



## **On transfer pricing**

### *Unofficial translation*

The Law of the Republic of Kazakhstan dated 5 July 2008 № 57-IV.

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Footnote. Preamble excluded by the Law of the Republic of Kazakhstan dated 01.07.2024 № 107-VIII (shall come into effect upon expiry of sixty calendar days after the date of its first official publication).

### **Article 1. The legislation of the Republic of Kazakhstan on transfer pricing**

1. The legislation of the Republic of Kazakhstan on transfer pricing is based on the Constitution of the Republic of Kazakhstan, consists of this Law and other regulatory legal acts.

2. If the international treaty ratified by the Republic of Kazakhstan establishes other rules than those contained in this Law, the rules of the international treaty shall be applied.

#### **Article 1-1. Purpose, objectives and principles of regulation in the field of transfer pricing**

1. The purpose of transfer pricing regulation shall be to prevent losses of government revenue in international business transactions and transactions related to international business transactions.

2. The objectives of regulation in the field of transfer pricing shall be:

1) exercising control over international business operations and transactions related to international business operations;

2) the creation of a transparent system of rules aimed at preventing the use of transfer prices by participants in international business transactions and transactions related to international business transactions.

3. Regulation in the field of transfer pricing shall be based on the following principles:

1) legality in the implementation of transfer pricing;

2) fairness and transparency in the implementation of transfer pricing.

**Footnote. The law is supplemented with Article 1-1 in accordance with the Law of the Republic of Kazakhstan dated 01.07.2024 № 107-VIII (shall come into effect upon expiry of sixty calendar days after the date of its first official publication).**

### **Article 2. Basic definitions used in this Law**

The following basic definitions are used in this Law:

1) price from information sources – the price received from officially recognized information sources, data on stock-exchange quotations from authorized bodies, as well as from other information sources;

2) price range – a range of market price values determined in accordance with the "arm's-length" principle in comparable economic conditions, which is established in the manner provided for in Article 17-1 of this Law;

2-1) control - control determined in accordance with international financial reporting standards or other internationally recognized financial reporting standards, which are adopted by stock exchanges for admission of securities to trading.

The term "control" is used for the purposes of transfer pricing reporting;

3) quotation period – the period of price formation, but no more than thirty one calendar sequent days for which the quotation of prices on stock exchange are published, established in a contract for realization of goods (work, service) within which the arithmetic mean value of arithmetic mean daily price quotations for the relevant exchange commodities (works, services) are determined in accordance with conditions of a transaction by the parties of the transaction, as well as non-exchange goods, prices for which are attached to quotations on exchange commodities;

3-1) quotation day – the date in which there is published quotation on goods (work, service) in officially recognized information sources;

4) identical goods (works, services) – the goods (works, services) having similar main features typical for them: physical characteristics, quality and reputation at market, country of origin and producer;

5) relevant market of identical (and in their absence – homogeneous) goods (works, services) – the market of destination (supply) of goods (work, service) at which the market price is formed, or the market on the basis of which the market price is objectively formed and (or) determined at the market of destination (supply);

6) homogeneous goods (works, services) – the goods (works, services) that not being identical have similar characteristics and consist of similar components that allows them to perform one and the same functions and be replaceable;

7) differential – the quotation size applied for bringing transaction prices or prices from information sources to comparable economic conditions;

8) state with concessional taxation – the foreign state determined in accordance with the tax legislation of the Republic of Kazakhstan;

9) commission (agency) remuneration – payment for services of a trade broker, trader or agent on buy and sell of goods, performance of works, rendering of services paid in the form of a sum or percent of a sum of the consummated transaction provided by a separate provision between a participant of the transaction and trade broker, trader or agent;

10) a transaction made on the territory of the Republic of Kazakhstan, directly related to an international business transaction - a transaction the subject of which is the subject of an international business transaction;

10-1) fiscal year – a time period for which annual consolidated financial statements of an international group are prepared;

10-2) adverse socio-economic impacts - a combination of social and economic consequences impeding the implementation of national interests or creating a threat thereto, and also jeopardizing the sustainable development of the national economy;

11) economic assessment of applied price – documents and information confirming substantiation of applying the price of transaction and represented to authorized bodies;

12) the "arm's length" principle - the principle used to determine the market price taking into account the price range (margin, profitability), based on a comparison of the terms of transactions between related parties with the terms of transactions between independent parties carrying out transactions at a market price determined in the manner established by this Law;

13) margin – a sum received by a trade broker, trader or agent in a result of conduct of transactions on buy and sell of goods, performance of works, rendering of services;

14) margin range – a range of market margin values determined in accordance with the "arm's length" principle in comparable economic conditions, which is established in the manner provided for in Article 17-1 of this Law;

15) transaction price – the price of goods (work, service) applied by participants of transactions upon consummation of the transaction regulated by this Law;

16) participants of transaction – an individual or legal entity that concluded the transaction regulated by this Law;

17) accounting on transaction monitoring – data on transactions including the transactions with applying transfer prices committed within accounting period represented by a participant of the transaction to the state revenues bodies annually in accordance with the procedure and form approved by the authorized body;

17-1) median value – a value that is in the middle of an odd set of numbers, or the arithmetic mean of the two middles of an even set of numbers;

18) market price – the price of goods (work, service) formed upon interaction of supply and demand at the market of identical (and in their absence – homogeneous) goods (works, services) in comparable economic conditions determined in accordance with the “arm's-length” principle;

18-1) market profitability – profitability prevailing under comparable economic conditions, determined in accordance with the "arm's length" principle;

18-2) profitability - a financial indicator used to apply the methods specified in paragraph 1 of Article 12 of this Law, and determined based on accounting data and (or) financial statements;

19) profitability range – a range of market profitability values determined in accordance with the "arm's length" principle in comparable economic conditions, which is determined in accordance with Articles 17-1 and 17-2 of this Law;

20) excluded by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication);

21) tax exemptions – release (reduction) from tax obligations on separate categories of tax payer, existence of investment tax preferences in accordance with a contract on investments or carrying out of the activity in a territory of special economic zones;

22) comparable economic conditions – transaction conditions at the market of identical (and in their absence – homogeneous) goods (works, services) if the difference between such conditions does not affect the price or may be adjusted for the purpose of bringing of transaction conditions to comparable economic conditions in accordance with this Law;

23) trade broker, agent – a person performing intermediary services in accordance with conditions of the agency agreement concluded with a participant of transaction;

24) compensation for performance of trade mediatory functions – compensation of one of transaction parties in the form of pecuniary recompense or representation of a discount (price reduction) to the price of realization of goods (work, services) for carrying out of trade mediatory services;

25) transfer price (transfer price formation) - a price that is formed between related parties and (or) differs from the objectively formed market price "(margin, profitability) taking into account the price range "(margin, profitability) when making transactions between independent parties, subject to control in accordance with this Law;

26) agreement on applying transfer pricing – the written contract between authorized bodies and participation of a transaction establishing a method for determination of the market price and information source applied for determination of the market price for a particular period;

27) a trader – a person carrying out mediatory functions on buy and sell of goods, performance of works, rendering of services on independent basis and (or) under a commission of a participant of transaction;

28) final consumer – independent party that does not have special relationship with participants of transaction, having an impact on economic results of a transaction carried out by these transaction participants;

28-1) revenue - income from the sale of goods, works and services, determined in accordance with international financial reporting standards or other internationally recognized financial reporting standards, which are adopted by stock exchanges for admission of securities to trading;

29) authorized body – a state revenues body of the Republic of Kazakhstan;

30) long-term price – the transaction price established for a particular period in officially published information sources and (or) agreement (contract) between transaction participants;

