

Transfer Pricing in Kazakhstan
Time to act



MAKING AN
IMPACT THAT
MATTERS
since 1845



TP rules in Kazakhstan: highlights

All cross-border transactions are subject to TP control in Kazakhstan (both between related and third parties)



Background

- The TP Law was firstly implemented in **2001**
- The current TP Law (Law No. 67-IV dated 5 July 2008 *On Transfer Pricing*) entered in force on **1 January 2009**
- BEPS related amendments were introduced from 2018.



Other aspects

- TP advanced pricing agreement (APA) – stipulated by the TP Law, but rarely applied
- Pricing methodologies – developed for particular industries (oil, uranium and titanium extraction and others)
- TP audits are usually performed as a part of tax audits



Controlled transactions in Kazakhstan:

- all cross-border transactions, irrespective of whether they are concluded with related parties or third parties and
- certain domestic transactions “directly linked to subsequent cross-border transactions” (subject to certain criteria being met)

The term “cross-border transactions” means:

- the import and export of goods
- transactions involving work performed or services provided where one of the parties is a non-resident operating in Kazakhstan without creating a permanent establishment
- transactions involving the sale of goods, performance of work, and/or provision of services by Kazakhstan residents outside of Kazakhstan.



Control methods

Monitoring report

TP documentation

Three-tiered documentation

Tax audits

Subject to control

Major taxpayers, subject to tax monitoring

All taxpayers

Members of multinational enterprises (MNE)

All taxpayers

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Matrix of TP requirements in Kazakhstan

Three-tiered documentation

Key TP differences: Kazakhstan, Russia and OECD countries

How we can help


Our core team members

MNE members will prepare and submit a local file in Kazakhstan for the first time by 31 December 2020



Matrix of TP requirements in Kazakhstan

TP Law stipulates six different types of reports

Report type	Subject to control	Period	Deadlines and submission procedure	Language
TP documentation with economic substantiation of prices	All taxpayers	Calendar year	Submitted by request (within 90 days) or during a tax audit	Kazakh or Russian
TP Monitoring report	Major taxpayers, subject to tax monitoring		Obligatory submission by 15 May of the year following the reporting year	
Notification of MNE membership	MNE members	Financial year	Obligatory submission by 1 September of the year following the reporting year	
Local file			Obligatory submission within 12 months of the reporting financial year	
Master file			 <i>If the company's financial year end on 31 December, then the first report is submitted by 31 December 2020</i>	
Country-by-country reporting			Submitted by request (within 12 months)	
			<ul style="list-style-type: none"> For MNE ultimate or surrogate parent entity – Kazakhstan residents: obligatory submission within 12 months of the reporting year. Other MNE members: by request within 12 months of the moment a request is received 	Kazakh or Russian / English if the parent entity is a Kazakhstan non-resident (notary certified copy is sufficient)

Consequences of non-compliance with TP requirements

Fines in Kazakhstan	Consequence	Amount
	Failure or refusal to provide documentation	USD 2 500 approximately
	Actions (or lack of action) committed repeatedly	USD 5 500 approximately
	Understatement of tax liabilities	Up to 80% of additionally accrued tax + interest + criminal / administrative liability

If you have a presence in other jurisdictions we recommend making sure of compliance with three-tiered documentation requirements, to avoid significant fines and criminal liability as set out in many jurisdictions



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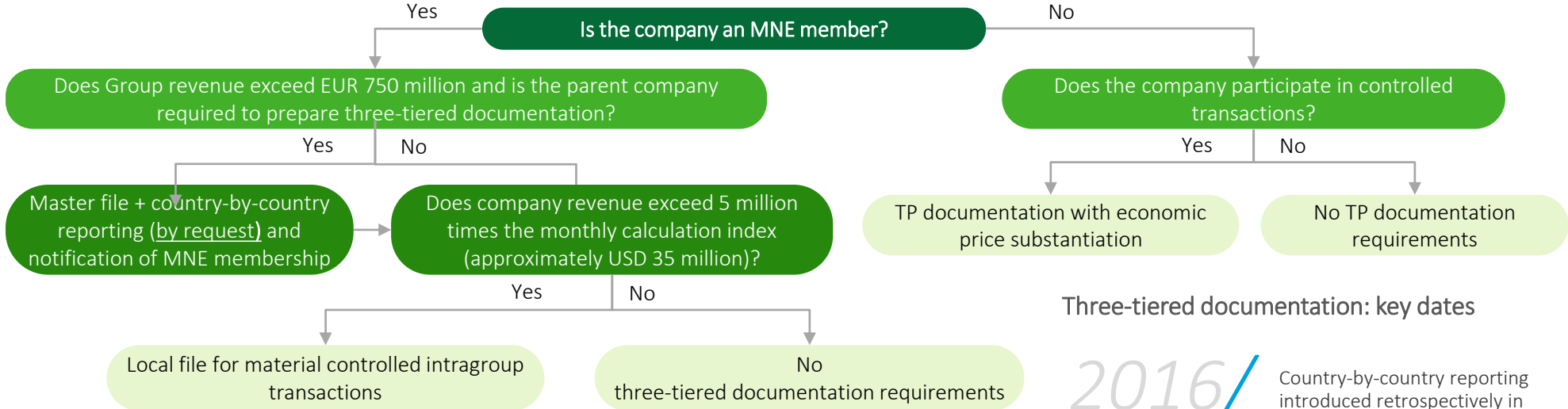
How we can help

