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International taxation regulation

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In accordance with the "Guidelines for improving the legislation of Mongolia until 2020", approved by the State Great Khural (the Parliament) on January 12, 2017, the Parliament on March 22, 2019, passed a revised version of the package of laws on Taxation.

General Anti-Avoidance Rule, Transfer Pricing Rules, Mutual Agreement Procedure, and Procedure for Exchange of Information with Foreign Tax Authorities are passed and adhered in accordance with revised version of the General Law on Taxation, which is included in this package of laws.

1. General Anti-Avoidance Rule (GAAR)

GAAR shall be implemented in the case that a taxpayer is found, during a tax audit, to have arranged a tax scheme alone or jointly with others, or to have benefited from tax evasion under the tax scheme, and the relevant tax cannot be re-imposed.

The taxpayer shall be considered to have benefited from the tax scheme under the following circumstances:

- reduction of tax base or change of exempted income, tax credit, withholding and deductible incomes by accounting method;
- deferral of tax liability;
- gaining of an advantage from the deferral of tax liability;
- reduction of taxable income by increasing the amount of exempt income or non-taxable income; or
- no taxation of taxable income.

If a taxpayer, alone or jointly with others, has arranged a tax scheme or has benefited from tax evasion under the tax scheme, the tax department shall determine the amount of tax to have been levied if the above-mentioned tax scheme were not arranged or the taxpayer did not receive the tax benefit, and shall re-impose the respective tax via adjustment of the tax amount. Re-imposing shall commence within 4 years and shall cover 4 years prior to the determination of the tax and adjustment to the tax amount.

Process of implementation of the GAAR:

Determine whether there are any circumstances to implement the GAAR during a tax audit



Submit a request for the implementation of the GAAR to the Risk Management Committee along with the relevant documents



The Risk Management Committee (secretary) shall verify the compliance of the request with legal requirements.



If the request is approved, the Risk Management Committee shall notify the taxpayer, the state tax inspector, and the respective department of the state administrative body in charge tax matters



Shall decide whether or not to implement the GAAR



In the case that the GAAR is to be implemented, the amount of tax that was supposed to be levied provided that the tax scheme was not arranged or the taxpayer did not receive the tax benefit shall be determined and the respective tax shall be re-imposed via adjustment of the previous tax amount.

The GAAR shall apply to the tax benefits received by the taxpayer as a result of the tax scheme from the date of entry into force of the General Taxation Law (revised version).¹

2. Mutual Agreement Procedure (MAP)

Mutual Agreement Procedure shall be implemented within the framework of Agreements to Avoid Double Taxation and to Prevent Tax Evasion (Double Tax Agreement or the DTA) concluded by Mongolia with other countries and apply to taxpayers of those countries.

Unless otherwise provided in the Double Tax Agreement, a request to implement the mutual agreement procedure shall be submitted to a representative appointed by the state administrative body in charge of tax matters within 3 years since the first day that the taxpayer finds out about the circumstance that the taxation imposition is not in accordance with the agreement or when such action is undertaken.

The taxpayer may submit a written request to the competent authority upon the following grounds in accordance with the "Mutual Agreement Procedure" of the Double Taxation Agreement:

Basis of ground

¹ Procedure of implementing General Anti-Avoidance Rule– <https://www.legalinfo.mn/annex/details/10432?lawid=14922>

- a) The Contracting State has imposed double tax on services and transactions made by taxpayer with relevant party in the country due to transfer pricing adjustment;
- b) The other Contracting State has imposed a tax on income from it incompliant with a Double Taxation Agreement in relation to the taxpayer as a representative office;
- c) The taxable income of the taxpayer's representative office in the other Contracting State is impose doubled taxes due to the adjustment by the other Contracting State;
- d) The Contracting State has withheld tax incompliantly with the Double Taxation Agreement;
- e) In order to determine which country a taxpayer should pay tax if taxpayer is a resident in Mongolia as well as resident taxpayer of other Contracting State;
- f) The Contracting State has imposed double taxation incompliant with the Double Taxation Agreement additional tax on income derived by an individual from services or works;
- g) Other disputes arising in connection with the application of the agreement specified in Mutual Agreement procedure in the Double Taxation Agreement;

Documents required for submission if a request:

- Request for assistance from an authorized person including the following information;
 - transactions, actions or other circumstances related to the case;
 - nationality, name, address and corresponding tax number of the persons concerned;
 - any actions, decisions, documents and their process undertaken by the relevant tax authority or tax administration of the other Contracting State in connection with the matter;
 - estimation of income type and amount of tax in MNT and in the national currency of the country;
- Certified copy of a document by the tax authority of the client or the tax authority of another Contracting State on the subject of the request, with an official translation;
- Power of attorney for representing the interests of a taxpayer in case of a request submission through a representative;
- If the question related to the request is related to price transfer, documentation related to the price transfer and document of adjustment made by the tax authorities and other relevant information;
- Certified copies of the request, relevant documents and response of the competent authority of the other Contracting State, with an official translation;
- If the competent authority of the other Contracting State has made a decision on matters of this mutual agreement, it must be accompanied by a certified copy of the decision and an official translation.
- If the competent authority requests additional clarifications and documents, the taxpayer shall provide requested documents within 30 days.²