30-1) international group - a set of persons who are members of an international group, including the parent company of such an international group, which simultaneously meet the following conditions:

the set of persons, referred to in item one of this subparagraph, includes at least one person who is recognized as a resident of the Republic of Kazakhstan or is not recognized as a resident of the Republic of Kazakhstan, but carries out entrepreneurial activity in the Republic of Kazakhstan through a structural unit, permanent establishment;

they are interconnected through control and (or) participation;

with respect to them, consolidated financial statements are prepared or their financial statements are not taken into account when preparing consolidated financial statements solely due to the size or materiality of the data of these persons in accordance with international financial reporting standards or other internationally recognized financial reporting standards, which are adopted by stock exchanges for admission of securities to trading;

30-2) member of an international group - a person who is either:

the parent company of an international group; or

a person carrying out entrepreneurial activity, in whose respect consolidated financial statements of an international group are prepared or consolidated financial statements would be prepared (in the absence thereof) if the securities of such a person were admitted to trading on the stock exchange; or

a person carrying out entrepreneurial activity, whose financial statements are not taken into account when preparing consolidated financial statements of an international group solely because of the size or materiality of the data of this person in accordance with international financial reporting standards or other internationally recognized financial reporting standards, which are adopted by stock exchanges for admission of securities to trading; or

a structural unit or permanent establishment of the person specified in items two and (or) three, and (or) four of this subparagraph, in whose respect separate financial statements are prepared for the purposes of internal control or financial, tax or other regulatory reporting of the person who set up such a structural unit or permanent establishment;

30-3) authorized member of an international group - a member of an international group that is not the parent company of an international group, but is authorized:

by the parent company of the international group to prepare and (or) lodge, on behalf of the international group, country-by-country reports and who exercises the same rights and obligations as the parent company of the international group in legal relations regarding the lodging of country-by-country reports, or

by another member of an international group to prepare and (or) lodge, on behalf of an international group or such a member, main reports and (or) local reports in the state (territory) of residency of another member of the international group who has granted the relevant

powers, or in which such a member of an international group carries out entrepreneurial activity through a structural unit, a permanent establishment. An authorized participant in legal relations regarding the lodging of main reports and (or) local reports shall exercise the same rights and obligations as another member of the international group that transferred the relevant powers.

The actions (inaction) of an authorized member of an international group in legal relations regulated by this Law shall be recognized as the actions (inaction) of a member of an international group that has granted the relevant powers to an authorized member of an international group;

30-4) parent company of an international group - a member of an international group that simultaneously satisfies the following conditions:

such a member directly and (or) indirectly participates in the authorized capital of other members of the international group and the size of its participatory interest is sufficient for preparing consolidated financial statements with respect to members of the international group;

such a member has no parent company;

no other member of the international group simultaneously satisfies all the conditions specified in this subparagraph;

31) international business transactions - transactions in which one participant in the transaction is a non-resident not registered in the Republic of Kazakhstan, and the other participant in the transaction is a resident of the Republic of Kazakhstan or a non-resident operating in the Republic of Kazakhstan through a permanent establishment, as well as transactions of residents of the Republic of Kazakhstan, made outside the territory of the Republic of Kazakhstan;

32) consolidated financial statements - financial statements of an international group prepared in accordance with international financial reporting standards or other internationally recognized financial reporting standards, which are adopted by stock exchanges for admission of securities to trading, in which assets, liabilities, capital, income, expenses and cash flows of the parent company of the international group and other members of the international group are presented as assets, liabilities, capital, income, expenses and cash flows of one person.

Footnote. Article 2 is in the wording of the law of the Republic of Kazakhstan dated 09.06.2010 № 288-IV (shall be enforced from 01.01.2009); as amended by the Laws of the Republic of Kazakhstan dated 05.07.2011 № 452-IV (shall be enforced from 13.10.2011); dated 05.12.2013 № 152-V (shall be enforced from 01.01.2014); dated 29.09.2014 № 239-V ( shall be enforced upon expiry of ten calendar days after the date of its first official publication ); dated 07.11.2014 № 248-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication) ; № 122-VI as of 25.12.2017 (refer to Article 11 for the

enforcement procedure); dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

### **Article 3. Control upon transfer pricing**

1. Control upon transfer pricing (hereinafter – control) shall be carried out on the following transactions:

1) international business operations.

2) committed on the territory of the Republic of Kazakhstan, directly related to international business transactions:

for marketable mineral resources extracted by a subsoil user who is one of the parties;

one of the parties has tax benefits;

one of the parties to which has a loss according to tax returns for the last two tax periods preceding the year of the transaction;

parties have different corporate income tax rates.

2. Control shall be carried out by conduct by the authorized bodies as follows:

1) monitoring of transactions;

2) inspections;

3) other procedures established by the Laws of the Republic of Kazakhstan.

3. Excluded by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

4. Excluded by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

Footnote. Article 3 as amended by the Laws of the Republic of Kazakhstan dated 09.06.2010 № 288-IV (shall be enforced from 01.01.2010); dated 30.06.2010 № 297-IV ( shall be enforced from 01.07.2010); № 124-VI as of 26.12.2017 (shall be enforced from 01.01.2018); № 241-VI as of 02.04.2019 (shall be enforced ten calendar days after its first official publication); dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

### **Article 4. Powers of authorized bodies**

1. For the purpose of carrying out control, the authorized bodies shall have the right to:

1) to request from the participants in the transaction, state bodies and third parties in the manner prescribed by the laws of the Republic of Kazakhstan, the information necessary to determine the market price and differential, as well as other data for monitoring transactions;

2) is excluded by the Law of the Republic of Kazakhstan dated 13.01.2014 № 159-V ( shall be enforced upon expiry of ten calendar days after the date of its first official publication );

3) carry out monitoring of transactions;

4) is excluded by the Law of the Republic of Kazakhstan dated 13.01.2014 № 159-V ( shall be enforced upon expiry of ten calendar days after the date of its first official publication );

5) is excluded by the Law of the Republic of Kazakhstan dated 13.01.2014 № 159-V ( shall be enforced upon expiry of ten calendar days after the date of its first official publication );

6) to conclude an agreement on the application of transfer pricing in the manner determined by the authorized body;

7) send a request to a member of an international group to lodge main and (or) country-by-country reports for a reporting fiscal year to the authorized body in the cases established by Articles 7-2 and 7-3 of this Law.

2. Is excluded by the Law of the Republic of Kazakhstan dated 05.07.2011 № 452-IV ( shall be enforced from 13.10.2011).

3. The authorized bodies shall be obliged to:

1) respect the rights of transaction participants and members of the international group, to whom the provisions of this Law apply;

2) protect the state interests;

3) consider economic assessment of applied price, including the documents confirming the price of transaction and differential, information on applying one of the methods for determination of the market price and other information confirming the substantiation of applied price;

3-1) consider an application of a transaction participant for conclusion of the agreement on applying transfer pricing within ninety business days from the date of receipt of the application from the transaction participant;

3-2) direct a written response to a transaction participant with the reasons of refusal in conclusion of the agreement on applying transfer pricing within five business days from the date of adoption of the decision on results of consideration of the application of the transaction participant;

4) explain the procedure for filling the standard forms of accounting on monitoring of transactions;

5) keep the secrecy of details received in the course of controlling;

6) conduct consideration of complaints of transaction participants based on results of inspection in accordance with the Laws of the Republic of Kazakhstan.



