

Tax and Legal Alert

Issue №8



Tax Alert:

On 11 November the Parliament approved various amendments to tax and customs laws. The amendments have been sent to the President for approval.

We present the main amendments below.

PwC will organize seminars regarding these changes. A schedule of the seminars will be sent separately.

Our Comments

Certain changes will reduce companies' tax liabilities. Certain long-standing controversial issues are resolved – e.g., CIT implications of unrealised foreign exchange losses, VAT refund for taxpayers who have a VAT receivable accumulated during geological exploration and field development. The definition of production cost for associated gas is clarified, interest is excluded from the production cost of extraction and primary processing, the deadline for submission of tax residency certificates by non-residents for application of beneficial provisions of international tax treaties is extended.

Certain amendments will extend the power of the tax authorities and result in greater administrative and tax burdens on small and medium sized businesses. Additional requirements for tax reporting for large taxpayers are introduced.

We have actively participated in resolving of problematic taxation issues (e.g. refund of accumulated VAT).

We will continue to represent our clients' interests in working with the authorities to improve tax and investment climate.

We will be pleased to assist you to understand and respond to legislative changes, the introduction on new requirements (e.g. electronic invoices, electronic accompanying waybills, tax registers for large taxpayers) and with any issues important to you.

Corporate Income Tax

- a beneficial CIT treatment for:
 - taxpayers transporting cargo using sea vehicles registered in Kazakhstan's international sea vehicles register;
 - taxpayers performing activity under investment strategic projects;
- a clarification of para 4 of Article 57 of the Tax Code to avoid controversial interpretations regarding the deduction of unrealised foreign exchange losses (effective from 1 January 2009);
- a clarification of Article 110 of the Tax Code regarding tax accounting of employees' income included into cost of goods sold (effective from 1 January 2013);
- a provision giving the tax authorities the right to adjust advance payments for the first quarter in case of understatement by a taxpayer.

Value Added Tax (VAT)

- a gradual introduction of obligatory electronic invoices: during 2016 — for certain types of taxpayers, from 2017 — for all VAT payers. Violation of electronic invoicing requirements could result in an administrative fine for large taxpayers up to 80% of the VAT stated in the invoice's hard copy (but not less than 40 MCI, approximately KZT 85 thousand);
- transfer of goods from KZ to another member state of the Customs Union (CU) within the same legal entity shall be non VAT-able turnover. Similarly goods, imported from another member state of the CU within the same legal entity shall not be subject to import VAT;
- new provisions on VAT refunds for taxpayers who have excess VAT receivable accumulated during the period of geological exploration and field development;
- a clarification on turnovers, which are not turnovers of commissioner under agency and commission contracts, as well as clarification on the order of invoicing under a commission contract;
- a cancellation of voluntary VAT registration from 2017;
- a reduction of the annual turnover threshold for mandatory VAT registration up to 3 234 MCI (about KZT 7 mln);
- new requirements for VAT registration;
- a transition to electronic VAT registration certificate from 1 April 2016;
- prolongation of import VAT payment by offset mechanism on import of certain goods till 2022.

International Taxation

- an exclusion of income from airport activities from the list of income from Kazakhstan sources of non-residents registered in countries with preferential taxation;
- extension of the deadline for submission of a tax residency certificates of a non-resident from 31 December to 31 March of the following year (effective from 1 January 2015);
- extension of the deadline for submission of a tax residency certificate copy for up to five calendar days from the date of submission of withholding tax return for the fourth quarter.

Taxation of subsurface users

- introduction of a formula for determination of the world price of crude oil by converting barrels into metric tonnes via a 'barrelization coefficient' indicated in the certificate of quality issued at the start of the route in Kazakhstan;
- introduction of a formula for calculation of production cost of natural gas extracted during oil production;
- clarification of the definition for production cost of extraction and primary processing (enrichment) excluding loan interest from such production cost. The amendment is effective from 1 January 2009;
- a tax exemption for dividends paid for subsurface users to non-residents (except for residents of countries with preferential taxation) for the period 2016-2017 if certain conditions are met;
- a change in calculation of mineral extraction tax (MET) for underground water. Starting 1 January 2016 MET for underground water will be calculated as 1 minimum calculation index ("MCI") per 1 m³ of extracted volume. In certain cases a reduced tax rate will be possible;

- a change in calculation of the signature bonus on extension of the contract territory with non-confirmed reserves for contracts for mineral and widespread natural resources, underground water and therapeutic mud;
- a new provision regarding the MET payment for sales of minerals extracted from off-balance reserves;
- a change in tax accounting of expenses for preparation of operational units (polygons) to start production after commercial discovery for uranium using underground leaching method. The amendment is effective from 1 January 2009;
- amendments to Article 111 of the Tax Code regarding the inclusion of VAT in the cost of liquidation of unproductive wells for CIT deduction in accordance with 1-2 of Article 111 of the Tax Code. The amendment is effective from 1 January 2009;
- the 20-time increase of tax rates for emissions from burning of associated and (or) natural gas on flares. Exclusion of a provision on application of 10 times rate on excess emissions over established norms and the right of the authorities to increase tax rates up to 20 times. The amendment is effective from 1 January 2017.

