News Flash

A short review of some of the most important recent amendments and additions to Kazakhstan legislation.

Dear friends,
We would like to offer you an overview of recent amendments to Kazakh tax legislation which may be relevant to your company.

Changes to the Tax Code

The Determination of Related Parties

The law on changes and amendments to certain legislative acts on taxation¹ (hereinafter, the “Law”) specifies criteria for determining related parties. Under the Law, individuals and (or) legal entities in any of the following situations are regarded as related parties:

• entities where one entity is an affiliated party of the other entity;
• entities where one entity is a large participant in the other entity (a large participant being defined as an owner of at least a ten-percent stake in the company);
• entities which are parties to an agreement stipulating that one of the entities is able to influence the other entity’s decisions;
• entities where one entity is controlled by a large participant or executive in the other legal entity;
• entities where a large participant or executive in one legal entity is a large participant or executive in the other legal entity;
• entities controlled by the same third legal entity;
• entities where one entity together with its affiliated entities owns at least a ten-percent stake in another legal entity or in multiple legal entities defined above as related parties;

¹Law No. 467-IV of the Republic of Kazakhstan on Changes and Amendments to Certain Legislative Acts on Taxation, dated 21 July 2011.
• an individual and any of the legal entities defined above as related parties, if the individual is an executive in one of the related legal entities, other than as an independent director in a joint stock company;
• individuals where one individual is a relative of another individual who is a large participant or an executive in a legal entity.

Fulfillment of Tax Liabilities through a Trust Manager
The Law clarifies the deadline for calculating, withholding and paying taxes and other obligatory payments to the state budget under a trust management agreement. The Law specifies the following dates when a trust manager must start to fulfill tax liabilities:
• from the date of registration of the right to trust management;
• from the date when the trust management agreement is concluded (if no registration of rights to trust management is required).

Reorganization of Legal Entities
The Law clarifies procedures for reorganizing a legal entity through a spin-off. According to the Law, legal entities reorganized through a spin-off are no longer required to submit liquidation tax reports or their VAT registration certificates to the tax authorities, because the legal entity in fact continues to operate, albeit through multiple successor companies.

Registering and Deregistering as Taxpayers
The Law abolishes the requirement for taxpayers to file a tax application to register or deregister as a taxpayer when they acquire or waive an ownership right to any object of taxation or object related to taxation.

According to the changes, if a taxpayer acquires or waives an ownership right to an object of taxation, the taxpayer must file the above-mentioned application with the tax authorities for the district where the object of taxation is located only if the taxpayer is not already registered with those tax authorities or if the taxpayer waives its ownership right to all objects of taxation and (or) objects related to taxation located in the district governed by the tax authorities.

The provision came into force retrospectively on 1 July 2011.

Income from Capital Gains and Losses Realized from Sales of Shares or Participation Stakes in a Legal Entity or Consortium
The Law introduces stricter requirements for the application of the following provisions:
• capital gains realized from sales of shares or participation stakes in a Kazakh legal entity or consortium, reduced by losses from sales of shares or participation stakes in a Kazakh legal entity or consortium are excluded from taxable income;
• losses from sales of shares or participation stakes in a legal entity or consortium are utilized against capital gains from sales of shares or participation stakes in a legal entity or consortium;
• capital gains realized from sales of shares or participation stakes in a legal entity or consortium are excluded from personal taxable income.

According to the Law, in addition to the requirements specified in the current Tax Code, the above-mentioned provisions apply if the taxpayer selling shares or participation stakes in a legal entity or consortium owns the shares or participation stakes for more than three years as of the date of the sales transaction.

Losses
The Tax Code clarifies the definition of losses from business activities. According to the Law, the following losses are not treated as losses from business activities:
• losses from sales of securities;
• losses from operations with derivatives, taking into account specifics of hedging operations;
• losses from sales of non-depreciable assets;
• losses from disposal of fixed assets included in Group I for tax depreciation purposes (i.e., buildings and constructions).

