

# TP NewsFlash

## Transfer Pricing

#1-2018



### Dear Readers,

In this issue, we offer you an overview of the recent legislative changes to Kazakhstan transfer pricing legislation which may affect your activities in Kazakhstan

### Forms on monitoring of transactions have been updated

Decree #728<sup>1</sup> dated December 15, 2017 updated forms on monitoring of transactions "Export of goods (works, services)" and "Import of goods (works, services)". Decree added two new fields 51 "Quotation period" and 51 "Price from source of information" and amended field 40 "Differential" to 40 "Differential (decoded)".

The changes allow the competent authorities obtain more relevant information on controlled transactions at the stage of analysis of monitoring forms, even before requesting information from the taxpayer or start of transfer pricing audit.

The first reporting period for submission of updated forms is 2017. Despite the fact that only the old templates that

were valid until December 15, 2017 are currently available in SONO<sup>2</sup>, after the update, it will be possible to submit updated monitoring forms for 2017 with the inclusion of additional fields.

### Country-by-country report and Notification of Membership in a Multinational Enterprise forms and rules for their completion have been published

On December 25, 2017 Kazakhstan signed a law introducing significant changes to the local transfer pricing reporting procedures for multinational enterprises operating in Kazakhstan, in particular, Country-by-country (CbyC) report and Notification of Membership in a Multinational Enterprise (Notification). Decree #178 dated February 14, 2018 introduced the corresponding reporting forms of CbyC report and Notification.

The content of these forms corresponds to the templates recommended by the Organization for economic cooperation and development (OECD) within the Base Erosion and Profit Shifting (BEPS) package.

We remind you that the first Notification should be submitted no later than September 1, 2018. The duty to submit Notification is imposed on those members of the multinational groups who are subject to the duty or requirement to submit CbyC report.

<sup>1</sup> Decree of the Minister of Finance of the Republic of Kazakhstan dated December 15, 2017 #728 on amendments to the order of the Minister of Finance of the Republic of Kazakhstan dated March 16, 2015 #176 "On approval of the rules for monitoring of transactions"

<sup>2</sup> The Reporting Processing System (in Russian: Система Обработки Налоговой Отчетности)

## Transfer Pricing Tips: intragroup services

BEPS, implementation of which started in Kazakhstan in 2017, pays considerable attention to the pricing of intragroup services. One of the key principles laid down in BEPS is that the cost of intra-group services should be consistent with the benefits received by the customer. How do you ensure that this principle is followed in intragroup transactions on purchase of services by your company? You can start analyzing the following issues:

- Ensure that the mark-up for services is set at the arm's length level. Usually, this requires to conduct a benchmarking study.

- Exclude "shareholder activities"<sup>3</sup> from cost pool of the service provider.
- Ensure a transparent determination of the cost pool of the service provider
- Apply consistent and fair keys allocating overheads.
- Ensure that there is no duplication of services with the functions of the internal departments of the customer.
- Prepare the necessary source documents.
- Make the «benefits test»<sup>4</sup>: often the most important and difficult is to prove that these services are necessary for the customer.

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<sup>3</sup> "Shareholder activities" - an activity which is performed by a member of a multinational group (usually the parent company or a regional holding company) solely because of its ownership interest in one or more other group

members, i.e. in its capacity as shareholder. Source: OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 2017

<sup>4</sup> The "Benefits test" is to prove that the taxpayer received benefits from the service and the expenses incurred are at arm's length