4. The authorized bodies shall perform other powers provided by this Law, other Laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Footnote. Article 4 as amended by the Laws of the Republic of Kazakhstan dated 09.06.2010 № 288-IV (shall be enforced from 01.01.2010); dated 05.07.2011 № 452-IV ( shall be enforced from 13.10.2011); dated 13.01.2014 № 159-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication); № 122-VI as of 25.12.2017 (refer to Article 11 for the enforcement procedure); dated 29.06.2020 № 352-VI ( shall be enforced upon expiry of ten calendar days after the day of its first official publication ); dated 24.11.2021 № 75-VII (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

#### **Article 5. Rights and obligations of transaction participants and members of an international group**

1) present economic assessment of the used price to authorized bodies, including documents confirming the transaction price and differential, information on applying one of the methods for determining the market price and other information confirming used prices;

2) receive information and explanations on the legislation of the Republic of Kazakhstan on transfer pricing from the authorized bodies;

3) represent own interests on the issues arising in connection with the performance of control, either in person or through own representative, or with involvement of a tax adviser;

4) present economic justification of the used price and other information confirming the used price to authorized bodies in the course of performance of control and appeal of a notification of tax audit results;

5) appeal notifications of inspection acts and action (inaction) of civil servants of authorized bodies in the manner established by the Laws of the Republic of Kazakhstan;

6) prior to an inspection, adjust the transaction price and (or) taxable items, as well as tax-related items, on their own;

7) conclude agreements with authorized bodies on the application of transfer pricing.

Moreover, a member of an international group has also the right to authorize another member of the international group to prepare and (or) lodge country-by-country and (or) main , and (or) local reports, on its behalf.

2. Transaction participants and members of an international group have other rights established by the laws of the Republic of Kazakhstan.

3. Transaction participants are obliged to:

1) perform their duties timely and in full in accordance with this Law;

2) comply with the legal requirements of authorized bodies;

3) maintain records and documentation confirming the reasonableness of the used transaction price;

4) submit information and lodge reports on the monitoring of transactions to the authorized bodies, and also other documents in the manner specified by this Law.

At the request of authorized bodies, a transaction participant shall provide information and documents confirming the reasonableness of the used transaction price, within ninety calendar days;

5) at the request of authorized bodies, in the course of inspections, provide economic justification of the used price, including documents confirming the transaction price and differential, information on the application of one of the methods for determining the market price and other information confirming the used price;

6) maintain local reporting if the party to the transaction is required to submit such reporting.

4. Members of an international group are obliged to:

1) perform their duties timely and in full in accordance with this Law;

2) comply with the legal requirements of authorized bodies;

3) submit a statement of membership in an international group to the authorized body in accordance with Article 5-1 of this Law;

4) maintain main and (or) cross-country reporting if a member of an international group is assigned an obligation or requirement to submit such reporting;

5) lodge transfer pricing reports to the authorized body in accordance with the provisions of this Law, except for cases established by subparagraph 6) of this paragraph;

6) at the request of authorized bodies, lodge main and (or) country-by-country reports in accordance with the provisions of this Law.

5. Transaction participants and members of an international group perform other duties provided for by this Law.

**Footnote. Article 5 as amended by Law of the Republic of Kazakhstan № 122-VI as of 25.12.2017 (refer to Article 11 for the enforcement procedure); as amended by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

#### **Article 5-1. Statement of membership in an international group**

1. A member of an international group is obliged to submit a statement of its membership in an international group to the authorized body on or before September 1 of a year following a reporting fiscal year.

The statement form and procedure for its completion shall be approved by the authorized body.

**2. Excluded by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

3. If a member of an international group finds that information in a submitted statement of membership in an international group is incomplete, inaccurate, or the statement was completed with errors, this member is obliged to submit a corrected statement with account of updated information.

In this case, the deadline established by paragraph 1 of this article does not apply to the submission of the corrected statement.

4. A failure of a member of an international group to submit a statement of membership in an international group or submission of a statement containing inaccurate information by such a member of an international group to the authorized body shall entail liability under the laws of the Republic of Kazakhstan.

**Footnote.** The Law is supplemented with Article 5-1 in accordance with Law of the Republic of Kazakhstan № 122-VI as of 25.12.2017 (shall be enforced from 01.01.2018); as amended by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

## **Article 6. Monitoring of transactions**

1. Monitoring of transactions shall be carried out by supervision of authorized bodies of the prices, applied by transaction participants.

2. International business transactions shall be subject to transaction monitoring.

Transaction monitoring reporting shall be presented on international business transactions in accordance with the list approved by the authorized body.

3. Based on results of monitoring of transactions in case of establishment of a transaction price deviation from the market price, the authorized bodies shall conduct inspection on the issues of transfer pricing.

4. The rules for carrying out the monitoring of transactions shall be approved by the authorized body and shall include the procedure for filling approved forms of accounting on the monitoring of transactions and their representation to the authorized bodies, as well as procedure for documentation maintenance on the monitoring of transactions.

**Footnote.** Article 6 as amended by the Laws of the Republic of Kazakhstan dated 09.06.2010 № 288-IV (shall be enforced from 01.01.2009); dated 05.07.2011 № 452-IV (shall be enforced from 13.10.2011); dated 29.09.2014 № 239-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication); dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

## **Article 7. Reporting on transfer price formation**

**Footnote.** The title has been amended by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

1. Transfer price formation reporting shall consist of the following types of reporting:

- 1) local;
- 2) main;
- 3) country-by-country.

The forms of transfer pricing reports and the procedure for their completion shall be approved by the authorized body.

2. Excluded by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

3. If a participant in a transaction and (or) a participant in an international group discovers incomplete information, inaccuracies or errors in filling out the submitted reports, such participant shall be obliged to submit adjusted reports taking into account the updated information.

In this case, the deadlines for lodging reports established by this Law do not apply to the lodging of corrected reports.

4. Failure by a participant in a transaction and (or) a participant in an international group to submit reports provided for in this article or submission of reports containing false information, shall entail liability in accordance with the laws of the Republic of Kazakhstan.

Footnote. Article 7 as amended by Law of the Republic of Kazakhstan № 122-VI as of 25.12.2017 (refer to Article 11 for the enforcement procedure); as amended by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

#### **Article 7-1. Local reports**

1. Local reporting for the reporting financial year shall be submitted by the party to the transaction to the authorized body no later than 12 months following the reporting financial year.

2. Excluded by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

3. The provisions of this article shall apply to a transaction participant who, during the reporting financial year, made transactions specified in paragraph 1 of Article 3 of this Law with related parties, except for transactions with persons identified as related parties in accordance with subparagraphs 16) - 20) of part two of Article 11 of this Law, and whose amount of revenue in accordance with its financial statements for the financial year preceding the reporting financial year is at least five million times the monthly calculation index established by the law on the republican budget and valid as of January 1 of the year preceding the reporting financial year.

Footnote. The Law is supplemented with Article 7-1 in accordance with Law of the Republic of Kazakhstan № 122-VI as of 25.12.2017 (shall be enforced from 01.01.2019); as amended by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

## **Article 7-2. Main reports**

1. Main reports for a reporting fiscal year shall be lodged by a member of an international group to the authorized body at its request.

The main reports for the reporting financial year shall be submitted by a member of the international group to the authorized body within thirty calendar days from the date of receipt by the member of the international group of the requirement to submit such reports. Basic reporting may be requested from a member of an international group by the authorized body no earlier than twelve months following the end of the relevant financial year.

In this case, the obligation to lodge main reports is considered fulfilled if a member of the international group submits a notarized copy of main reports of the parent company of the international group that is a non-resident or an authorized member of the international group (if the parent company of the international group has granted the right to lodge main reports to such a member of the international group), which contains information similar to that in main reports prepared in accordance with the requirements established by the legislation of the Republic of Kazakhstan on transfer pricing. If main reports are lodged by the parent company of an international group or an authorized member of the international group to the competent authority of a foreign country in electronic form, it is not required to notarize a copy of such reports.

