

Kazakhstan switches to a three-tiered approach to transfer pricing documentation

January 2018

In brief

A law introducing amendments to Kazakhstan's Tax Code and the Law on Transfer Pricing (the "Law") has been officially published on 26 December 2017. This alert focuses on the changes to the Law on Transfer Pricing ("TP").

In detail

Key changes

In general, the Law introduces a three-tiered approach to TP documentation and generally follows the recommendations in the Organization of Economic Cooperation and Development's Base Erosion and Profit Shifting Action 13 Final Report. The amendments will require multinational enterprise groups ("MNE Group(s)") conducting business in Kazakhstan to file the following documents with the Kazakhstan tax authorities ("Three-tiered transfer pricing documentation") under certain conditions as discussed below:

- a Country-by-Country Report ("CbCR"),
- a Master file ("MF"),
- a Local file ("LF"),
- a notification about being a member of an MNE Group ("Notification").

Non-compliance with the new requirements will lead to penalties.

Note that:

- *these changes are complex and difficult to understand, especially when considered for the first time;*
- *some requirements are mandatory while others are at the request of the tax authority;*
- *rules for preparing three-tiered transfer pricing documentation will be issued additionally.*

An MNE Group definition

A group of entities to which the new requirements apply, qualifies for the MNE Group definition if all the below conditions are met:

- Entities of a group are related through control and/or ownership,
- At least one entity of a group is a resident of Kazakhstan or conducts business in Kazakhstan through a permanent establishment,
- Entities of a group are included in the group's consolidated financial statements or excluded solely on size or materiality grounds in line with the international financial reporting standards or other internationally recognized financial reporting standards accepted by security exchanges.

The definition is wide and will impact most Kazakh subsidiaries / branches / permanent establishments within an MNE group.

Specific requirements

CbCR

Any entity of an MNE Group is *obliged* to file a CbCR in Kazakhstan if it is:

- an ultimate parent of the MNE Group and a Kazakhstan resident,
- an entity authorized by the ultimate parent of the MNE Group to fulfill its CbCR obligation on its behalf ("surrogate parent"),

- a Kazakhstan resident entity or a nonresident entity conducting business in Kazakhstan through a permanent establishment at request of the tax authorities, where such obligation arises under certain conditions (e.g., an ultimate parent is not obliged or did not file a CbCR in its foreign jurisdiction of residence, there is no agreement for exchange of information between Kazakhstan and the said foreign jurisdiction or such agreement is not followed)

and the MNE Group meets the following threshold for its revenue in the consolidated financial statements in the year prior to the reporting financial year:

- if the ultimate parent is a Kazakhstan resident - *no less than 750 million EUR*,
- if the ultimate parent (or surrogate parent) is not a Kazakhstan resident and the jurisdiction of its residency has CbCR requirements - *the threshold determined by such foreign jurisdiction.*

The CbCR must be submitted *on an annual basis* within the 12-month period following the reporting financial year or the date of receipt of the request to submit the CbCR. It is important to note that the CbCR requirement applies retrospectively from 1 January 2016.

Master file

Any entity of an MNE Group is obliged to file a MF in Kazakhstan *at the request of the tax authorities* if it conducted transactions subject to the Law on Transfer Pricing in a reporting financial year and is (one of the following):

- an ultimate parent of the MNE Group and a Kazakhstan resident,
- an entity authorized to fulfill the MF obligation,
- a Kazakhstan resident entity other than an ultimate parent or an authorized entity,
- a non-resident entity conducting business in Kazakhstan through a permanent establishment, where the ultimate parent or entity authorized is not a Kazakhstan resident

and the MNE Group meets the same revenue threshold as for the CbCR requirement.

The MF must be submitted within the 12-month period following the date of receipt of the request to submit the MF. The MF requirement applies from 1 January 2019.

Note that these provisions are framed widely: any Kazakh subsidiary / branch / permanent establishment of an MNE Group meeting the above requirements could be requested to submit a MF if the group revenue reaches the threshold level.

Local file

Any entity of an MNE Group is obliged to file a LF if it conducted transactions subject to the Law on Transfer Pricing in a reporting financial year and is:

- an ultimate parent of the MNE Group and a Kazakhstan resident,
- an entity authorized to fulfill the LF obligation,
- a Kazakhstan resident entity other than an ultimate parent or an authorized entity,
- a non-resident entity conducting business in Kazakhstan through a permanent establishment

and that entity of an MNE Group had revenue in the year prior to the reporting financial year of at least 5 million monthly calculation indices (approx. 36 million USD).

The LF must be submitted *on an annual basis* within a 12-month period following the reporting financial year. The LF requirement applies from 1 January 2019.

Notification

Any entity of an MNE Group is obliged to file a Notification if it is subject to any of these (CbCR, MF, LF) requirements.

A notification must be submitted no later than 1 September of the year following the reporting financial year. The notification requirement applies from 1 January 2018.

The takeaway

The Law introduces new obligations for submitting information to the Kazakhstan tax authorities for MNE Group entities with an ultimate parent located in Kazakhstan or in other countries.

These provisions are complex, especially when considered for the first time. MNE Groups need to assess their readiness to comply and prepare a plan for compiling and filing the respective files and reports albeit that in some cases Kazakh subsidiaries / branches / permanent establishments may not have all the information necessary to assess the implications.

We will be pleased to meet with you to establish the implications.

Tax and Legal Alert

PwC Kazakhstan

Let's talk

If you are interested in additional information, please contact PwC team members servicing your company, or any person below.



Michael Ahern, *Partner
Tax and Legal Services*
michael.ahern@pwc.com



Elena Kaeva, *Partner
Tax Services*
elena.kaeva@pwc.com



Timur Zhursunov, *Partner
Tax and Legal Services*
timur.zhursunov@pwc.com



Adel Sapargaliyeva, *Senior Manager
Transfer Pricing Services*
adel.sapargaliyeva@pwc.com



Ben Pietersen, *Manager
Transfer Pricing Services*
ben.pietersen@pwc.com



Evgeny Galushka, *Manager
Transfer Pricing Services*
evgeny.galushka@pwc.com

PwC Kazakhstan

34 Al-Farabi Ave.,
Building A, 4 floor
Almaty, Kazakhstan, A25D5F6
Tel.: +7 727 330 32 00
Fax: + 7 728 244 68 68

www.pwc.kz

15/1 Kabanbay Batyr Ave.
Business Centre "Q2", 4th floor
Astana, Kazakhstan, Z05M6H9
Tel.: +77172 55 07 07
Fax: +7 7172 55 07 08