



## A Company vs State Revenue Committee of the Ministry of Finance (the “SRC”)

**Tax audit period:** 2009 – 2012

**Type of audit:** a full-scope tax audit

**Amount of assessment:** more than KZT 1 billion

**Court instance:** the Supreme Court of Kazakhstan

**Date:** May 2016

**Key issues:** transfer pricing (“TP”) issues related to export of minerals

### Background:

The main activity of the Company is extraction and sale of minerals, including exports.

As a result of the tax audit, the SRC challenged the Company’s tax liabilities in respect of its export of minerals to a related trader based on provisions of Kazakhstan TP legislation.

### Position of the Company

According to the court case materials, in order to confirm that prices of the export sales to the Russian trader were consistent with market prices, the Company applied the resale price method (“RPM”). It provided the SRC with a benchmarking study (“BMS”) regarding profitability of independent traders prepared using a commercial database.

### Position of the tax authorities:

The tax authorities agreed with the application of the RPM and the use of a commercial database for performing the BMS on profitability of independent traders. However, they did not agree with the results of the BMS. In particular, an overstatement of the trader margin was claimed due to differences in the approach to preparing the BMS by the tax authorities and by the Company.

### Position of the court:

The Supreme Court ruled in favour of the tax authorities.

### Key observations and recommendations of PwC:

- The SRC extends its practice of auditing TP issues by testing margin (profitability) using commercial databases.
- Within the tax audit, the SRC applied concepts that are widely used in international TP practice, but are not described in the Kazakhstan TP legislation. For example, selection of a tested party in a controlled transaction, selection of comparable independent companies, use of an inter-quartile range and selection of an appropriate profit level indicator for determining a market range, etc.
- We recommend paying close attention to peculiarities of applying TP methods testing margins (profitability) and preparing BMS. We also recommend to agree your company's position regarding

the use of TP methods with the SRC in advance and to establish a robust dialogue with the tax authorities regarding the TP methodology followed, during a tax audit.

**Michael Ahern, Partner**  
*michael.ahern@kz.pwc.com*

**Anuar Mukanov, Director**  
*anuar.mukanov@kz.pwc.com*

**Adel Sapargaliyeva, Manager**  
*adel.sapargaliyeva@kz.pwc.com*

34 Al-Farabi Ave.  
Building A, 4th floor  
Almaty, Kazakhstan, 050059  
Tel.: +7 (727) 330 32 00  
Fax: +7 (727) 244 68 68  
[www.pwc.kz](http://www.pwc.kz)

**Dana Tokmurzina, Senior Manager**  
*dana.tokmurzina@kz.pwc.com*

**Nursultan Nurbayev, Manager**  
*nursultan.nurbayev@kz.pwc.com*

15/1 Kabanbay batyr Ave.  
Business Centre "Q2", 4th floor  
Astana, Kazakhstan, 010000  
Tel.: +7 (7172) 55 07 07  
Fax: +7 (7172) 55 07 08  
[www.pwc.kz](http://www.pwc.kz)