2. Unless otherwise established by paragraph 3 of this article, the obligation to lodge main reports at the request of the authorized body extends to the following members of an international group:

1) the parent company of an international group that is a resident of the Republic of Kazakhstan;

2) an authorized member of an international group (if main reports are to be lodged by an authorized member of an international group);

3) a resident who is a member of an international group and is not the parent company of an international group or an authorized member of an international group;

4) a non-resident who is a member of an international group and carries out entrepreneurial activities in the Republic of Kazakhstan through a structural unit, a permanent establishment, if the parent company of the international group or an authorized member of the international group (if main reports are to be lodged by an authorized member of the international group) is not a resident of the Republic Kazakhstan.

If main reports are to be lodged by an authorized member of the international group on behalf of the person, specified in subparagraph 3) or 4) of this paragraph, or by the parent company of the international group, whose member is the person, specified in subparagraph 3) or 4) of this paragraph, in the manner prescribed by the authorized body, the obligation of the person, specified in subparagraph 3) or 4) of this paragraph, is considered to have been fulfilled upon the lodging of main reports at the request of the authorized body.

3. The provisions of this article apply to a member of an international group that simultaneously meets the following conditions:

1) in a reporting fiscal year, a member of an international group made transactions specified in Article 3 of this Law;

2) the amount of revenue shown in consolidated financial statements of an international group for a fiscal year immediately preceding a reporting fiscal year, for which main reports are lodged, is at least the amount:

equivalent to 750 million euros using the arithmetic average market exchange rate set in accordance with the tax legislation of the Republic of Kazakhstan for the corresponding fiscal year, if the parent company of the international group is a resident of the Republic of Kazakhstan;

established by the legislation of a foreign country, whose resident is the parent company of an international group or an authorized member of an international group (if the parent company of an international group has granted the authority to lodge country-by-country reports to such a member of an international group), for creating an obligation to lodge country-by-country reports to the competent authority of such a state - if the parent company of the international group or authorized member of the international group is a non-resident of the Republic of Kazakhstan, and if such a foreign state has legislation on the lodging of country-by-country reports in place.

**Footnote. The Law is supplemented with Article 7-2 in accordance with Law of the Republic of Kazakhstan № 122-VI as of 25.12.2017 (shall be enforced from 01.01.2019); as amended by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

### **Article 7-3. Country-by-country reports**

1. Country-by-country reports for a reporting fiscal year shall be lodged to the authorized body by a member of the international group, specified in paragraph 2 of this article, within 12 months following the reporting fiscal year.

Country-by-country reports for a reporting fiscal year shall be lodged by a member of an international group, specified in paragraph 3 of this article, to the authorized body at its request within 12 months of receipt of the requirement for lodging country-by-country reports by the member of the international group.



In this case, the obligation to lodge country-by-country reports is considered fulfilled if a member of an international group submits a notarized copy of country-by-country reports of the parent company of the international group that is a non-resident or an authorized member of the international group (if the parent company of the international group has granted the right to lodge country-by-country reports to such a member of the international group) containing information similar to that in country-by-country reports, the requirements for which are established by the legislation of the Republic of Kazakhstan on transfer pricing. If the country-by-country reports are lodged by the parent company of the international group or an authorized member of the international group to the competent authority of a foreign country in electronic form, it is not required to notarize a copy of such reports.

2. Unless otherwise established by paragraph 4 of this article, the obligation to lodge country-by-country reports is imposed on with the following members of the international group:

1) the parent company of an international group that is a resident of the Republic of Kazakhstan;

2) an authorized member of an international group (if the parent company of the international group, specified in subparagraph 1) of this paragraph, has granted the authority to lodge country-by-country reports to such a member of the international group).

3. Unless otherwise established by paragraph 4 of this article, the obligation to lodge country-by-country reports at the request of the authorized body extends to the following members of the international group:

1) a resident who is a member of an international group and is not the parent company of an international group or an authorized member of an international group, provided that one of the following conditions is observed:

the parent company of an international group or an authorized member of an international group (if the parent company of an international group has granted the authority to lodge country-by-country reports to such a member of an international group) is not a resident of the Republic of Kazakhstan and is not obliged to lodge country-by-country reports by the legislation of the state (territory) of its residency;

the parent company of the international group or an authorized member of the international group (if the parent company of the international group has granted the right to lodge country-by-country reports to such a member of the international group) failed to fulfill their obligations for lodging country-by-country reports (if the authorized body has information, including that received from the competent authority of a foreign state (territory) );

the state (territory) of residency of the parent company of the international group or an authorized member of the international group (if the parent company of the international

group has granted the right to lodge country-by-country reports to such a member of the international group) has no international treaty (agreement ) with the Republic of Kazakhstan in place, providing for the exchange of information on taxation issues;

the state (territory) of residency of the parent company of the international group or an authorized member of the international group (if the parent company of the international group has granted the right to lodge country-by-country reports to such a member of the international group) systematically fails to fulfill obligations for automatic exchange of information with the authorized body;

2) a non-resident who is a member of an international group and carries out entrepreneurial activity in the Republic of Kazakhstan through a structural unit, a permanent establishment, provided that one of the conditions, similar to those specified in subparagraph 1) of this paragraph, is observed.

For the purposes of item five of subparagraph 1) of this paragraph, systematic non-fulfillment of obligations for automatic exchange of information means cases when the competent authority of a foreign state (territory) refused to provide information on country-by-country reports, although there is an international treaty (agreement) with the Republic of Kazakhstan, providing for the exchange of information on taxation issues, or when the competent authority of a foreign state (territory) did not automatically exchange information with the authorized body on the data from country-by-country reports in relation to an international group, one of whose members is a resident of the Republic of Kazakhstan or a non-resident carrying out entrepreneurial activity in the Republic of Kazakhstan through a structural unit, permanent establishment, for more than two years after an appropriate request from the authorized body.

4. The provisions of this article shall apply to the parent company of an international group or an authorized member of an international group (if the parent company of the international group has granted the right to lodge country-by-country reports to such a member of the international group), or to another member of an international group who is responsible for lodging country-by-country reports at the request of the authorized body, provided that the amount of revenue shown in the consolidated financial statements of the international group for the fiscal year immediately preceding the fiscal year for which country-by-country reports are lodged, is at least the amount:

equivalent to 750 million euros using the arithmetic average market exchange rate set in accordance with the tax legislation of the Republic of Kazakhstan for the corresponding fiscal year - if the parent company of the international group is a resident of the Republic of Kazakhstan;

established by the legislation of a foreign country, whose resident is the parent company of an international group or an authorized member of an international group for creating an obligation to lodge country-by-country reports to the competent authority of such a state - if the parent company of the international group or authorized member of the international



group is a non-resident of the Republic of Kazakhstan, and if such a foreign state has legislation on the lodging of country-by-country reports in place.

5. The authorized body must request and require the competent authority of a foreign state to annually submit, through automatic information exchange on the basis of an international treaty (agreement) providing for the exchange of information on taxation issues, the data of country-by-country reports regarding the activity of an international group, one of whose participants is a resident of the Republic of Kazakhstan or a non-resident carrying out entrepreneurial activity in the Republic of Kazakhstan through a structural unit, a permanent establishment in the manner and within the time frames established by the parties to the international treaty (agreement).

6. The authorized body shall send, through automatic information exchange on the basis of a current international treaty (agreement), one of the parties to which is the Republic of Kazakhstan, providing for the exchange of information on taxation issues, the relevant data of country-by-country reports lodged in the Republic of Kazakhstan by the parent company of an international group or an authorized member of an international group, to the competent authority of a foreign state (territory), where a member of an international group is a resident or a non-resident carrying out entrepreneurial activity through a structural unit, a permanent establishment, at the request of a foreign state in the manner and within the time frames established by the parties to such an international treaty (agreement), provided that the competent authority of the foreign state (territory) adheres to the principle reciprocity.