Personal income tax (PIT)

- a provision for microfinance institutions not to accrue and pay PIT on cease of obligations on microloans for individuals under certain circumstances;
- in order to support socially vulnerable groups from 1 January 2017 the limit of income exempt from taxation is increased from 55 to 75 times the minimum wage, and the list of individuals eligible for such exemption is clarified;
- an income tax exemption for socially vulnerable groups in the calendar year when such exemption right is initiated or terminated.

Property tax

- a reduction of tax rates on landing strips, airport buildings and terminals, except for Astana and Almaty;
- recognition of assets built during preparation of units for uranium extraction using the method of underground leaching as taxable for property tax. The amendment is effective from 1 January 2009;
- the taxable base for property tax should be determined based on valuation (in case of valuation) but not less than its average annual book value determined in accordance with IFRS. The amendment is effective from 1 January 2017;
- recognition of the following buildings and constructions as taxable for property tax:
 - that are actually used by legal entities and individual entrepreneurs without registration of property rights;
 - that are recognised as assets and became the property of a second-tier banks as a result of foreclosure on collateral.

Tax administration

- a new format for electronic waybills;
- new mandatory tax registers for major taxes for large taxpayers subject to monitoring. Tax registers will be submitted on an annual and quarterly basis;
- introduction of large taxpayers' monitoring procedures;

- extension of the appeal period for 15 business days if a taxpayer submits addendums to the appeal;
- a maximum size of the state duty when appealing tax audit results to the court:
 - 500 MCI – for individual entrepreneurs and farmers
 - 20 000 MCI – for legal entities.

Legal Alert:

New Civil Procedure Code was adopted on 31 October 2015.

New civil procedure rules simplified and improved pre-trial preparatory procedures, increased time for pre-trial stage, introduces document disclosure requirements, new court system for investor-related disputes.

Disclosure of documents

Civil Procedure Code ("CPC") introduced a mandatory disclosure of documents prior to legal proceedings.

The main purpose of disclosure is to enable parties to evaluate strength of their evidence before trial. Parties will have access to all documents, including documents of the adverse party.

Mediation

Under new rules judges and attorneys will have powers to act as mediators for the parties in the civil proceeding. This will help to reduce backlog of court cases and shorten court procedures.

The judge could act as impartial mediator helping parties to resolve their dispute. The resolution of disputes resolved by means of mediation will be executed similarly to settlement agreement.

Under new rules, attorneys could also act as mediators for the parties thus bringing parties to settlement agreement, removing unnecessary penalties and reducing costs of trial.

Summary proceedings

New and improved requirements to summary proceedings were introduced. Simple disputes could now be resolved quicker and without oral hearing by the judge based on written evidence.

Investment disputes

New improved court composition will be introduced for investment protection disputes.

Specialized panel of the Supreme Court will be dealing with larger investors disputes.

The new Civil Procedure Code comes into force on 1 January 2016.

The accession of Kazakhstan to the World Trade Organization.

There were number of recent changes to existing legislation as part of Kazakhstan accession to World Trade Organisation ("WTO").

Employment and migration rules changes

Pursuant to proposed legislative changes to migration rules individuals from WTO member countries could arrive to Kazakhstan and engage in labour activities in the country on the basis of **intra-corporate transfer** scheme.

Intra-corporate transfer is a temporary transfer of employees from parent company based in WTO members states to Kazakhstan incorporated subsidiary/ or branch/representative office for no more than three years with right to extend contract for one more year.

Migration quotas imposed by the state agencies for attracting labour force will not apply to individuals arriving from WTO member countries under intra-corporate transfer schemes.

Subsoil use legislative changes

Number of legislative changes concerning subsoil users were introduced in November 2015 as part of country's accession to WTO, including removal of requirements for local content in goods and services.

· Local content in goods

Government imposed local content restrictions for procurement of goods and requirement to support local producers will no longer be applicable to newly concluded subsoil use contracts.

Any subsoil use contracts signed before 1 January 2015 will be reassessed gradually and restriction will be removed by 2021.

· Local content in services

Local content requirement for procurement of works and services in newly signed subsoil use contracts shall not exceed 50%;

Contracts signed from 2011 to date will be re-assessed in the next five years to bring in line with WTO requirements and reduce local content restriction for procured works and services to 50%.

Local producer of works and services are individual entrepreneurs or Kazakhstan incorporated legal entities employing at least 95% of local personnel. Managers and professionals transferred to Kazakhstan on the basis of intra-corporate transfer scheme will not count towards local personnel ratio.

The number of managers and professionals employed in Kazakhstan under intra-corporate transfer scheme should not exceed 25% of total number of managers and experts in each respective category and since January 2022, no more than 50% in each respective category.

The following requirements have not been affected by the recent legislative changes:

The requirement to grant a notional discount of 20% to local producers of works and services in their bids during tender processes and

Subsoil users are still required to purchase works and services from Kazakhstan producers whose documentation is compliant with the existing technical regulations.

Further action: how PwC can help you?

If you would like to understand the impact of these changes on business of your company from a tax and legal perspective in more detail, we would be pleased to discuss outstanding questions with you.

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