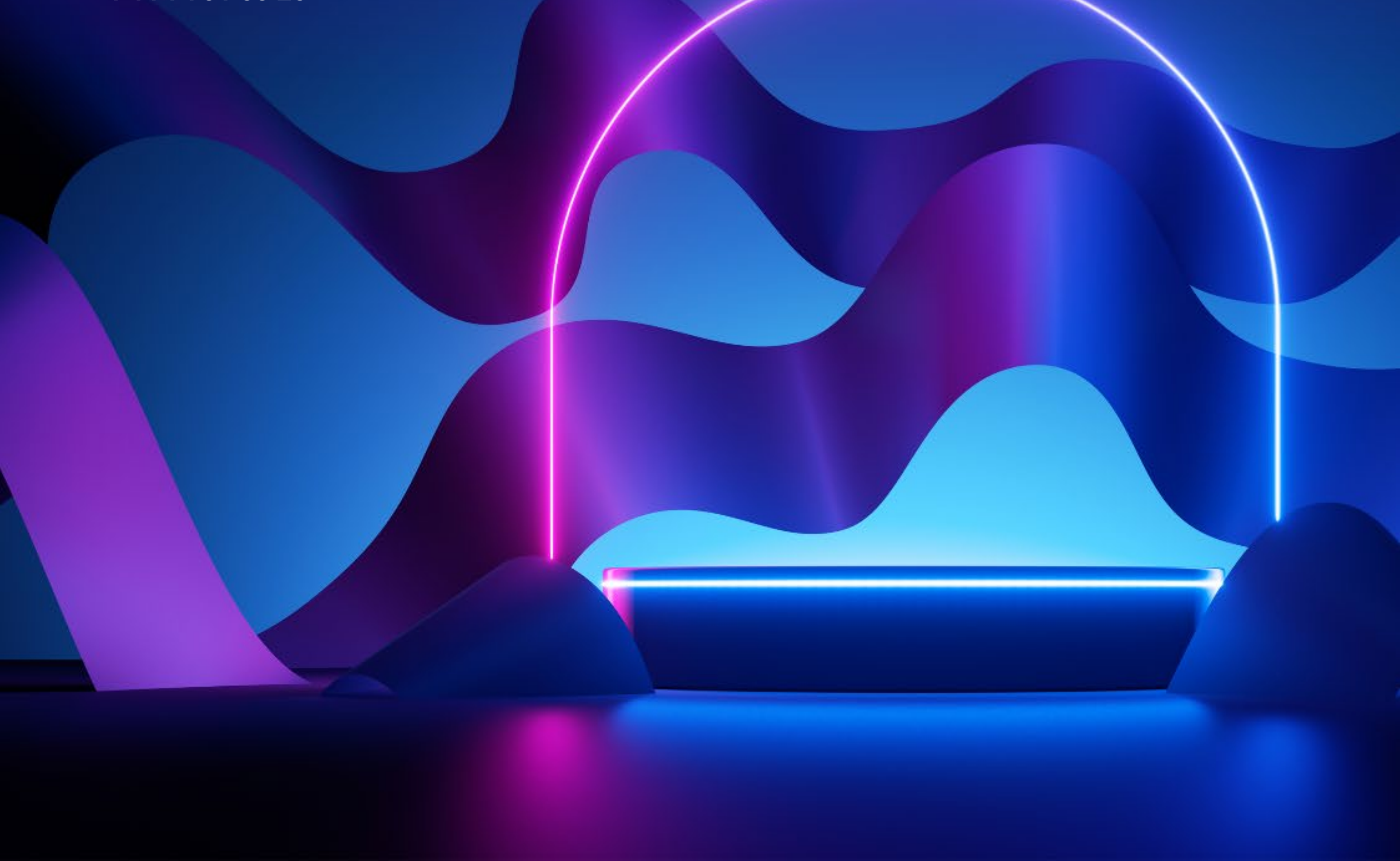
TP Spotlight

Issue №5 - April, 2024.

Review of the amendments to the Law of the Republic of Kazakhstan on transfer pricing

Tax advisory hotline:

+7 771 781 88 28



Dear readers!

