

Questions to assess your readiness to satisfy the requirements of three-tiered TP documentation applicable from 1 January 2019



TP documentation requirements change significantly from 1 January 2019. We have summarized the changes below and also drafted a series of questions to help you assess the relevance of the changes for your company.

The Law on Transfer Pricing ("TP Law") published in December 2017 introduced new requirements for multinational enterprise groups ("MNE Group(s)") with regard to the preparation of transfer pricing ("TP") documentation. The new regulation introduces the requirement to prepare three-tiered TP documentation following the recommendations in the Organization of Economic Cooperation and Development's ("OECD") Base Erosion and Profit Shifting ("BEPS") Action 13.

The amendments will require MNE Groups conducting business in Kazakhstan to file the following types of three-tiered TP documentation with the Kazakhstan tax authorities under certain conditions (briefly described below):

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

Non-compliance with the new requirements could lead to **administrative penalties up to 6,500 US dollars**.

Notification

Any entity within a MNE Group is obliged to file a Notification if it is subject to any type of the three-tiered TP documentation (i.e. CbCR, MF, LF) requirements. A Notification must be submitted **on an annual basis**, no later than 1 September of the year following the reporting financial year ("FY").

CbCR

An ultimate parent or an entity authorized by an ultimate parent of a MNE Group to fulfil its CbCR obligation ("surrogate parent"), are required to file a CbCR if the revenue (turnover) in the consolidated financial statements of a MNE Group in the year prior to the FY is **more than 750 million euro**.

In 2018 we assisted a large MNE Group resident in Kazakhstan with the preparation of the first CbCR in Kazakhstan in order to comply with TP Law requirements.

MF

The following entities of a MNE Group are required to file a MF **at the request** of the Kazakhstan tax authorities if the revenue of the entity according to the consolidated financial statements of the MNE Group in the year prior to the reporting FY is **more than 750 million euro**:

- an ultimate parent of a MNE Group and a Kazakhstan resident;
- a surrogate parent of a MNE Group;
- a Kazakhstan resident entity other than an ultimate parent or surrogate parent, or
- a non-resident entity conducting business in Kazakhstan through a permanent establishment, where the ultimate parent or surrogate parent is not a Kazakhstan resident.

A CbCR and MF for the reporting FY must be filed with the Kazakhstan tax authorities within the 12-month period following the date of **receipt of the request to file a TP report**.

The MF requirements apply from 1 January 2019, while the CbCR requirements are retrospectively effective from 1 January 2016.

LF

The following entities of a MNE Group are required to file a LF if such entities conducted transactions subject to TP control (cross-border transactions and certain transactions carried out on the territory of Kazakhstan, if they are directly related to cross-border transactions) and the revenue of these entities in the year prior to the reporting FY is **at least 5 million monthly calculation indices (appr. 31 mln US dollars)**:

- an ultimate parent of a MNE Group and a Kazakhstan resident;
- a surrogate parent of a MNE Group;
- a Kazakhstan resident entity other than an ultimate parent or surrogate parent, or
- a non-resident entity conducting business in Kazakhstan through a permanent establishment.

The following sections must be included in a LF:

- ✓ a detailed description of the business and business strategy pursued by the local entity;
- ✓ a description of the controlled transactions' categories as well as the context in which such transactions take place;
- ✓ identification of associated enterprises involved in each category of controlled transactions, and the relationship between them;
- ✓ a detailed functional analysis of the local entity and relevant associated enterprises with respect to each category of controlled transactions;
- ✓ selection of a TP method;
- ✓ an indication of which associated enterprise is selected as the tested party, an explanation of the reasons for this selection;
- ✓ an explanation of the reasons for performing a multi-year analysis;
- ✓ a list and description of selected comparable uncontrolled transactions, including a description of the comparable search methodology and source of information;
- ✓ a description of comparability adjustments performed; and
- ✓ a description of the reasons for concluding that relevant transactions were priced on an arm's length basis.

A LF for the reporting FY **must be filed with the Kazakhstan tax authorities on an annual basis** within the 12-month period following the reporting FY. The LF requirement applies from 1 January 2019.



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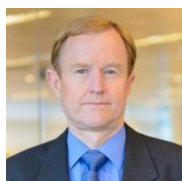
Questions to establish whether your Company is at risk.

1. Is your Company part of a MNE Group? Yes ☐ No ☐
2. Did the MNE Group (which your Company is part of) prepare consolidated financial statements for FY 2018? Yes ☐ No ☐
3. Does the revenue of the MNE Group for FY 2018 exceed 750 million euro? Yes ☐ No ☐
4. Is your ultimate parent / surrogate parent (of the MNE Group) obliged to file a TP report in accordance with its local TP legislation? Yes ☐ No ☐
5. Does your ultimate parent / surrogate parent (of the MNE Group) file a CbCR? Yes ☐ No ☐
6. Does your Company have intra-group transactions (e.g. receipt of goods or services, receipt of loans, financial guarantees, licensing of intangible property)? Yes ☐ No ☐
7. Has your Company filed notification of the participation in a MNE Group by 1 September 2019? Yes ☐ No ☐

If two or more of your answers are positive, there is a high probability that your Company is obliged to file TP reports with Kazakhstan tax authorities.

We recommend you assess your readiness to comply with the new requirements and plan the preparing and filing of TP reports. We will be happy to assist you with complying with the new requirements.

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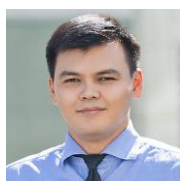
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