² Mutual Agreement Procedure – <https://www.legalinfo.mn/annex/details/10429?lawid=14918>

3. Procedure of exchanging information

In order to implement the agreements concluded by Mongolia with other countries, the authorized person may mutually exchange for taxation purpose	a) documents, reports, records and information about accounts held by banks, financial institutions, their authorized persons, trustees, intermediaries and guarantors;	with a foreign tax authority
	b) facts, reports, documents, records and accounting information relating to the ultimate beneficial owner, partnership or other person of the legal entity;	
	c) information on shares, share capital, unit rights and other interests in the case of an investment fund, as well as information on the settlement agent, trustee and beneficiary in the case of a trust fund.	

The information specified in the procedure of exchanging information shall be received from the financial institution based on a notification of the Contracting State and delivered to the competent authority of the Contracting State. The notification of the Contracting State may contain the following information:

- the term for providing information (within 14 calendar days, if necessary, the competent authority may set another term);
- the form of the documents whether the original or the copy required by the competent authority;
- whether or not to certify the documents officially.

4. Transfer Pricing Rules

Transfer Pricing Rules of Mongolia applies to all types of foreign and domestic transactions between related parties.

№	Types of Transfer Pricing report	Content	Who should file	Timeline
1.	Annual transactional TP report	Information on transactions between affiliate parties	All taxpayers who have the affiliate party transactions	Within February 10 of the following year
2.	Local File	<ul style="list-style-type: none"> • Information on the business activities and business strategies and policies of the resident taxpayer or permanent establishment in Mongolia; 	<ul style="list-style-type: none"> • Earned sales revenue in the previous tax year is MNT 6 billion or more (approximately 2.1 million USD); 	

		<ul style="list-style-type: none"> • Information required to analyze the comparability of transactions under the control, information on comparable independent transactions, price transferring method and other relevant information; • Financial information on transactions related to resident taxpayers of Mongolia; 	<ul style="list-style-type: none"> • Business entities with foreign investment. 	
3.	Master File	<p>The following information of a Corporate Group and group members:</p> <ul style="list-style-type: none"> • Shareholder or shareholding structure; • Geographic place of business; • Intangible assets, their ownership structure and price transfer policy for intangible assets; • Financial transactions between the group and the group members and respective transfer price policy; • Financial and tax policy, as well as information on unilateral and bilateral negotiated agreements on pre-agreed price with tax authorities of other countries; • Information about the company's core business, sales, procurement, supply chains, key assets used for creation of the value, functions and risks of the group and its members, as well as substantial transactions that has impact on the structural changes in the financial year. 		

4.	Country-by country report (CbCR)	<ul style="list-style-type: none"> Income earned in each country where the transnational group operates, profit (loss) before taxation, paid income tax, income tax liabilities, share capital, accumulated earnings and profits, the number of employees, integrated information on movable and immovable properties excluding money and similar items; Taxpayer number of each member of the transnational group, information on the country of residence for tax purposes, information on the establishment of each member of the group under which country's law if the country of registration and the country of residence for tax purposes is different, and information about main business activities of each member of the group. 	<p>A member of a non-parent company of a transnational group located in Mongolia for tax purposes shall meet the following conditions if the parent company of a transnational group located in Mongolia for tax purposes meets one of the following conditions:</p> <ul style="list-style-type: none"> The head of a transnational group is not obliged to prepare and report in each country in accordance with the laws of the country or region in which it is located for tax purposes; The country or region where the head of the multinational group for tax purposes is located has entered into an international tax agreement with Mongolia, but agreement has not been reached between the competent authorities within the period prescribed by law; The tax authority of the country or region where the head of the transnational group is located for tax purposes has notified of a systematic delay to a member of the transnational group located in Mongolia. 	<p>It must be filed with the relevant tax authority within 12 months from the last day of the Group's financial year.</p>
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In the event that the taxpayer misreported transfer price report, the tax authority shall take the following measures:

- to re-impose the respective tax based on public information of other taxpayers comparable to the taxpayer, or upon selection and comparison of information from central database of tax registration and information;
- to obtain information on the taxpayer for comparison of the taxpayer's transactions without disclosing the information, in which taxpayer information shall remain confidential.

If transfer pricing report related to the transaction between affiliate parties is not submitted to the tax administration in time, the respective tax shall be re-imposed and:

№	Name of Transfer Pricing report	A penalty equal to the following percentage of the transactions between the affiliate parties shall be imposed.
1.	Annual transactional TP report	2%
2.	Local File	3%
3.	Master file	3%
4.	Country-by country report (CbCR)	4% ³

For more information or any queries, please feel free to contact Bolormaa.V, Partner of GRATA International Law Firm by bvolodya@gratanet.com or 976 70155031.

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³ Law on Violations - <https://www.legalinfo.mn/law/details/14403>