On March 25, 2024, the President signed Law of the Republic of Kazakhstan No. 68-VIII “On introducing amendments and additions to certain legislative acts of the Republic of Kazakhstan (hereinafter – «RoK») on transfer pricing issues.” The law comes into force on May 27, 2024.

We offer you an overview of the main provisions of the proposed changes.

Expansion of transfer pricing control

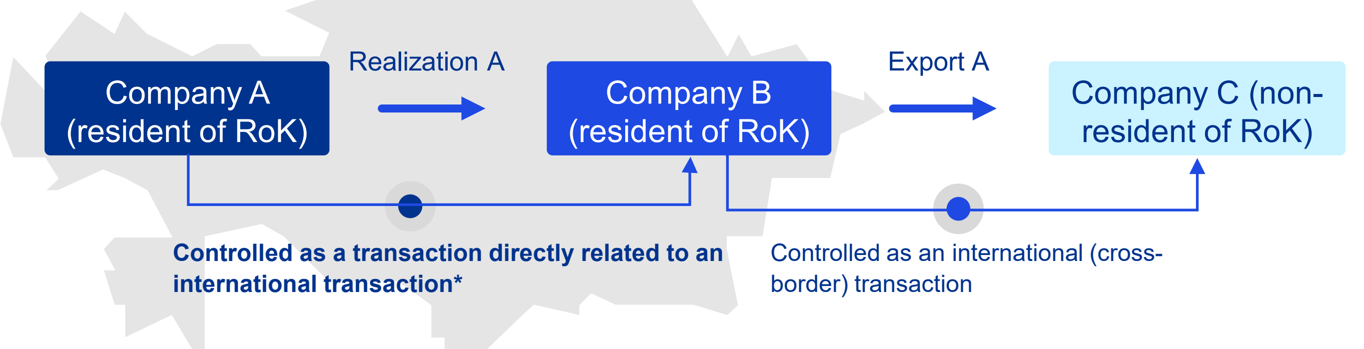
The updated definition of an international business transaction excludes any reference to the subject matter of the transaction in the form of goods, works, or services, i.e. any international business transactions may be subject to control regardless of the subject matter of the transaction (including transactions with shares, securities, participatory interests, and intangible assets).

Moreover, the range of transactions conducted on the territory of the RoK and falling under control has significantly expanded.

Firstly, transactions conducted on the territory of the RoK, directly related to an international business transaction, are now understood as transactions, the subject of which is the subject of an international business transaction.

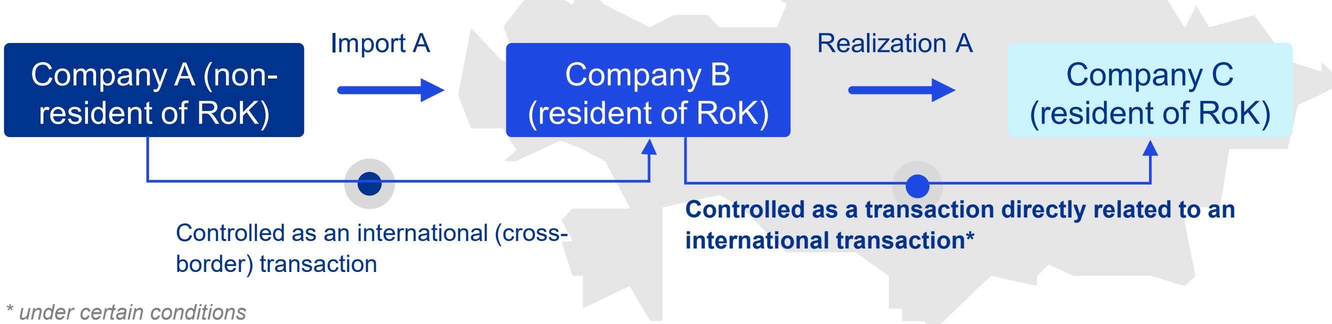
Therefore, to be regarded as related to an international transaction, a local transaction may not only precede (see “Before”) but could also follow the international transaction (see “After").

