

Newsflash

Tax and Legal

Special issue



Dear Readers,

In this issue, we offer you an overview of the recent legislative changes to Kazakhstan transfer pricing legislation stemmed from the Base Erosion and Profit Shifting (BEPS) Action Plan of the Organization for Economic Cooperation and Development (OECD).

A photograph showing a close-up of a person's hands typing on a laptop keyboard. The person is wearing a white shirt. A smartphone is visible in the background on a light-colored surface.

The form and content of the transfer pricing documentation is to be established by the state revenue authorities. If a member firm of a multinational enterprise finds that a submitted report is incomplete, misleading or contains mistakes, the firm must file an amended report. Starting from 2019, a failure to file the required transfer pricing documentation or filing misleading reports will be subject to administrative penalties.

The Law introduces necessary definitions. A multinational enterprise is defined as a group of entities meeting the following criteria:

- the group includes a resident of Kazakhstan or an entity operating in Kazakhstan through a permanent establishment;
- entities in the group are related through control and (or) a participation interest;
- the consolidated financial statements are prepared for the member firms of the multinational enterprise or financial statements of a member firm are excluded from the consolidated financial statements solely because of the size or materiality of the firm under the IFRS or other internationally recognized financial reporting standards respected by stock exchanges.

The Law also introduces definitions of multinational enterprise member firm, ultimate parent, surrogate parent and consolidated financial statements.

Three-Tiered Transfer Pricing Documentation

On 25 December 2017, along with the new Tax Code¹ the President signed a law introducing significant changes to the local transfer pricing reporting procedures for multinational enterprises operating in Kazakhstan (hereinafter the "Law"). The Law establishes criteria under which certain member firms of multinational enterprises operating in Kazakhstan oblige to file with the tax authorities one or more of the following transfer pricing documentation:

1. Notification of Membership in a Multinational Enterprise (hereinafter, the "Notification");
2. Local File;
3. Master File;
4. Country-by-country (hereinafter, "CbyC") report.

¹ Law No. 122-VI of the Republic of Kazakhstan On Amendments to Certain Legislative Acts of the Republic of Kazakhstan Related to Taxation Issues, dated 25 December 2017

The new transfer pricing filing requirements for multinational enterprises are implemented gradually. According to the OECD recommendations, the first reporting period for CbyC report is 2016. Accordingly, the regulations on CbyC requirements entered into force retroactively from 1 January 2016. The Law provisions on the Notification entered into force on 1 January 2018. The first reporting period for Local File and Master File will be 2019.

Notification

The following member firms of a multinational enterprise are required to file the Notification:

- an ultimate parent – resident of Kazakhstan;
- a member firm authorized to file the Notification or other member firms having obligations to file any of the three-tiered transfer pricing documentation.

The Notification is due by 1 September of the year following the reporting year. Therefore, the first deadline for the Notification is 1 September 2018 for members of multinational enterprises having obligations to file CbyC reports.

Country-by-Country Report

A CbyC report is due by:

- an ultimate parent – resident of Kazakhstan;
- a member firm of a multinational enterprise authorized by the ultimate parent to file the CbyC report (surrogate parent).

The obligation to file a CbyC report arises if the consolidated group revenue of a multinational enterprise in the year immediately preceding the CbyC reporting year exceeds:

- 750 million euros² – if the ultimate parent of the group is a resident of Kazakhstan;
- the CbyC reporting threshold established by the ultimate parent's or surrogate parent's home country if the ultimate parent or surrogate parent is a foreign resident.

A CbyC report is due annually within 12 months following the reporting financial year. If the obligation to submit a CbyC report arises upon a request of the state revenue authorities, the CbyC report will be due by 12 months after the date of receipt of the request. As it was mentioned above, the CbyC requirements entered into force retroactively. The first reporting year for CbyC is 2016.

A resident member firm that is not the ultimate/surrogate parent or a nonresident operating in Kazakhstan through a permanent establishment submits a CbyC report upon a request of the state revenue authorities, if:

- The ultimate parent and surrogate parent failed to fulfill the CbyC requirements;
- The ultimate parent's (or surrogate parent's) home country:
 - Does not have an acting international agreement on sharing of tax information with Kazakhstan;
 - Regularly fails to fulfill its obligations on the automatic exchange of information with the state revenue authorities of other countries;
 - Does not have CbyC requirements.

Local File

For the following member firms of a multinational enterprise:

- an ultimate parent – resident of Kazakhstan,
- a surrogate parent, if the ultimate parent authorizes it to submit Local File,
- a resident member firm that is not the ultimate/surrogate parent,
- a nonresident member firm operating in Kazakhstan through a permanent establishment,

an obligation to submit a Local File arises, if the following criteria met simultaneously:

- in a reporting period the member firm had a transaction subject to Kazakhstan transfer pricing control;
- the member firm's revenue for the year immediately preceding the reporting year exceeds 5,000,000 times the MIF³ (approximately 36 million US dollars).

Local File is due within 12 months following the reporting financial year. The first reporting year for Local File is 2019.

Master File

An obligation to submit Master File arises upon a request of the state revenue authorities. The state revenue authorities may request the following member firms of a multinational enterprise:

² Applying an average market exchange rate defined by Kazakhstan tax legislation for the corresponding financial year

³ MIF – Monthly Index Factor for 2018 is 2,405 tenge

- an ultimate parent – resident of Kazakhstan,
- a surrogate parent, if the ultimate parent authorizes it to submit Master File,
- a resident member firm that is not the ultimate/surrogate parent,
- a nonresident member firm operating in Kazakhstan through a permanent establishment,

to submit Master File if the following criteria met simultaneously:

- in a reporting period the member firm had a transaction subject to Kazakhstan transfer pricing control;
- the consolidated group revenue of the multinational enterprise in the year immediately preceding the reporting year exceeds the threshold established for CbxC reporting.

Master File is due within 12 months after the date of receipt of the state revenue authorities' request. The first reporting year for Master File is 2019.



Contacts



Rустем Садыков
Partner,
Head of Tax and Legal
KPMG in Kazakhstan and Central Asia
T: +7 (712) 55 28 88
E: rsadykov@kpmg.kz



Vyacheslav Sosnovskiy
Tax and Legal
Director
T: +7 (727) 298 08 98
E: vsosnovskiy@kpmg.kz

www.kpmg.kz



kpmg.com/app



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