Taxation of Dividends
The Law expands a list of conditions under which dividends paid to individuals or legal entities may be exempt from income tax. In addition to the conditions specified in the current Tax Code, dividends paid to an individual or legal entity are exempt from income tax if the legal entity paying dividends to the individual or legal entity is not a subsoil user within the whole period for which the dividends are paid.

---

1 Tax Code, Article 35.3
2 Tax Code, Article 136
3 Tax Code, Article 136
Taxation of Nonresidents

The Law specifies procedures for the satisfaction of tax liabilities of a permanent establishment of a foreign legal entity operating in Kazakhstan without opening a branch or representative office in a case where the foreign legal entity relocates its place of effective management to Kazakhstan. Rights and obligations of the permanent establishment transfer to the foreign legal entity as a whole, and excess taxes and penalties paid to the state budget by the permanent establishment should be refunded to the permanent establishment.

Definition of a Permanent Establishment

The Law expands the definition of a permanent establishment for tax purposes. Under the Law, the following activities can constitute a permanent establishment in Kazakhstan:

• a nonresident’s participation in a joint venture agreement concluded with a resident if activities under the agreement are performed in Kazakhstan;
• construction and installation work and services related to supervision of the performance of such work and services.

Registration of a Permanent Establishment

The Law specifies procedures for the registration of multiple permanent establishments. According to the changes, if a nonresident performs entrepreneurial activities which constitute two or more permanent establishments subject to registration with the same tax authorities, only one permanent establishment need be registered with the tax authorities for the region where those multiple permanent establishments are created.

In addition, if a nonresident operates through a registered permanent establishment and performs the same or similar operations in a region other than the region where its permanent establishment is registered, the performance of such additional operations constitutes another permanent establishment which should be registered from the date when the same or similar operations are launched.

Calculation of Income Tax on a Nonresident’s Income

The Law clarifies the procedures for calculating income tax on income of nonresidents seconding foreign personnel to legal entities in Kazakhstan. According to the current Tax Code, a nonresident seconding foreign personnel to resident companies and to foreign legal entities operating in Kazakhstan through a permanent establishment does not create a permanent establishment in Kazakhstan with respect to these services if it meets certain conditions specified in the Tax Code. The Law states that for the purpose of calculating income tax on income of a nonresident seconding foreign personnel to Kazakhstan, such services are treated as services provided outside Kazakhstan if the stipulated conditions are met.

Income Received in a Tax Haven

According to the current Tax Code, if a Kazakh resident owns ten or more percent in a foreign legal entity located and (or) registered in a tax haven, a share of profit of the foreign legal entity should be included in the Kazakh resident’s taxable income.

The above-mentioned provisions do not apply if a Kazakh resident indirectly participates in a foreign legal entity and (or) owns voting shares in this foreign legal entity through another Kazakh resident.

The provision came into force retrospectively on 1 January 2009.

Dividends

The Law clarifies the taxation of dividends paid to a legal entity registered in a tax haven. According to the changes, dividends paid to a legal entity registered in a tax haven are subject to income tax at a rate of 20 percent with no exception. Only dividends paid to nonresidents registered in states not included on the list of tax havens are exempt from income tax if the conditions specified in the Tax Code are met.

This provision is expected to come into force on 1 January 2012.

Nonresidents’ Income from Sources in Kazakhstan

According to the current Tax Code, income earned by a legal entity registered in a tax haven from sales of services to companies in Kazakhstan represents income from a source in Kazakhstan, regardless of where the services are performed.
The Law introduces an exception saying that income earned by a nonresident registered in a tax haven from sales of tourism services provided on the territory of the tax haven should not be treated as income from sources in Kazakhstan.

In addition, the Law states that income received in the form of payments from companies in Kazakhstan for vessel demurrage represents income from a source in Kazakhstan.