For the purposes of this article, the principle of reciprocity shall be understood to mean mutual submission of the data of country-by-country reports by the authorized body and the competent authority of a foreign state (territory).

**Footnote. The Law is supplemented with Article 7-3 in accordance with Law of the Republic of Kazakhstan № 122-VI as of 25.12.2017 (shall be enforced from 01.01.2016).**

#### **Article 7-4. The use of transfer pricing reports for tax purposes**

The authorized body has the right to use transfer pricing reports for tax purposes.

**Footnote. The Law is supplemented with Article 7-4 in accordance with Law of the Republic of Kazakhstan № 122-VI as of 25.12.2017 (shall be enforced from 01.01.2018).**

#### **Article 8. Interaction of authorized bodies with other organizations**

1. The authorized bodies shall have the right to request information required for determination of correctness of applying the transaction price from the following subjects in accordance with the Laws of the Republic of Kazakhstan:

- 1) state bodies;
- 2) banks, organizations carrying out separate types of banking operations;
- 3) insurance (reinsurance) organizations, insurance brokers;

- 4) professional participants of securities market;
- 5) auditors, audit organizations;
- 6) other organizations related to international business operations.

2. The requests on representation of information and involvement of the specialists of state bodies to inspections shall be compulsory for execution within thirty calendar days.

#### **Article 9. Conduct of inspections on the issues of transfer pricing**

1. The authorized bodies shall conduct inspections on the issues of transfer pricing in the following cases:

- 1) upon establishment of deviation of transaction price from market price;
- 2) on the basis of information on the facts of applying the transfer prices received from state bodies;
- 3) during inspections on compliance with the tax legislation of the Republic of Kazakhstan and the customs legislation of the Eurasian Economic Union and (or) the Republic of Kazakhstan carried out by authorized bodies in the absence of sources of information on market prices.

2. The state control in the field of applying transfer process shall be carried out in the form of inspection and other forms.

An inspection shall be carried out in accordance with the Entrepreneurial Code of the Republic of Kazakhstan. Other forms of state control shall be carried out in accordance with this Law.

Features of the procedure and time frames for conducting an inspection and other forms of state control by state revenue authorities shall be determined by the tax legislation of the Republic of Kazakhstan and the customs legislation of the Eurasian Economic Union and (or) the Republic of Kazakhstan.

**Footnote. Article 9 as amended by the Laws of the Republic of Kazakhstan dated 17.07.2009 № 188-IV (the order of enforcement see Article 2); dated 30.06.2010 № 297-IV (shall be enforced from 01.07.2010); dated 06.01.2011 № 378-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 07.11.2014 № 248-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication); dated 29.10.2015 № 376-V (shall be enforced from 01.01.2016); № 124-VI as of 26.12.2017 (shall be enforced from 01.01.2018).**

#### **Article 10. Adjustment of items of taxation and (or) objects linked with tax assessment**

1. When it is established that the transaction price deviates from the market price, taking into account the price range and (or) profitability of the transaction participant from the

profitability range during inspections, the authorized body shall adjust taxable items and (or) tax-related items in the manner prescribed by this Law and other laws of the Republic of Kazakhstan.

2. Regarding exchange goods, the adjustment of items of taxation and (or) objects linked with tax assessment shall be carried out in consideration of a price range and differential stated in information sources, unless otherwise provided by this Article. The list of exchange goods shall be approved by the Government of the Republic of Kazakhstan.

3. Regarding the transactions with agricultural products, the adjustment of items of taxation and (or) objects linked with tax assessment shall be carried out upon deviation of the transaction price from the market price more than ten percent, unless otherwise provided in paragraph 4 of this Article.

4. Regarding export contracts concluded in the period from 15 March to 1 July of a current calendar year in respect of agricultural products produced (received) in one of the future months of the current calendar year, the adjustment of items of taxation and (or) objects linked with tax assessment shall not be performed in case if the transaction price is not lower than the process of commercial procurement by the specialized organization for the current calendar year upon condition of keeping a separate accounting of these agricultural products and inflow of money to the banking accounts of a transaction participant (seller) from a non-resident in amount of no less than fifty percent of a general sum of export contract within fifteen business days after conclusion of the expert contract.

5. Adjustment of objects of taxation and (or) objects related to taxation shall be made when the transaction price deviates from the market price, defined as the median value from the price range specified in the source of information, for the following transactions with participants:

- 1) registered in the state with concessional taxation;
- 2) carrying out exchange (barter) operations;
- 3) having a loss on a data of tax declarations for the last two taxable periods preceding the year of consummation of the transaction;
- 4) having tax exemptions;
- 5) carrying out the execution of circumstances on the transactions performed by set off of the homogeneous counter demands (including set off upon assignment of demand).

5-1. For transactions with related parties, adjustments to taxable items and (or) tax-related items if the transaction price deviates from the market price, defined as the median value from the price range specified in the source of information, are made by the authorized body based on the results of the tax audit.

6. On the basis of adjustment of items of taxation and (or) objects linked with tax assessment, the payment of taxes and other compulsory payments to the budget calculated in ways that if incomes or expenses from these transactions and other items of taxation for accounting period were determined proceeding from the market price in consideration of a

price range, shall be made with applying fines and late fees in accordance with the legislation of the Republic of Kazakhstan.

7. In case of establishing a fact of deviation of transaction price from the market price, in consideration of a price range of a transaction participant that has the tax exemptions and (or) customs payments, the payment of taxes and payments over a period in which the deviation of transaction price from the market price is established, shall be made in generally established manner without applying special provisions of the legislation of the Republic of Kazakhstan reducing tax and customs obligations.

8. Adjustment of items of taxation and (or) objects linked with tax assessment shall be carried out upon establishing a fact of distribution of incomes, carried out in accordance with Article 16 of this Law that do not conform to the “arm's-length” principle in comparable economic conditions between interrelated parties according to the results of accounting taxable period.

Adjustment in accordance with this paragraph shall be carried out by change of items of taxation and (or) objects linked with tax assessment without the relevant change of payment documents and original documents conforming the discharge of goods (works, services) with drawing up of the forms of documents required in accordance with the customs legislation of the Republic of Kazakhstan.

In case of adjustment performed by a transaction participant in accordance with subparagraph 5) of paragraph 1 of Article 5 of this Law with simultaneous transfer of the part of total income between interrelated parties, the received income shall be considered as the revenues from realization for accounting taxable period, and the transferred income shall be considered as reduction of the revenues from realization for accounting taxable period.

Adjustment of items of taxation and (or) objects linked with tax assessment performed in accordance with this paragraph, shall be subject to reflection in the relevant tax reporting represented to the state revenues bodies accompanied by the relevant calculations for each transaction individually, in compliance with the conditions provided by paragraph 9 of this Article.

9. Adjustment shall be performed on items of taxation and (or) objects linked with tax assessment, if such adjustment brings or may bring in the following to increase of tax amounts and other compulsory payments to the budget.

10. Adjustment of items of taxation and (or) objects linked with tax assessment shall not be performed upon deviation of the transaction price from market price in consideration of a price range in the following cases upon:

1) establishing or determining the transaction price and (or) procedure (methods) of price formation in international treaty ratified by the Republic of Kazakhstan;

2) fixation of transaction price in agreements between the Government of the Republic of Kazakhstan and governments of other states;

2-1) exercise of a priority right of the state to acquire a fine gold for replenishment of assets in precious metals;

3) fixation of transaction price and (or) establishment of the procedure (methods) for price formation under decision of the Government of the Republic of Kazakhstan.

