation for tax purposes in Kazakhstan is three or five years, depending on the size of the business. But relative to transfer pricing audits, this period can be extended to seven years in case of the initiation of a tax audit.

Our services

Compliance:

- Prepare / localize / update transfer pricing documentation for all types of transactions
- Prepare benchmarking studies for prices, profitability margins, interest rates, royalty
- Prepare monitoring reports, Local File, CbCR and Master File

Day-to-day support:

- Diagnostics of transfer pricing risks
- Develop transfer pricing policies and procedures, train in-house specialists
- Assist with transfer pricing matters ad-hoc

Planning and transformation:

- Structure your business in a tax efficient way
- Align transfer pricing with your business model
- Transform supply chain
- Attribute profit to a permanent establishment appropriately

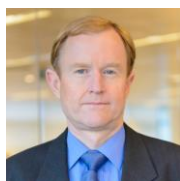
Position defense and dispute resolution:

- Develop defense strategy and argumentation
- Support during tax audits and coordinate positions with tax authorities
- Draft appeals and resolve disputes in court
- Assist with advance pricing agreements and mutual agreement procedures

Our experience

- We assisted a significant number of taxpayers from various industries with preparation of local transfer pricing file for 2019 reported for the first time.
- We conducted a three-day training course for Supreme Court judges on transfer pricing issues applicable to various industries.
- We provided comprehensive assistance to more than ten large oil companies on transfer pricing issues related to the export transactions of crude oil during tax inspections, appeal of the results of tax inspections in the State Revenue Committee, the Ministry of Finance of the RK and courts. The total amount of successfully appealed amount of taxes exceeds USD 45 mln.
- We assisted several oil and mining companies to successfully appeal in courts the assessment of taxes concerning the transfer pricing issues related to the intragroup services, as well as financial services. The amount of assessments was reduced by 100%.
- In 2018 one of the largest MNE Group, ultimate parent of which is a resident of the Republic of Kazakhstan, for the first time has submitted the CbCR pack to the tax authorities in accordance with the new requirements of the TP Law on three-tiered TP documentation. The CbCR pack was prepared with PwC team's help.
- We regularly assist our clients with preparation of transfer pricing monitoring report, TP documentations, benchmarking studies (on such transactions as import / export of goods, financial transactions, royalty, intragroup services) using various databases.

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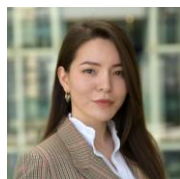
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