

## Legislative alert

On 9 July 2008 the President of the Republic of Kazakhstan signed the long-expected Transfer Pricing Law (the Law), which shall be effective from 1 January 2009.

### New Transfer Pricing Law

In this issue we would like to draw your attention to the new Transfer Pricing Law and provide a brief overview of the most important provisions of the new Law.

The currently effective Law on State Control Over Transfer Pricing of 5 January 2001 was criticised on numerous occasions due to uncertainty in its application and excessive control over prices by the state authorities, particularly with respect to the export of mineral resources. It was hoped that the new Law would have a positive effect in bringing clarity to transfer pricing regulation. However, it appears that by introducing the new Law the state aims to further strengthen its control over prices used by taxpayers in transactions within and outside of the Republic of Kazakhstan.

In certain aspects (such as introduction of transactional profit methods and a degree of recognition of the "arm's length" principle) the new Law has moved towards the principles of OECD Transfer Pricing Guidelines. However, the Law has failed to improve the situation in respect of the transfer pricing control in transactions between unrelated parties and made the position even worse in respect of the transfer pricing control in transactions involving mineral resources.

The most significant features of the Law are:

- a) Transactions conducted in the Republic of Kazakhstan involving sale of mineral resources extracted by a subsurface user that is a party to the transaction are subject to transfer pricing control if directly related with international business transactions;
- b) The Law does not actually differentiate application of transfer pricing control for related and unrelated parties (for example, no price deviation is allowed for unrelated parties);
- c) Certain commercial conditions established by a contract may be superseded by the Law for the purposes of transfer pricing control;
- d) The Law introduces extensive transfer pricing documentary and monitoring requirements that include, among other things, industry, market, functional and risk analysis;

- e) The Law envisages the possibility to conclude agreements between a taxpayer and the tax authorities regarding a method and sources for determination of market prices. It is not clear, however, whether such agreement would have binding force for the tax authorities;
- f) The Law introduces two new methods for determination of market price – profit split method and net margin method.

Importantly, the Tax Committee of the Ministry of Finance is planning to draft a new Transfer Pricing Instruction that should elaborate on the practical implementation of the Law.

## Contacts

We hope that you will find this overview helpful. For more detailed information, please contact the following specialists:

### Zhanna Tamenova

Partner, Head of Tax Services

Tel: +7 (727) 258 5960

Email: Zhanna.S.Tamenova@kz.ey.com

### Natalya Kozlenkova

Manager, Marketing and Business Development Department

Tel: +7 (727) 258 5960

Email: Natalya.Kozlenkova@kz.ey.com

## Ernst & Young

Assurance | Tax | Transactions | Advisory

### About Ernst & Young

Ernst & Young is a global leader in assurance, tax and legal, transaction and advisory services. Worldwide, our 130,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve potential.

For more information, please visit [ey.com](http://ey.com).

Ernst & Young expands its services and resources in accordance with clients' needs throughout the CIS. Over 3,700 professionals work at 15 offices in Moscow, St. Petersburg, Novosibirsk, Ekaterinburg, Togliatti, Yuzhno-Sakhalinsk, Almaty, Astana, Atyrau, Baku, Kyiv, Donetsk, Tashkent, Tbilisi, and Minsk.

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

### Contacts

Almaty +7 (727) 258 5960	Moscow +7 (495) 755 9700
Astana +7 (7172) 58 0400	Novosibirsk +7 (383) 211 9007
Atyrau +7 (7122) 99 6099	St. Petersburg +7 (812) 703 7800
Baku +994 (12) 490 7020	Tashkent +998 (71) 140 6482
Donetsk +38 (062) 340 4770	Tbilisi +995 (32) 43 9375
Ekaterinburg +7 (343) 379 3510	Togliatti +7 (8482) 75 7670
Kyiv +38 (044) 490 3000	Yuzhno-Sakhalinsk +7 (4242) 49 9090
Minsk +375 (17) 209 4535	

This publication has been carefully prepared, but it necessarily contains information in summary form and is therefore intended for general guidance only, and is not intended to be a substitute for detailed research or the exercise of professional judgment. Ernst & Young can accept no responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate adviser.

[www.ey.com/kazakhstan](http://www.ey.com/kazakhstan)

© Ernst & Young LLP

All rights reserved.