Upon deviation of transaction price from the price fixed and (or) formed in accordance with subparagraphs 1) -3) of part one of this paragraph, the adjustment of items of taxation and (or) objects linked with tax assessment shall be carried out in the manner established by this Law.

Application on fixation of transaction price and (or) establishment of the procedure (methods) for price formation under decision of the Government of the Republic of Kazakhstan shall be represented by a transaction participant to the authorized body carrying out management of the relevant scope of state administration, accompanied by economic assessment of suggested price and (or) procedure (methods) of price formation, documents (calculations, substantiations) confirming a threat of occurrence of unfavourable social and economic consequences, and substantiation of necessity to fix the transaction prices and (or) to establish the procedure (methods) for price formation under decision of the Government of the Republic of Kazakhstan.

No later than thirty business days from the date of receipt of an application, the authorized body carrying out management of the relevant scope of state administration shall take one of the following decisions:

1) on a practicability of fixing transaction price and (or) establishment of the procedure (methods) for tax formation, and shall direct proposals to the Government of the Republic of Kazakhstan on fixing transaction price and (or) establishment of the procedure (methods) of tax formation;

2) on inexpediency of fixing transaction price and (or) establishment of the procedure (methods) of tax formation and shall direct a substantiated refusal to a transaction participant.

11. When a taxpayer independently adjusts taxable items and (or) tax-related items before the start of a comprehensive tax audit (if transfer price formation issues are included) and a thematic audit on transfer price formation issues, the amounts of taxes and other obligatory payments to the budget shall be calculated using a price range and (or) profitability range (margin) and are subject to payment without penalties and reflected in the relevant tax reporting submitted to the authorized body.

12. Adjustment of taxable objects and (or) tax-related objects of a transaction participant registered in a state with preferential taxation shall be carried out as follows:

1) when applying the method specified in subparagraph 1) of paragraph 1 of Article 12 of this Law - without taking into account the provisions of paragraph 5 of Article 13 of this Law;

2) when applying the methods specified in subparagraphs 2), 3) and 5) of paragraph 1 of Article 12 of this Law - without taking into account the profitability of the transaction participant registered in a state with preferential taxation.

Footnote. Article 10 is in the wording of the Law of the Republic of Kazakhstan dated 09.06.2010 № 288-IV (shall be enforced from 01.01.2009); as amended by the Laws of the Republic of Kazakhstan dated 22.06.2012 № 21-V (shall be enforced from 01.01.2009); dated 05.12.2013 № 152-V (the order of enforcement see Article 9); dated 07.11.2014 № 248-V ( shall be enforced upon expiry of ten calendar days after the date of its first official publication ); as amended by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).

**Article 10-1. Determination of a market price and adjustment of items of taxation and (or) objects linked with tax assessment in particular cases**

1. The subjects of legal relations for which the transaction price is formed in accordance with the procedure (method) for determination of a market price of goods realized within the agreements on production sharing, including the transactions with parties registered in countries with concessional taxation approved by the Government of the Republic of Kazakhstan up to 30 June 2012, the methods of determination of the market price established by this Law shall not be applied.

Upon deviation of a transaction price from the price formed in accordance with the procedure (method) for determination of a market price of goods realized within the agreements on production sharing including the transactions with parties registered in countries with concessional taxation, adjustment of items of taxation and (or) objects linked with tax assessment shall be performed up to the price determined in accordance with such procedure (method).

2. This Article shall be applied to transactions concluded from the date of entering of agreement on production sharing into force.

Footnote. The Law is supplemented by Article 10-1 in accordance with the Law of the Republic of Kazakhstan dated 22.06.2012 № 21-V (shall be enforced from 01.01.2009).

**Article 11. Determination of interrelatedness of parties**

Footnote. Throughout Article 11, the word “linked” is substituted for the words “interrelated” respectively by the Law of the Republic of Kazakhstan dated 09.06.2010 № 288-IV (shall be enforced from 01.01.2010).

Interrelated parties shall be recognized as individuals and (or) legal entities having special mutual relations having an impact on economic results of the transactions (operations) between them.

Such special mutual relations shall include the following conditions:

1) one person shall be recognized as an affiliate of another person;

- 2) the person is a principal shareholder, big participant (holding ten and more percent of voting shares or participatory interests) of a transaction participant;
- 3) the person is interrelated with a transaction participant by a contract including property trust management in accordance with which he (she) has the right to determine decisions adopted by a trust manager;
- 4) the property owner is interrelated with a person to whom one or several powers of the property owner in respect of this property (possession, use, disposal) is transferred, as well as on the basis of the contract on property trust management in accordance with which the owner has the right to determine decisions adopted by this person;
- 5) the person is a civil servant of a transaction participant or legal entity mentioned in subparagraphs 2), 3), 6) – 10) of this Article with the exception of an independent director;
- 6) the legal entity is under control of a person that is a principal shareholder, big participant or civil servant of the transaction participant;
- 7) the legal entity with respect to which the person being a principal shareholder, big participant or civil servant of a transaction participant is a principal shareholder, big participant having the right to the relevant share in property;
- 8) the legal entity with respect to which the transaction participant is a principal shareholder, big participant having the right to the relevant share in property;
- 9) the legal entity is under control of a third party jointly with a transaction participant;
- 10) a person independently or jointly with his affiliates shall own, use, or dispose of ten or more percent of voting shares or participation interests of a transaction participant or legal entities specified in subparagraphs 2), 3), 6) - 9) of this article;
- 11) the individual is a close relative (parent, son, daughter, adopter, adoptee, brighter, sister, grandmother, grandfather, grandchild), as well as legal relative (brother, sister, parent, son or daughter of a husband (wife) of an individual being a principal shareholder, big participant or civil servant, with the exception of an independent director of a transaction participant;
- 12) two trust managers are interrelated among each other, if one and the same person is a founder of trust management on the basis of two contracts of property trust management and has a possibility to determine decisions adopted by them;
- 13) the trust manager and organization in which a founder of trust management is a principal shareholder or big participant (holding ten and more percent of voting shares or participatory shares), if the founder of trust management has a possibility to determine the decisions adopted by the trust manager;
- 14) the trust manager on the basis of one contract of property trust management and the gain acquirer on the basis of another contract on property trust management are recognized interrelated, if the founder of trust management according to both contracts on property trust management is one and the same person that has the possibility to determine decisions adopted by the trust manager;

15) excluded by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication);

16) a person shall produce or trade products using intangible assets and (or) intellectual property rights of another person and its related party, for which he must make payments totalling more than fifty percent of the original cost (or self-cost) of such products;

17) a person and (or) its related party shall supply more than fifty percent of the total cost of raw materials, materials or initial products (excluding depreciation costs of fixed assets) used by another person for the production of finished products;

18) a person and (or) its related party shall generate more than fifty percent of the revenue of another person for the reporting calendar year on transactions that are international business operations;

19) a person whose total debt to another person on the date of concluding a transaction or revising the main terms of a transaction exceeds fifty percent of equity capital or at least ten percent of the total amount of debt at the end of the reporting calendar year shall be guaranteed by another person, except in cases where one of the persons is an independent international financial organization or a government agency of a foreign state, as well as cases when one of the persons has a license to conduct banking and other operations issued in the Republic of Kazakhstan or a foreign state;

20) a person who is granted rights for the reporting calendar year as an agent, distributor or dealer of a company when purchasing or selling goods (work, services) in accordance with a written agreement.

