

**On transfer pricing**

***Unofficial translation***

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

*Unofficial translation*

      This Law regulates public relations arising upon transfer pricing, for the purpose of prevention of loss of the state revenues in international business operations and transactions linked with international business operations.

 **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 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 price value limited by minimal and maximal values of market prices determined in a result of applying one of the methods of determination of market prices or information sources in the manner established by this Law;

      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) transaction consummated in a territory of the Republic of Kazakhstan directly linked with international business operation – the transaction on buy and sell of goods, performance of works, rendering of services that are the subject of international business operation in the following;

      10-1) unfavourable social and economic consequences – a set of social and economic consequences preventing the realization of national interests or creating a danger to them, as well as endangering the stable 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) “arm's-length” principle – the principle applied for determination of the market price in consideration of a price range, on the basis of comparison of transaction conditions between interrelated parties with the transaction conditions between independent parties carrying out transactions at the 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 values limited by minimal and maximal values of market margin determined in accordance with the “arm's-length” principle in comparable economic conditions;

      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;

      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;

      19) range of the rates of profitability – a range of values of the rates of profitability limited by minimal and maximal values of the rates of profitability determined in accordance with the “arm's-length” principle in comparable economic conditions;

      20) rate of profitability – reference of accounting income from the main activity received from realization of goods (work, service) to expenditures for production and realization of these goods (work, service);

      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 pricing) – the price which is formed between interacted parties and (or) differed from objectively formed market price in consideration of a price range upon consummation of the transactions between independent parties subjected 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;

      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;

      31) international business operations – export and (or) import transactions on buy and sell of goods; transactions on performance of works, rendering of services, one of the parties of which is a non-resident carrying out the activity in the Republic of Kazakhstan without establishment of a permanent institution; transactions of residents of the Republic of Kazakhstan consummated beyond the territory of the Republic of Kazakhstan on buy and sell of goods, performance of works, rendering of services.

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

      By this, for the purpose of this subparagraph:

      export of goods – carriage of goods from the territory of the Republic of Kazakhstan carried out in accordance with the customs legislation of the customs union and (or) the Republic of Kazakhstan, as well as carriage of goods from the territory of the Republic of Kazakhstan to the territory of other member-state of the customs union;

      import of goods – entry of goods to the territory of the Republic of Kazakhstan carried out in accordance with the customs legislation of the customs union and (or) customs legislation of the Republic of Kazakhstan, as well as entry of goods to the territory of the Republic of Kazakhstan from the territory of other member-state of the customs union;

      2) consummated in a territory of the Republic of Kazakhstan directly interrelated with international business operations:

      on realized mineral resources extracted by a subsoil user that is one of the parties;

      one of the parties of which has tax exemptions;

      one of the parties of which has a loss on such tax declarations for the last two taxable periods preceding the year of consummation of the transaction.

      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. Procedure for interaction of authorized bodies upon conduct of control carried out in accordance with this Law, shall be determined by the authorized bodies.

      Footnote. Article 3 as amended by the Laws of the Republic of Kazakhstan dated 09.06.2010 No. 288-IV (shall be enforced from 01.01.2010); dated 30.06.2010 No. 297-IV (shall be enforced from 01.07.2010).

 **Article 4. Powers of authorized bodies**

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

      1) request information from transaction participants, state bodies and third parties required for determination of the market price and differential, as well as data for monitoring the transactions;

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

      6) conclude an agreement on applying transfer pricing in the manner approved by the Government of the Republic of Kazakhstan.

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

      3. The authorized bodies shall be obliged to:

      1) respect the rights of transaction participants;

      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 No. 288-IV (shall be enforced from 01.01.2010); dated 05.07.2011 No. 452-IV (shall be enforced from 13.10.2011); dated 13.01.2014 No. 159-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

 **Article 5. Rights and obligations of transaction participants**

      1. Transaction participants shall have the right to:

      1) represent substantiation of applied price to authorized bodies, including the documents confirming the transaction price and differential, information on applying one of the methods for determination of the market price and other information confirming the applied prices;

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

      3) represent own interests on the issues arising due to controlling, in person or through own representative or with participation of a tax adviser;

      3-1) represent economic assessment of the applied price to authorized bodies and other information confirming the applied price, in the course of controlling and appealing a notification on results of tax inspection;

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

      5) adjust transaction price and (or) items of taxation, as well as objects linked with taxation on an independent basis before inspection;

      6) conclude agreements with authorized bodies on applying transfer pricing.