Before



** under certain conditions*

After (in addition to the transactions on the above scheme)



** under certain conditions*

Secondly, the transfer pricing control extends to local transactions related to international business transactions, if parties to the local transactions are subject to different corporate income tax rates.

The purpose of this change is to control transactions of SEZ participants engaged in foreign economic activities.

Additionally, the amendments abolished the exemption from the transfer pricing control over transactions on commodity exchanges.

Improving the application of methods for determining market prices

The Law abolished the requirement to sequentially apply the market price calculation methods (transfer pricing method hierarchy). Instead, if the comparable uncontrolled price method is not applicable, a taxpayer may apply any of the four remaining methods whichever is most appropriate to the facts and circumstances of the transaction.

The choice of the most appropriate transfer pricing method must be justified. The amendments list the factors that parties involved in a transaction must consider when justifying the chosen method, including the nature of the transaction being performed determined by functional analysis, the availability of reliable information to apply the chosen method, and the degree of comparability of the comparable transactions/companies.

New approaches for calculating the price and profitability ranges

The amendments introduce a new Article 17-1, which establishes the procedure for calculating price, profitability, and margins arm's length ranges. Accordingly, appropriate changes have been made to the definitions of ranges and definitions of profitability (including gross margin on costs and sales, operating margin on costs and sales, and operating return on assets), market profitability, and median value have been introduced.

The new procedure for determining the price and profitability ranges:

- with a single value of the market price and/or market profitability (margin) - the range is determined as equal to such value of the market price or profitability;
- if the number of values of market prices and/or market profitability does not exceed three values, the range is determined from the minimum to the maximum value inclusive;
- if the number of market price and/or market profitability values is greater than or equal to four, the range is determined between the twenty-fifth and seventy-fifth percentile, inclusive, calculated based on the market price or profitability values used.

To calculate the price range, market prices are determined using the same source of information used.

To calculate the profitability range, financial data for three consecutive calendar years immediately preceding the calendar year in which the analyzed transaction was completed is used.

Corresponding changes referring to the newly introduced procedure for determining the price range and profitability range (margin) have been made to the articles establishing the procedure for applying methods for determining market prices.

Transfer pricing adjustment

The adjustment procedure for transactions in which participants are related parties has been clarified, according to which the adjustment of taxable items will be determined based on the median value of the market range.

At the same time, when making an independent adjustment before the start of a tax audit, the amounts of additional charges to the budget are calculated using a price range (profitability, margin) and are subject to payment without penalties by submitting additional tax reporting.

Expanding the definition of Related Parties

The list of criteria has been added, upon fulfillment of which the parties to a transaction are considered related parties. The interconnectedness of such persons is determined by the presence of special economic relationships between the parties and the ability of one party to significantly influence the financial performance of the other party.

For example, such criteria include cases when one person purchases a significant volume of goods (raw materials) or uses the intangible assets of another person, constituting at least 50% of the cost of the finished goods produced by such person.

It should be noted that under certain conditions the re-introduced interconnectedness criteria do not apply to non-residents, for example, if the financial statement of a non-resident or a group, in which the non-resident is a participant is published by IFRS in the public domain and/or is presented on the stock exchanges of member countries of the Organization for Economic Cooperation and Development.

Improving requirements for three-level reporting

The obligation to apply for participation in an international group applies to all participants of the international group who are taxpayers of Kazakhstan. The provision whereby applications are provided only by the RoK resident parent company and transfer pricing reporting group members has been eliminated.

The obligation to submit local reporting is assigned to any taxpayers who, in the reporting financial year, carried out transactions subject to transfer pricing control with related parties (regardless of whether the taxpayer is a member of an international group). The obligation to submit local reporting arises if the taxpayer’s income for the financial year preceding the reporting financial year is at least five million MIF[1].

[1] *Monthly Index Factor established as of 1 January of the year preceding the reporting financial year*

Contacts

Vyacheslav Sosnovsky

Partner

Tax and Legal Department

E: VSosnovskiy@kpmg.kz

Gaukhar Mukasheva

Director

Tax and Legal Department

Transfer pricing

E: GMukasheva@kpmg.kz

kpmg.kz

Document status: Confidential