The conditions provided for in subparagraphs 16) - 20) of part two of this article shall not apply to the non-resident participant in the transaction:

whose financial statements are published in accordance with international financial reporting standards (hereinafter referred to as IFRS) in the public domain and (or) presented on the stock exchanges of member countries of the Organization for Economic Cooperation and Development (hereinafter referred to as OECD);

who is a member of an international group whose financial statements are published in accordance with IFRS in the public domain and (or) presented on the stock exchanges of OECD member countries;

whose financial statements are submitted to the authorized body at its request no later than sixty calendar days from the date of receipt of the request. In this case, the financial statements must be confirmed by an independent audit organization.

**Footnote. Article 11 as amended by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (effective sixty calendar days after the date of its first official publication).**

## **Article 12. Methods for determination of a market price**



1. For the purpose of determination of a market price, one of the following methods shall be used:

- 1) method of comparable uncontrolled price;
- 2) “cost-plus” method;
- 3) resale minus method;
- 4) profit split method;
- 5) transactional net margin method.

2. If it is impossible to use the comparable uncontrolled price method, one of the methods specified in paragraph 1 of this Article shall be used, which, taking into account the actual circumstances and conditions of the transaction being made, allows to draw the most reasonable conclusion about the compliance or non-compliance of the transaction price with market prices.

3. The choice of the appropriate method must be justified, where the party to the transaction takes into account the following circumstances:

1) the choice of method taking into account the nature of the transaction, determined by analyzing the functions performed by each participant in the transaction, taking into account the assets used and the expected risks;

2) availability of reliable information necessary to apply the selected transfer price formation method;

3) the degree of comparability of controlled and uncontrolled transactions, including the reliability of adjustments to achieve comparability.

**Footnote. Article 12 as amended by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

### **Article 13. Method of comparable uncontrolled price**

1. Method of comparable uncontrolled price shall be applied by comparing a transaction price for goods (works, services) with a market price considering the price range on identical (and in their absence – homogeneous) goods (works, services) in comparable economic conditions, unless otherwise provided by this Article.

Upon determination of a market price of goods (work, service) the information on prices for goods (works, services) at the time of realizing these goods (work, service) shall be considered.

In case if conditions of a contract on realizing goods (works, services) provide the application of a quotation period, the price for exchange goods, as well as for non-exchange goods the prices of which are tied with quotations to exchange goods shall be determined as arithmetic mean of any daily quotations to goods (works, services) published in one informational source for the quotation period considering the differential.

The arithmetic mean of price quotations for quotation period shall be determined by the following formula:

$$S = \frac{P_1 + P_2 + P_n}{n}$$

where:

S – arithmetic mean value of arithmetic mean daily price quotations for the relevant goods (work, service) for the quotation period;

$P_1, P_2, \dots, P_n$  – arithmetic mean value of daily price quotations for the relevant goods (work, service) on days for which the price quotations within the quotation period are published;

n – number of days in quotation period for which the price quotations are published.

Arithmetic mean value of daily price quotations for the relevant goods (work, service) for the quotation period shall be determined by the formula:

$$P_n = \frac{C_{n1} + C_{n2}}{2}$$

where:

$P_n$  – arithmetic mean value of daily price quotations for the relevant goods (work, service)

;

$C_{n1}$  – the lowest value (min) of daily price quotation for the relevant goods (work, service);

$C_{n2}$  – the highest value (max) of daily price quotation for the relevant goods (work, service).

In the absence of minimal and maximal values of price quotations for the date, the arithmetic mean value shall be regarded as factual value of the quotation for the relevant date.

2. For the purpose of this Law, the transaction shall be recognized as documentary confirmed goods delivery (performed work, rendered service) within the contract, and comparison of a price of realization with a market price shall be carried out only with the relevant market of goods (works, services) independently from the country of registration of a customer.

The date of realization of goods is a date of transfer of the right of ownership to a customer, unless otherwise provided by this Article.

The quotation period established in a contract on realization of goods (works, services) shall not be subject to change within the twelve months period from the date of its establishment.

For the purpose of this Law, the quotation period shall be determined according to contract terms in a time length:

on oil:

1) upon realization of goods by marine transport no more than five quotation days up to the date of transfer of the right of ownership of goods to a customer and no more than five quotation days after the date of transfer of the right of ownership of goods to the customer;

2) upon realization of goods by major pipeline transport and other types of transport, with the exception of realization by marine transport, from the first to last day of a month of transferring the right of ownership of goods to a customer;

on exchange goods (works, services), with the exception of oil – no more than sixty two calendar days up to the date of transferring the right of ownership of goods (work, service) to a customer and no more than sixty two calendar days after the date of transferring the right of ownership of goods (work, services) to the customer;

on non-exchange goods, the prices for which are tied to the quotations to exchange goods – no more than sixty two calendar days up to the date of transferring the right of ownership of goods to a customer and no more than one hundred twenty calendar days after the date of transferring the right of ownership of goods to the customer.

Upon non-conformity of quotation period established in a contract on realization of goods (works, services) to conditions of determining the quotation period established by this Article, the market prices for goods (works, services) shall be accepted for the date of realization of these goods (work, service).

According to long-term contracts with non-exchange goods (works, services) in which the long-term price is stated, the date of realization of goods (works, services) for determination of the price is the date of conclusion of the contract upon simultaneous compliance with the following conditions:

1) consummation of transactions according to a contract shall begin within a month from the date of conclusion of the contract;

2) market price is determined from officially recognized informational sources established in accordance with this Law for long-term contracts for the last date preceding the date of conclusion of the contract;

3) long-term price is applied no more than once a year and is confirmed by the final contract between transaction participants or the relevant contract between a trader, an affiliated transaction participant – resident of the Republic of Kazakhstan, and a final consumer that is an independent party. The documents represented upon request of authorized bodies are the evidences of execution of the contract.

3. Method of comparable uncontrolled price shall be applied for determination of a market price by external or internal correlation. Upon impossibility of applying a method of comparable uncontrolled price by external correlation, the method of comparable uncontrolled price shall be applied by internal correlation. By this, upon external correlation,

the comparable transactions between a transaction participant and interrelated party and between two and more independent parties shall be compared. Upon internal correlation, the comparable transactions shall be compared between a transaction participant and interrelated party and between the same transaction participant and independent party.

4. Upon applying a method of comparable uncontrolled price, the market price shall be determined as follows:

1) for transactions with goods (works, services) on which there are documentary confirmed information on a route of transportation to the relevant market with available price in informational source, the market price shall be determined as the price from the informational source considering the range price. The transaction price shall be brought by differential to comparable economic conditions with market price;

2) for transactions with goods (works, services) that do not conform to subparagraph 1) of this paragraph, the market price shall be determined by bringing of the price from informational source to the relevant market by differential to comparable economic conditions with the transaction price considering the price range.

5. Differential shall include:

1) expenditures required for delivery of goods (works, services) to the relevant market substantiated and confirmed documentarily and (or) by informational sources;

2) conditions having an impact on a size of price deviation from the market price mentioned in paragraph 7 of this Article;

3) quality of goods (works, services).

6. The components of differential shall be confirmed documentarily or by informational sources.

7. The conditions having an impact on a size of deviation of transaction price from market price shall include:

1) quantity (volume) of delivered goods, performed works, rendered services;

2) conditions of payments applied in transactions of this type, as well as other conditions that may have an impact on prices;

3) price discounts or price premiums, applied upon consummation of transactions including those occasioned by:

seasonal fluctuations of consumer demand for goods (works, services);

loss of goods (works, services) of a quality or other consumer properties;

partial improvement or restoration of lost qualities and (or) other consumer properties of goods (works, services);

expiration (approach of expiration date) of shelf life or realization of goods (works, services);

marketing policy upon promotion of new goods (works, services) at market that do not have analogous, as well as upon promotion of goods (works, services) in new markets;

realization of preproduction models and samples of goods (works, services) for the purpose of familiarization of consumers with them;

4) reputation at market, origin country and availability of a trade mark;

5) margin, commission (agency) remuneration of a trade broker, trader or agent or compensation for performance of trade intermediary functions.