      2. The transaction participants shall have other rights provided by the Laws of the Republic of Kazakhstan.

      3. The transaction participants shall have the right to:

      1) fulfill the obligations in time and in full measure in accordance with this Law;

      2) perform legal requirements of the authorized bodies;

      3) keep accounting and documentation confirming the substantiation of the applied transaction price;

      4) represent information and accounting to authorized bodies on monitoring of transactions, as well as other documents in the manner provided by this Law.

      Upon request of authorized bodies, the transaction participant shall represent information and documents confirming the substantiation of the applied transaction price within ninety calendar days;

      5) represent economic assessment of the applied price upon request of authorized bodies in the course of conducting inspections, including documents confirming the transaction price and differential, information on applying one of the methods for determination of the market price and other information confirming the applied prices.

      4. Transaction participants shall perform other obligations provided by this Law.

      Footnote. Article 5 as amended by the Law of the Republic of Kazakhstan dated 09.06.2010 No. 288-IV (shall be enforced from 01.01.2010).

 **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 operations on goods (works, services) the list of which is approved by the authorized body shall be subject to monitoring of transactions.

      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 No. 288-IV (shall be enforced from 01.01.2009); dated 05.07.2011 No. 452-IV (shall be enforced from 13.10.2011); dated 29.09.2014 No. 239-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

 **Article 7. Accounting and documentation on monitoring**
**of transactions**

      Footnote. The title is in the wording of the Law of the Republic of Kazakhstan dated 09.06.2010 No. 288-IV (shall be enforced from 01.01.2009).

      1. Accounting on monitoring of transactions shall include the following information:

      1) documentation confirming substantiation of applying the prices including:

      data on interaction of parties;

      description of entrepreneurial activity of a transaction participant, branch, in which the transaction participant carries out his (her) activity and market conditions;

      forecasts, strategy of business, methodology of transfer pricing including information concerning the factors that have an impact on price fixation;

      functional analysis, analysis of risks, material and non-material assets;

      reports on international standards including financial reporting;

      2) method applied for determination of market price;

      3) information source;

      4) information on transactions mentioned in Article 3 of this Law containing details from the agreements (contracts), bills (invoices), customs freight declaration, details represented by financial organizations, as well as other details required for determination of a differential;

      5) description of goods (works, services) including physical characteristics, quality and reputation at market, country of origin and producer, existence of trade mark and other information linked with qualitative characteristics of goods (work, service);

      6) contractual conditions;

      7) strategy of conducting business operations;

      8) margin, commission (agency) remuneration of a trade broker, trader or agent or compensations for performance of trade intermediary functions by them. By this, the transaction participant shall represent information disclosing the components of a margin, if such information is available to transaction participants, and in case if the margin includes the commission (agency) remuneration of a trade broker, trader or agent or compensation for performance of trade intermediary functions, these components shall not be considered by the authorized bodies upon controlling;

      9) other data that substantiates correctness of applying the transaction price and that has impact on a size of deviation of transaction price from market price.

      Information mentioned in subparagraphs 1), 5), 6), 7), 8) and 9) of part one of this Article shall be represented to the state revenues bodies in case of existence of such conditions and data having an impact on a size of deviation of transaction price from market price upon consummation of transactions regulated by this Law.

      2. Transaction participants including those that consummated transactions with goods, that are not subject to monitoring of the transactions shall be obliged to keep documents in accordance with this Law confirming the substantiation of applied price, and represent it to authorized bodies upon request of the authorized bodies.

      Footnote. Article 7 as amended by the Laws of the Republic of Kazakhstan dated 09.06.2010 No. 288-IV (shall be enforced from 01.01.2009); dated 07.11.2014 No. 248-V (shall be enforced upon expiry of ten calendar days after the date of its first official publication).

 **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 rom 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) upon conduct of inspections carried out by the authorized bodies on the issues of compliance with the tax legislation of the Republic of Kazakhstan and the customs legislation of the customs union and (or) the Republic of Kazakhstan in case of absence of information sources 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.

      The inspection shall be carried out in accordance with the Law of the Republic of Kazakhstan “On state control and supervision in the Republic of Kazakhstan”. Other forms of state control shall be carried out in accordance with this Law.

      the special aspects of procedure and terms of conducting inspection and other forms of state control carried out by the state revenues bodies shall be determined by the tax legislation of the Republic of Kazakhstan and the customs legislation of the Customs Union and (or) the Republic of Kazakhstan.