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Three-tiered documentation – your actions

MNE members will prepare and submit a local file in Kazakhstan by 31 December 2020 for the first time



Under the TP Law the term “MNE group” applies to entities that meet all of the following conditions simultaneously:

- At least one of the entities is a Kazakhstan resident (or operates in Kazakhstan through a permanent establishment)
- All entities are related through participation or control (established under international accounting standards accepted by public securities exchanges)
- Entities are included in MNE group consolidated financial statements or excluded from them exclusively due to size or materiality grounds (in line with international accounting standards accepted by public securities exchanges)

Three-tiered documentation: key dates

- 2016/ Country-by-country reporting introduced retrospectively in Kazakhstan
- 2018/ Three-tiered documentation requirements introduced into the TP Law
- 2019/ Local and master file requirements became effective
- 2020/ Local file should be submitted for the first time by 31 December 2020

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We recommend defining MNE group constituents according to the TP Law since it deviates from that established under OECD Action plan 13 



Key TP differences: Kazakhstan, Russia and OECD countries

A wider control concept, strict hierarchy of methods and sources of information distinguish TP rules in Kazakhstan from most jurisdictions

	Kazakhstan	Russia	OECD
Control	All cross-border transactions and specific domestic transactions “directly linked to subsequent cross-border transactions”	<ul style="list-style-type: none"> • Cross-border and some internal transaction between interrelated parties • Rarely – transactions between independent parties 	Transactions between interrelated parties, in most countries – cross-border transactions
TP methods	A strict hierarchy of pricing methods, where The Comparable Uncontrolled Price (CUP) method has the highest priority	A strict hierarchy of pricing methods, where any deviation should be explained	The most appropriate method
Adjustments	Downward adjustments are not permitted in Kazakhstan	Downward adjustments are not permitted in Russia	Adjustments are permitted
Legislation sources	TP legislation. OECD references are acceptable, but non-binding in Kazakhstan	TP legislation. OECD references are acceptable	OECD + Local TP rules
Requirements	For MNE: Country-by-country reporting, master file, local file For non-MNE: TP documentation, TP monitoring	For MNE: Country-by-country reporting, global documentation, national documentation (by request) For non-MNE: TP documentation (by request)	Defined by local legislation

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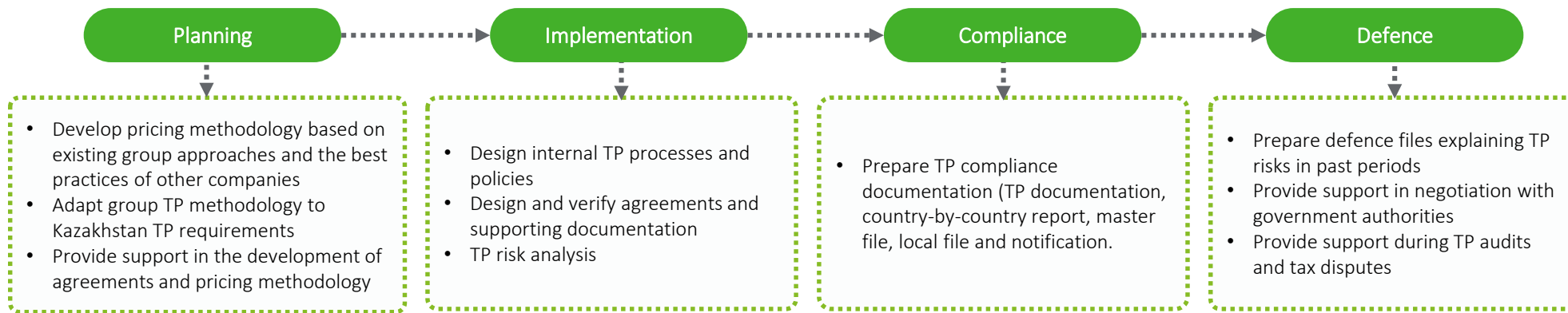
How we can help

Our core team members



How we can help

We will be happy to assist you; from the planning stage to the development of a defense strategy



Why choose the Deloitte Kazakhstan TP team?



Synergy

Strong cooperation with international TP experts allows us to provide results that would work not only in Kazakhstan, but worldwide



Efficiency

We always try to implement existing pricing approaches and methodologies developed at the group level



Most importantly, we are tax specialists

Our expertise allows us identify tax risks not directly related to transfer pricing, such as

- the beneficial ownership concept in transactions for IP rights or financial transactions
- issues related to cost base verification in service transactions



Team that wins

- A dedicated transfer pricing team since 2009
- We have experience supporting our clients during TP audits

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Over 10 years of experience in the transfer pricing market

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