**Calculating and Withholding Tax at the Source of Payment**

Under the Law, the procedures for calculating and withholding income tax at the source of payment apply individually to each type of service if a contract concluded with a nonresident stipulates the performance of multiple types of services both in and outside of Kazakhstan.

Each stage of the provision of services should be treated as an individual service for the purpose of calculating and withholding tax at the source of payment from a nonresident's income. The total income of a nonresident from a contract for multiple services must be divided into income from different services in and outside of Kazakhstan.

The nonresident rendering services must provide its customer with copies of accounting records to substantiate the allocation of total income to different services. If the nonresident allocates income unreasonably and leads to understatement of income subject to taxation in Kazakhstan, its total income under the contract becomes subject to income tax.

**Advance Payments**

Under the Law, organizations operating within special economic zones and organizations operating in the social sphere are no longer required to submit statements of advance CIT payments.

---

**Financial Statements**

According to the Law, any information which now should be included in annual financial statements may be reported on the appendices to CIT declarations.

**Taxation of Residents**

**Refund of Income Tax Withheld at the Source of Payment of Dividends to a Resident on Shares which are Underlying Assets of a Depository Receipt**

According to the Law, the Tax Code specifies the procedure for the refund of income tax withheld at the source of payment of dividends to a resident on shares which are underlying assets of depository receipts.

The Tax Code specifies conditions which a tax agent must meet to exempt a resident from income tax with respect to dividends on shares which are underlying assets of depository receipts held by this resident. The Tax Code also specifies a list of documents which a resident must submit to claim a refund of income tax withheld at the source of payment if the tax agent has remitted the tax to the state. According to the Law, in this case income tax should be refunded by the tax agent.

**Aggregate Annual Income**

**Income from a Reduction of Provisions**

The Law changes the procedure for taxation of income from a reduction of provisions resulting from writing-off hopeless loans. According to the Law, a reduction of previously deducted provisions resulting from writing-off hopeless loans for the reporting period within the limits established by the Kazakhstan National Bank is not regarded as taxable income to financial institutions.

The provision will be in force from 1 January 2011 through 31 December 2012 and will apply if the following conditions are met:

- the amount of a written-off hopeless loan does not exceed the limits established by the Kazakhstan National Bank;
- a financial institution writes off a hopeless loan in accordance with the rules established by the Kazakhstan National Bank.

In addition, according to the Law, a positive difference between the amount of previously deducted provisions created as of 31 December of the previous reporting period in accordance with the rules established by the Kazakh government and the amount of provisions created as of 31 December of the previous reporting period in accordance with IFRS and Kazakh accounting legislation will also be recognized as taxable income from a reduction of provisions. The provision will be in force from 1 January 2013 through 1 January 2014.

**Taxation of Subsoil Users**

**Sales of Participation Stakes in Subsoil Users’ Assets**

The Law says that the state authorities plan to establish an authorized body which will be responsible for submitting to the tax authorities information about purchases and sales of securities issued by and ownership stakes in subsoil users.

---

1 Tax Code, Article 135.1 and Article 135.2
2 Tax Code, Article 227-1
Deductions

Interest Expense Deductions

According to the Law, the Tax Code will clarify the procedures for determining a company’s average annual equity capital for the purpose of determining debt-to-equity ratio and deductible interest expense. The Law says that to avoid limiting the deduction for interest paid to an unrelated party, a negative value of average annual capital should be treated as zero when calculating the amount of deductible interest expense.

The provision came into force retrospectively on 1 January 2009.

Non-deductible Expenses

According to the current Tax Code, costs of operations with a taxpayer recognized as a fictitious entity are non-deductible.9 However, the Law says that if taxpayers prove in a court of law that a transaction was valid, they may claim deductions for those expenses.

The provision came into force retrospectively on 1 January 2009.