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

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

      1. Upon establishing a fact of deviation of transaction price from market price in consideration of a price range in the course of conduct of inspections, the authorized bodies shall carry out adjustment of items of taxation and (or) objects linked with tax assessment in the manner provided 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 items of taxation and (or) objects linked with tax assessment shall be carried out upon deviation of transaction price from market price determined as average number stated in information source, regarding the following transactions with participants as follows:

      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).

      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 Article5 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. Upon independent adjustment of items of taxation and (or) objects linked with tax formation by a tax payer before beginning of conducting complex tax inspection (in case of inclusion of the issues of transfer pricing) and thematic inspection on the issues of transfer pricing, the tax amounts and other compulsory payments to the budget shall be subject to payment without imposition of fines by representing additional tax reporting.

      12. The differential stated in paragraph 5 of Article 13 of this Law shall not have an impact on transactions, the participants of which are registered in the state with concessional taxation, and adjustment of items of taxation and objects linked with tax assessment shall be performed without consideration of the provisions of paragraph 5 of Article 13 of this Law.

      Footnote. Article 10 is in the wording of the Law of the Republic of Kazakhstan dated 09.06.2010 No. 288-IV (shall be enforced from 01.01.2009); as amended by the Laws of the Republic of Kazakhstan dated 22.06.2012 No. 21-V (shall be enforced from 01.01.2009); dated 05.12.2013 No. 152-V (the order of enforcement see Article 9); dated 07.11.2014 No. 248-V (shall be enforced upon expiry of ten calendar days after the date 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 No. 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 No. 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 is recognized as affiliated person 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) the person holds, uses, disposes ten and more percent of voting shares or participatory shares of a transaction participant or legal entities mentioned in subparagraphs 2), 3), 6) – 9) of this Article, independently or jointly with own affiliated persons;

      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) the transaction participants apply the transaction price at which there is a deviation from a market price considering the price range, according to data of one of the authorized bodies.

 **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. Upon impossibility to apply the method of comparable uncontrolled price, one of the methods mentioned in part one of this Article shall be applied in a sequential order.

 **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:

          P1 + P2 + Pn

      S = --------------

                 n

      where:

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

      Р1, Р2,..., Рn – 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:

            Cn1 + Cn2

      Pn = ------------

                2

      where:

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

      Сn1 – the lowest value (min) of daily price quotation for the relevant goods (work, service);

      Сn2 – 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 No. 288-IV (shall be enforced from 01.01.2009); as amended by the Laws of the Republic of Kazakhstan dated 05.12.2013 No. 152-V (shall be enforced from 01.01.2014); dated 07.11.2014 No. 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. For determination of expenditures (expenses), the expenditures (expenses) for production (acquisition) and (or) realization of goods (works, services), expenditures (expenses) on transportation, storage, insurance and other expenditures (expenses), the premium shall be determined in a such way to ensure mean range of the rate of profitability settled for this scope of activity that shall be calculated proceeding from the range of the rate of profitability in comparable economic conditions.

      3. Profitability for this scope of activity shall be determined on the basis of data of the bodies of state statistics of the Republic of Kazakhstan, state revenues bodies and other informational sources.

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

 **Article 15. Resale minus method**

      Resale minus method – the method upon which the market price of goods (works, services) shall be determined as difference between the price at which such goods (works, services) are realized by a customer upon the following realization (resale), and confirmed by expenditures (expenses) incurred by the customer upon resale (without consideration of a price at which the goods (works, services) were acquired by mentioned customer from a seller, as well as his (her) margin. By this, the margin shall conform to the range of margin.

      Footnote. Article 15 as amended by the Law of the Republic of Kazakhstan dated 09.06.2010 No. 288-IV (shall be enforced from 01.01.2009).

 **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. Transactional net margin method**

      Transactional net margin method shall be based on determination of net income that the independent parties would gain from this transaction in comparable economic conditions.

      Net income shall be determined in consideration of one of the following indices that are formed according to data of business accounting:

      1) depreciated value of assets;

      2) volume of realization;

      3) expenditures.

 **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. The list of officially recognized informational sources on market prices shall be approved by the Government of the Republic of Kazakhstan.

      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 No. 288-IV (shall be enforced from 01.01.2010).

 **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 No. 1, Article 2) shall be deemed to have lost force.

*The President*

*of the Republic of Kazakhstan              N. Nazarbayev*

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