



# **Transfer Pricing Country Summary**

## **Kazakhstan**

June 2022

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## 1. Introduction

Kazakhstan is not part of the EU or a member country of OECD. It has formal transfer pricing documentation requirements to submit the master file, local, country-by-country reporting and the notification of country-by-country reporting for qualifying multinational groups.

## 2. Laws & Regulations

### a) References to OECD/EU/Local Rules

The Kazakhstan TP rules generally follow the OECD Guidelines. In line with Action 13 of the OECD Base Erosion and Profit Shifting project, Kazakh implemented rules for the transfer pricing documentation in local regulations. The three-tier documentation approach includes explanations on Master file, Local file and CBCR accordingly, but it has material differences from OECD report template or format.

### b) Definition of Related Party

Kazakhstan does not provide specific definition of related party, because its TP legislation applies to all international transactions, regardless of whether the parties are related.

### c) Nature of Transfer Pricing Documentation

Kazakhstan is not a member of the OECD and but basically follows the OECD Guidelines. This means that it also recognizes BEPS Action 13 for Transfer Pricing documentation.

### d) Tax Havens & Blacklists

A low-tax jurisdiction means its income tax rate is no more than 10% or it has a law on confidentiality of financial information or laws protecting crucial information from the tax authority.

The tax haven list names the following countries and territories:

- Andorra;
- Antigua and Barbuda;
- Bahamas;
- Barbados;
- Bahrain;
- Belize;
- Brunei;
- China (People's Rep.) (only in respect of Hong Kong and Macao);
- Colombia;
- Comoro Islands;
- Costa Rica;
- Cyprus;
- Djibouti;
- Dominica;
- Dominican Republic;
- France (only in respect of (i) Archipelago Kerguelen, (ii) French Guiana, and (iii) French Polynesia); Fiji;
- Grenada;
- Guatemala;
- Guyana;
- Ireland (only in respect Dublin and Shannon);
- Jamaica;

- Lebanon;
- Liberia;
- Luxembourg;
- Malaysia (only in respect of Labuan);
- Maldives;
- Malta;
- Mariana Islands;
- Marshall Islands;
- Mauritania;
- Mauritius;
- Monaco;
- Montenegro;
- Morocco (only in respect of Tangier);
- Myanmar;
- Nauru;
- Netherlands (only in respect of Aruba and the Netherlands Antilles);
- New Zealand (only in respect of Cook Islands and Niue);
- Nigeria;
- Palau;
- Panama;
- Philippines;
- Portugal (only in respect of Madeira islands);
- Samoa;
- San Marino;
- Seychelles;
- St Vincent and the Grenadines;
- St Kitts and Nevis;
- Spain (only in respect of Canary Islands);
- Singapore;
- Sri Lanka;
- St Lucia;
- Switzerland;
- Suriname;
- Tanzania;
- Tonga;
- Trinidad and Tobago;
- United Arab Emirates (only in respect of Dubai);
- United Kingdom (only in respect of (i) Anguilla, (ii) Bermuda, (iii) British Virgin Islands, (iv) Cayman Islands, (v) Chagos Islands, (vi) Channel Islands (Guernsey, Jersey, Isle of Man, Sark, Alderney); (vii) Gibraltar, (viii) Montserrat, (ix) Turks and Caicos Islands, and (x) South Georgia and South Sandwich Islands);
- United States (only in respect of (i) Guam, (ii) Puerto Rico, (iii) Wyoming and Delaware states, and (iv) US Virgin Islands); and
- Vanuatu.

#### e) Advance Pricing Agreement (APA)

Kazakh legislation stipulates the right to conclude a unilateral APA, but does not mention bilateral APA. The timeline for unilateral APA is 3 years.

#### f) Audit Practice

In Kazakhstan, export of commodities is under higher scrutiny. Audits related to transfer pricing always cause additional tax liabilities followed by appeal. The cost of the issue for the large companies is usually very high.

For the information obtained from the taxpayer, the tax authorities shall keep confidential. And the burden of proof is usually on the taxpayer.

### 3. Transfer Pricing Documentation

#### a) Level of Documentation

Kazakhstan adopted the requirements of BEPS Action 13 of the OECD. The requirements apply as of financial years starting on or after 1 January 2016. This three-tiered approach to transfer pricing documentation requires:

- (i) a master file (pursuant to Annex I to Chapter V of the TP Guidelines) containing standardised information on organization structure, description of business, intangibles and intercompany financial activities that is relevant for all MNE group members;
- (ii) a local file (pursuant to Annex II to Chapter V of the TP Guidelines) referring specifically to material transactions of the local taxpayer such as information on business units exceeding the crossborder transactions threshold, and general information on the company;
- (iii) a Country-by-Country Report (pursuant to Annex III to Chapter V of the TP Guidelines) containing certain information relating to the global allocation of the MNE's income and taxes paid together with the list of all constituent entities of the MNE group included in each aggregation per tax jurisdiction.