Deduction of Subsequent Expenses

According to the current Tax Code, taxpayers may deduct expenses incurred for utilizing, repairing, maintaining or liquidating assets. The Law says that in addition to the above-mentioned expenses, taxpayers may also deduct expenses for the reconstruction and modernization of assets as subsequent expenses in accordance with the Tax Code.10

Individuals’ Income

The Law clarifies that limits on per diem allowances for individuals working on a rotational basis apply only to employers’ meals expenses and do not apply to accommodation expenses.

The provision came into force retrospectively on 1 January 2009.

PIT Declaration for Foreigners and Stateless Individuals

The Law officially establishes the deadline for submitting PIT and social tax declarations for foreigners and stateless individuals. According to the changes, a tax agent must file payroll tax declarations on a quarterly basis no later than the 15th day of the second month following the reporting quarter.

Value Added Tax

Turnover from Sales of Goods and Services

The Law says that interest accrued and paid to a depositor under a bank account agreement and (or) bank deposit agreement should not be treated as income from sales of goods and services.

Amount of Taxable Sales

According to the current Tax Code, the amount of excise tax on excisable goods should be included in the amount of taxable sales revenues.11 The Law says that excise tax should not be included in the amount of taxable sales revenues in the case of gasoline and diesel fuel, other than aviation fuel, produced from crude oil supplied to the excise-paying entity for toll processing.

VAT Exemption

The Law expands the list of services sold in Kazakhstan which are exempt from VAT.12 In addition to the services specified in the current Tax Code, services related to changing wheels on rail carriages to a different track gauge when crossing the Customs Union border are also exempt from VAT.

In addition, according to the Law, sales of goods in Kazakhstan on the territory of a free warehouse by the owner of the free warehouse will be exempt from VAT if conditions specified in the Law are met.13 The provision will come into force on 1 January 2013.

VAT Credits

According to the current Tax Code, a taxpayer cannot claim a credit for VAT on operations performed with a taxpayer recognized as a fictitious entity. The Law says that if the taxpayer proves in a court of law that the transaction was valid, the taxpayer is allowed to claim a credit for the VAT on such transactions.

The provision came into force retrospectively on 1 January 2009.

VAT Refund

The Law clarifies procedures for claiming a refund of excess input VAT from the state budget.

According to the current Tax Code, a taxpayer is entitled to claim a refund of excess input VAT reported as of the end of the tax period, except for input VAT paid in the following cases:14

• on imported goods;
• on fixed assets placed in service;
• on investments in real estate;
• on biological assets.

The Law abolishes the above-mentioned exceptions retroactively as of 1 January 2011. However, if a taxpayer acquires goods and (or) services which are not used for sales subject to VAT at a zero-percent rate, excess input VAT will be refunded only to the extent of the amount of input VAT paid for nonresidents which are not registered VAT payers in Kazakhstan and which do not operate in Kazakhstan through a permanent establishment.

---

9 Tax Code, Article 115 (2)
10 Tax Code, Article 122.1
11 Tax Code, Article 238.7
12 Tax Code, Article 248
13 Law, Article 8
14 Tax Code, Article 272.1 (1)
Credit Method of VAT Settlement

According to the Law, the validity period of the rules for the settlement of import VAT by the credit method for the goods included on a list approved by the Kazakh government will be extended from 1 January 2012 to 1 January 2017.

VAT Declaration

The Law says that entities importing goods into Kazakhstan are not required to submit a VAT declaration if they are not registered VAT payers in Kazakhstan.

The provision came into force retrospectively on 1 January 2009.

The Deadline for Payment of VAT in the Case where a Taxpayer Deregisters as a VAT Payer

The Law specifies the deadline for the payment of VAT reported on VAT reports submitted by a taxpayer applying to deregister as a VAT payer. In this case the taxpayer must pay VAT no later than ten calendar days after the date when the taxpayer submits its final VAT reports to the tax authorities.