8. According to differential mentioned in paragraph 5 of this Article, introduction of amendments and supplements by transaction participants to the relevant reporting on monitoring of the transactions shall not be allowed:

1) of inspected taxable period – during conduct of complex and thematic inspections on the issues of transfer pricing;

2) appealed taxable period – during the term for filing and consideration of a claim to notification on the results of tax inspection and (or) decision of a superior state revenues body issued following the results of considering the claim to notification in consideration of the restored term for filing of the claim.

**Footnote.** Article 13 is in the wording of the Law of the Republic of Kazakhstan dated 09.06.2010 № 288-IV (shall be enforced from 01.01.2009); as amended by the Laws of the Republic of Kazakhstan dated 05.12.2013 № 152-V (shall be enforced from 01.01.2014); dated 07.11.2014 № 248-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

#### **Article 14. “Cost-plus” method**

1. Upon using a “cost-plus” method, the market price of goods (works, services) shall be determined as a sum of incurred expenditures (expenses) and premium.

2. To determine costs (expenses), costs (expenses) for the production (purchase) and (or) sale of goods (works, services), costs (expenses) for transportation, storage, insurance and other costs (expenses) shall be taken into account.

The markup shall be determined in such a way as to ensure the range of profitability established for a given area of activity, determined in accordance with Articles 17-1 and 17-2 of this Law.

3. The range of profitability for a given area of activity shall be determined based on the sources of information specified in Article 18 of this Law, under comparable economic conditions.

**Footnote.** Article 14 as amended by the Laws of the Republic of Kazakhstan dated 09.06.2010 № 288-IV (shall be enforced from 01.01.2010); dated 07.11.2014 № 248-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication); dated 25.03.2024 № 68-VIII (shall come into effect upon expiry of sixty calendar days after the date of its first official publication).

#### **Article 15. Subsequent sale price method**

With the subsequent sale price method, the market price of goods (work, services) shall be determined as the difference between the price at which such goods (work, services) are sold

by the buyer during subsequent sale (resale), and the confirmed costs (expenses) incurred by the buyer during resale (without taking into account the price at which the goods (works, services) were purchased by the specified buyer from the seller, as well as its profitability (margin). In this case, the profitability (margin) must correspond to the range of profitability (margin) determined in accordance with Articles 17-1 and 17-2 of this Law.

**Footnote. Article 15 as amended by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

#### **Article 16. Profit split method**

Profit split method shall determine a profit from transaction that shall be distributed between transaction participants.

This profit shall be distributed between transaction participants in accordance with economic substantiation, functional analysis, agreements adopted in accordance with the “arm's-length” principle and on the basis of the profit which these companies would gain, if they were independent.

#### **Article 17. Net profit method**

1. The net profit method shall be applied by comparing the profitability of the transaction participant with the range of profitability in comparable economic conditions.

2. When applying the net profit method, the following profitability indicators may be used :

- operating cost return;
- operating profitability of sales;
- operating return on assets.

In this case, profitability shall be determined in accordance with Articles 17-1 and 17-2 of this Law.

**Footnote. Article 17 as amended by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

#### **Article 17-1. The procedure for determining the price range and profitability range (margin)**

1. To apply the methods specified in subparagraphs 1), 2), 3) and 5) of paragraph 1 of Article 12 of this Law, unless otherwise provided by Article 13 of this Law, the price range and (or) profitability (margin) range shall be used, which is determined in the following order :

1) in the case when the number of values of market prices and (or) values of market profitability (margin) used to apply the specified methods is equal to one value, then the range shall be defined as equal to such value of the market price or profitability (margin);

2) in the case when the number of values of market prices and (or) values of market profitability (margin) used to apply the specified methods does not exceed three values, then

the range shall be defined as the range from the minimum value to the maximum value inclusive of such market prices and (or) market profitability (margin).

For the purposes of this subclause, the price range indicated in the source of information in the form of two values through a line shall be also accepted as a range not exceeding three values;

3) in the case when the number of values of market prices and (or) values of market profitability (margin) used to apply the specified methods is equal to four or more values, then the range shall be defined as the range between the twenty-fifth and seventy-fifth percentiles inclusive, calculated for based on the market prices or profitability (margin) values used.

2. To calculate the price range, market price values determined in accordance with and using the same source of information shall be used.

3. To calculate the range of profitability (margin), financial data for three consecutive calendar years immediately preceding the calendar year in which the analyzed transaction was made shall be used.

**Footnote. Article 17-1 is supplemented by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

#### **Article 17-2. The procedure for determining profitability**

1. Gross profitability of costs shall be defined as the ratio of gross profit from sales of goods (work, services) to the cost of goods (work, services) sold.

2. Gross profitability of sales shall be defined as the ratio of gross profit from sales of goods (work, services) to revenue from sales of goods (work, services) excluding excise taxes and value-added tax.

3. Operating cost profitability shall be defined as the ratio of the amount of operating profit from sales of goods (work, services) to the sum of the cost of goods (work, services) sold and commercial and administrative expenses associated with sales of goods (work, services).

4. Operating profitability of sales shall be defined as the ratio of the amount of operating profit from sales of goods (work, services) to revenue from sales of goods (work, services) excluding excise taxes and value-added tax.

5. Operating profitability of assets shall be defined as the ratio of the amount of operating profit from sales of goods (works, services) to the current market value of the assets used or, in the absence of information about the current market value of the assets used, to the value of the assets according to the accounting (financial) statements.

**Footnote. Article 17-2 is supplemented by the Law of the Republic of Kazakhstan dated 25.03.2024 № 68-VIII (shall come into effect upon the expiration of sixty calendar days after the day of its first official publication).**

## **Article 18. Informational sources used for determination of a market price**

1. For determination of a market price of goods (work, service) and other data required for applying methods of determination of the market price, the informational sources shall be used in the following order of priority:

- 1) officially recognized informational sources on market prices;
- 2) informational sources on exchange quotations;
- 3) data of state bodies, authorized bodies of other states and organizations on prices, differential, expenditures and on conditions having an impact on deviation of the transaction price from market price;
- 4) informational programs used for the purpose of transfer pricing, information represented by transaction participants and other informational sources.

2. For determination of a range of market prices, the list of officially recognized informational sources shall contain one or more informational sources on market prices.

3. Only the informational sources mentioned in subparagraphs 1) and 2) of paragraph 1 of this Article shall be used on a transaction, the participant of which is registered in the state with concessional taxation upon determination of a market price.

**Footnote. Article 18 as amended by the Law of the Republic of Kazakhstan dated 09.06.2010 № 288-IV (shall be enforced from 01.01.2010); № 223-VII of 19.04.2023 (shall enter into force ten calendar days after the date of its first official publication).**

## **Article 19. Responsibility for breach of the legislation of the Republic of Kazakhstan on transfer pricing**

1. Breach of the legislation of the Republic of Kazakhstan on transfer pricing shall entail responsibility established by the Law of the Republic of Kazakhstan.

## **Article 20. Order of enforcement of this law**

1. This Law enters into force from 1 January 2009.

2. The Law of the Republic of Kazakhstan dated 5 January “On state control upon applying transfer prices” (the Bulletin of the Republic of Kazakhstan, 2001 № 1, Article 2) shall be deemed to have lost force.

*The President  
of the Republic of Kazakhstan*

*N. Nazarbayev*