Under certain circumstances, Kazakhstan taxpayers must also submit a notification on participation in an MNE group.

The Tax administration does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.

#### b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

#### c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

#### d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

### e) Choice of Transfer Pricing Method

The methods and its hierarchy are as follows:

- the CUP method;
- the cost-plus method;
- subsequent sale price method;
- the profit split method; and
- net profit method.

The most appropriate method principle has not been applied in Kazakhstan yet.

### f) Economic Analysis – Benchmark Study

Single-year analysis is preferable compared with multiyear one. For the use of interquartile range, Kazakhstan allows the full range from maximum to minimum is allowed. Except for these, there is no specific rules in Kazakh legislation.

### g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the “conduct of parties” the prevailing concept.

### h) Financial Statements

Kazakhstan requires related-party disclosures in financial statement. Annual financial statement includes:

- Balance sheet
- Profit and loss report
- Cash flow statement
- Equity statement
- Notes

### i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold * (Yes/No)	Local Language (Yes/No)*(If “No”, it can be filed in English)
<b>Corporate Income Tax</b>	File	IFRS	by 31 March of the year following the reporting period (may be extended to 30 April)	N.A.	No	Yes (Russian or Kazakh language)

<b>Master File</b>	File	OECD Guidelines 2017	within 12 months following the reporting period or within 12 months upon request of the tax authorities	N.A.	Yes	Yes (Russian or Kazakh language)
<b>Local File</b>	Prepare	OECD Guidelines 2017	within 12 months following the reporting period	N.A.	Yes	Yes (Russian or Kazakh language)
<b>CbCR</b>	File	OECD Guidelines 2017	within 12 months following the reporting period or within 12 months upon request of the tax authorities (depending on the type of taxpayer)	no later than 1 September of the year following the reporting financial year	Yes	No (must be filed in the Russian or Kazakh language. If the parent entity is a non-resident in Kazakhstan, the English language is used)
<b>Local form X</b>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
<b>Local form Y</b>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
<b>Local form Z</b>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
<b>Annual Accounts</b>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
<b>Segmented P&amp;L</b>	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.

\* Kazakhstan has signed the MCAA agreement for the filing of CbCR.

\* Kazakhstan does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.

The TP documentation should be finalized along with the tax returns. The documentation should be submitted by 31 March of the year following the reporting period. It may be extended to 30 April under certain circumstances.

- The Master File should be ready for submission within 12 months following the reporting period or within 12 months upon request of the tax authorities. Notably, only if a consolidated group revenue for the year preceding the reporting financial year for which the master file is filled is EUR 750 million or more should the company prepare a Master File.
- The Local File should be ready for submission within 12 months following the reporting period. Only if a company's revenue for the fiscal year preceding the reporting year is greater than 5 million monthly calculation index should the company prepare a Local File.
- The Country-by-Country Report has to be filed within 12 months following the reporting period or within 12 months upon request of the tax authorities according to the type of taxpayer. The threshold is the same with Master File.
- The Country-by-Country reporting notification form has to be filed no later than 1 September of the year following the reporting financial year.

The statute of limitations period is five years after the end of a respective tax period. When meeting certain conditions, the limit may be extended to seven years.

#### j) Mandatory Language

The TP documentation should be in either Russian or Kazakh language.

#### k) Notification Requirement

The notification form is provided as Annexes 3 and 4, respectively to the Decree of Minister of Finance # 178 of 14 February 2018. Notification shall include the following information:

- general information about the member of the group;
- information about the non-resident member of the group;
- information about the parent entity of the group; and
- information about the authorized reporting entity of the group.

Notification can be submitted in hard copy or electronic form authenticated with an electronic signature of the taxpayer.

#### l) Record Keeping

This section is not applicable.

#### m) Penalties and Interest Charges

Taxpayers will get penalties from failure to submit, late submission or incorrect disclosures, with the maximum of KZT 1,389,000. Special penalties are set for failure to comply with the TP monitoring reporting requirements and failure to provide documents required to perform TP control, with the maximum of KZT 972,300.