



TP Spotlight

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**Transfer Pricing in 2020:
updates in respect of Local file**



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Consulting on Transfer Pricing issues

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2020 was the first year during which taxpayers in Kazakhstan had to prepare and submit Local file for FY2019. In fact, this innovation enabled tax authorities to start working actively to control the arm's length nature of prices, and now they are checking whether prices in intra-group transactions comply with the arm's length level.

The most anticipated innovation was the introduction of amendments to the transfer pricing legislation concerning the guidelines for completion of the «three-tiered» transfer pricing documentation. In addition to editorial changes, the draft specifies the definition of the controlled transaction, materiality of transactions and details of the Local file submission to the tax authorities. Implementation of changes was scheduled for the end of 2020, however the project is still under consideration.



Key challenges in Local file preparation

Experience has shown that taxpayers faced certain practical difficulties both in preparing the Local file itself and in preparing the Notification on their Membership of an International Group (the Notification). The main difficulties can be described as follows:



Determination of interdependence when preparing the Notification

In addition to identifying categories of controlled transactions, taxpayers need to determine the group of related parties, and sometimes they need to justify the absence of such interdependence. In practice, difficulties arise when dealing with organizations with cross (mutual) shareholding, since it is rather difficult to calculate the actual shares of such organizations.



Conducting a comparative study and availability of information sources

At the stage of conducting a comparative study (benchmarking), taxpayers usually face difficulties finding comparable transactions / companies given certain differences, as well as finding information sources for analysis.



Adjustments and calculation of the arm's length range

Due to the lack of a unified approach and methodological recommendations on the application of adjustments and calculation of the arm's length range for certain types of transactions in Kazakhstan, taxpayers are guided by international practice and recommendations of the Organization for Economic Cooperation and Development (OECD) on Transfer Pricing for Multinational Corporations and Tax Administrations.

Currently, it is difficult to predict the approach of tax authorities in Kazakhstan to the analysis of Local files. However, there is no doubt that global transfer pricing control standards will be soon introduced, and more accurate information on the results of audits by the tax authorities will be available shortly.

Another challenging issue is the lack of a unified international approach to the analysis of pricing, which leads to difficulties in the analysis of controlled transactions by tax authorities in different jurisdictions.

On January 19, 2021, The Platform for Collaboration on Tax published «Practical Toolkit to Support the Successful Implementation by Developing Countries of Effective Transfer Pricing Documentation Requirements». The toolkit serves as a sourcebook of guidance on implementing transfer pricing documentation requirements for developing countries. Those include:

- Overview of the regulatory framework
- Confidentiality of documentation and taxpayers' information
- Timeframe for preparing and submission of documentation to the tax authorities
- Law enforcement practice
- Access to information held outside jurisdictions
- Simplifications and exceptions

Thus, the document «Practical Toolkit to Support the Successful Implementation by Developing Countries of Effective Transfer Pricing Documentation Requirements» was designed to assist tax authorities of developing countries in preparing documentation and can also serve as a guidance on conducting audits in respect of local file content.



Adjusted Local file

Clause 3 of Article 7 of the Law of the Republic of Kazakhstan «On Transfer Pricing» provides for the possibility for taxpayers to submit the adjusted Local file. This opportunity is provided to any member of the international group of companies who submitted Local file until December 31, 2020. At the same time, the timeframe for Local file submission established by this Law does not apply to submission of the adjusted Local file.

Thus, innovations in the field of preparation and submission of Local file have imposed new responsibilities on taxpayers, which require a significant amount of work, certain time costs as well as involvement of qualified personnel. Careful planning and availability of practical examples will help to form certain mechanisms of assistance in the following areas:

- Selection of the most reasonable method to confirm the compliance of prices with the arm's length level
- Development of a strategy of interaction with the tax authorities during audits
- Development of effective mechanisms for control over intra-group prices and risk management in the field of transfer pricing

In this regard, it would be appropriate for taxpayers to analyze the existing pricing model, assess tax risks and prepare the defense position in the light of challenges faced by businesses in 2020, as well as adjust the approach to determining arm's length prices, if necessary.

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