The Date of Recognition of Imported Goods in Financial Statements

The Law clarifies the date of recognition of goods imported into Kazakhstan in financial statements. The Law says that the date of recognition of imported goods should be either of the following dates:

- the earliest date of recognition of such goods in accounting records under IFRS or Kazakh accounting legislation;
- the date of importation of goods into Kazakhstan.

If the taxpayer knows both of the above-mentioned dates, it should use the most recent date as the date of recognition of goods.

Thus, if a taxpayer records goods in its accounting records prior to the date when the goods are imported into Kazakhstan, the date of deemed importation of the goods into Kazakhstan is the date when the goods are imported into Kazakhstan. If a taxpayer records goods in its accounting records after the date when goods are imported into Kazakhstan, the date of deemed importation of the goods into Kazakhstan is the date when the goods are recorded in the accounts.

The provision came into force retrospectively on 1 July 2011.

Submission of Indirect Tax Declaration for Imported Goods

The Law simplifies the procedure for submitting indirect tax declarations to the tax authorities. If a taxpayer does not submit a statement of imports of goods and payments of indirect taxes along with its indirect tax declaration, this is regarded as a failure to submit the indirect tax declaration. According to the current Tax Code, in addition to a statement of imports of goods and payments of indirect taxes, a taxpayer must also submit the package of documents specified in the Tax Code.

The provision came into force retrospectively on 1 July 2011.

Excisable Goods

The Law limits the cases where excisable goods used as an in-kind payment are subject to excise tax. According to the Law, excisable goods used as an in-kind payment are subject to excise tax in all cases other than the transfer of excise goods as a payment of mineral extraction tax or export rental tax.

The provision came into force retrospectively on 1 July 2011.

Social Tax

According to the Law, actual expenses of an employer for training, professional development or retraining of employees will be exempt from social tax when the employer sends its employee on a business trip to a different location for training, professional development or retraining in a professional area related to the employer’s business activity.

The exemption from social tax results from changes to provisions specifying income which is not subject to personal income tax.

The provision came into force retrospectively on 1 January 2009.

Vehicle Tax

According to the Law, state institutions are exempt from vehicle tax on vehicles if they lease the vehicles out to individuals and (or) legal entities or if they transfer the vehicles to a trust.

The provision came into force retrospectively on 1 January 2010.

Fulfillment of Tax Liabilities

Under the Law, taxpayers will have more time for setting their tax liabilities after they receive a notification reminding them of their tax liabilities. The tax authorities should send the notifications not less than ten business days prior to the application of methods for ensuring the fulfillment of tax liabilities. Currently the tax authorities send the notifications not less than five business days prior to the application of methods for ensuring the fulfillment of tax liabilities.

---

15 Tax Code, Article 276-20.6
16 Law, Article 1.3 (52)
17 Tax Code, Article 156.1 (24)
18 Tax Code, Article 607.2 (5)
The tax authorities may also restrict the disposal of assets by taxpayers if the taxpayers do not fulfill their tax liabilities within 15 business days from the date when notifications are delivered to the taxpayers. Currently the tax authorities may restrict the disposal of assets by taxpayers if the taxpayers do not fulfill their tax liabilities within ten business days from the date when tax notifications are delivered.¹⁹

In addition, the Law says that if a taxpayer does not fulfill tax liabilities which do not exceed an amount equal to six times the MIF, the fulfillment of such tax liabilities may be secured without taking measures for the enforced payment of tax. According to the current Tax Code, the measures for enforced payment of taxes need not be taken if a taxpayer has a tax liability which does not exceed an amount equal to three times the MIF.²⁰

Special Tax Regime

The Law extends to 1 January 2014 the validity period of the Tax Code provision stipulating that the following entities are not entitled to apply special tax regimes:

• a legal entity 25 percent owned by other legal entities;
• a legal entity founded by a founder of another legal entity applying a special tax regime.

The Law will come into force on 1 January 2012.

¹⁹ Tax Code, Article 613.1 (1)
²⁰ Tax Code, Article 614.2 (1)