



## Crowe Transfer Pricing Wednesday

# Updates on A Recent Transfer Pricing Case by The Supreme Court of Kazakhstan

15 March 2023



On 25 January 2023, the Administrative Disputes Chamber of the Supreme Court of Kazakhstan ("the Court") issued a judgement on transfer pricing case. The Judgement clarified position of the judiciary on several matters, such as selection of transfer pricing methods, application of adjustments, admissible information sources, etc., and was issued partially in favour of the taxpayer and partially in favour of tax authorities.

Overall, this Judgement introduces a number of principles which will be used in practice and in any case clarify what may be the position of the judiciary in other disputes with similar facts and circumstances.

## a. Facts of The Case

The taxpayer, Trans-Global Company (TGC) exports oil products, in particular to Azerbaijan, Latvia and Cyprus.

The tax authorities conducted a transfer pricing audit for the years 2017-2018 and disallowed certain tax deductions in view that the controlled transactions were not conducted at arm's length prices. This has resulted in tax adjustments of approximately the equivalent of USD 300,000.

The taxpayer appealed to the First Instance Courts and Appellate Courts but the decisions for the first and second appeals were ruled against the taxpayer.

## b. The Judgement of the Supreme Court

The Supreme Court of Kazakhstan partially quashed the decisions of the lower courts and satisfied the claims of the taxpayer on 5 out of 7 points of disagreement with the tax authorities. These points are:

1. Adjustments to the price from quotes of official sources
2. Customs duty deductibility
3. Railway costs deductibility
4. Freight costs
5. Transhipment costs
6. Losses in transit
7. Trader's margin

On the first point, the judges ruled in favour of the taxpayer as TGC used official quotes consistently, while tax authorities did adjustments to particular quotes randomly.

On the third, fourth and fifth points, the Court also ruled in favour of TGC as the taxpayer used quotes of Argus Oil trade source, listed in the legislation as the official source while the tax authorities relied on sources of information of lower priority.

On the seventh point, the Court rejected the reference of the taxpayer to the letter of the buyer and ruled that the deductible margin should be also calculated on the basis of the quotes from officially accepted sources.

## C. Conclusions

The main conclusions to be derived from this Judgement in our opinion are:

1. Transfer pricing methodology should be transparent and sound, based on official sources of information.
2. Parties should act in good faith and not to resort in cherry-picking by using the methods inconsistently leading to preferential for certain cases.
3. The Comparable Uncontrolled Price (CUP) method should be used at least as a starting point in the analysis, if applicable.
4. The Court invited transfer pricing experts to deliver their opinions in this case. Hence, the transfer pricing documentation should be prepared or reviewed by the transfer pricing experts to prevent unnecessary complications.

We should pay attention to the structure of the Judgement as well. This case is a good example of a good juridical technique and structure. The logic of the decision is very simple: initially, the Court determines the applicable source of information about prices on oil products and then applies them in the calculation of arm's length price for adjustment thereto.

It is also important to mention that the Court noted that, in the sixth point, the inconsistency of the tax authorities in selecting a methodology led to a result that was beneficial for the taxpayer. The Court did not reverse this conclusion based on the principles of good faith and reliance on tax authorities' decisions. This idea has not been supported by courts for a long time, which further emphasizes the importance of the "Trans-Global Company" case decision in the field of transfer pricing practice.

## How Crowe Kazakhstan can help you:

1. We recommend reviewing and verifying the transfer pricing methodology and documentation for specific controlled transactions with the assistance of transfer pricing experts.
2. We can identify possible cases for overpayment of tax where the application of the principles mentioned above leads to more beneficial results for the taxpayer.

For further questions and translated text of the Judgement into English, please contact:

## Contacts Crowe Kazakhstan

### **Alberto Simoncini**

Managing Partner

Direct: +7 727 311 14 04

Cell: +7 701 515 56 94

[a.simoncini@crowe.kz](mailto:a.simoncini@crowe.kz)

### **Roustam Vakhitov**

Associated International Tax Partner

Cell: +31 640826427

[r.vakhitov@crowe.kz](mailto:r.vakhitov@crowe.kz)