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Tax and Legal Alert

Issue No. 4

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Customs issues

Export control

On 24 April 2014 the Senate of the Parliament of the Republic of Kazakhstan (“RK”) approved a law “On denouncement of the Agreement on the single procedure of export control of Eurasian Economic Community member states”.

As announced in the Tax and Legal Alert last month, free transit of controlled goods on the territory of EurAsEC may pose a threat to national security.¹

Tariff quotas

On 16 April 2014 the President of Kazakhstan signed a Law of RK “On Ratification of the Protocol on Amendments to the Agreement on Conditions and Mechanisms of Tariff Quotas Application dated 12 December 2008”.

The ratification of the Protocol on amendments to Agreement on conditions and mechanisms of tariff

quota application dated 12 December 2008 allows to bring individual norms of Agreement in accordance with the provisions of the Agreement on the Eurasian Economic Community (hereinafter – “EEC”) dated 18 November 2011, according to which Customs Union Commission is eliminated, and its powers are transferred to EEC.

The Protocol also introduces changes to the Agreement which will allow to regulate tariff quota volumes for some kinds of agricultural goods between the Customs Union member states.²

Customs procedures

According to the chairman of the Tax Committee of the Ministry of Finance of RK Jumadildayev A., a draft protocol on making changes and additions to Protocol on indirect taxation was prepared at the request of Kazakh business community, which currently is under internal government review. This protocol will allow to simplify procedures for confirmation of

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export and import of goods by making it possible to submit necessary documents in electronic format, while currently documents have to be submitted in hard copy format.³

General

Investment climate

According to the Minister of Economy and Budget Planning Dosayev E., the Government of RK will introduce a draft law on improvement of investment climate to the Parliament of RK before 1 July 2014.

According to Dosayev, a draft law establishes a new format of investment contracts with investors.

The following measures of government support are provided: compensation of up to 30% of investment expenditures by the government after constructed objects are put into operation; exemption from CIT; long-term contracts for purchase of goods and services of investors with the national holdings, companies and government authorities.

Moreover, the document will provide for norms on “stability” of the legislation for the period of 10 years in taxation and ecology fields, as well as implementation of “one-stop shop” principle for investors at Investment Committee of MINT and introduction of investment ombudsman institute.⁴

EXPO-2017

16 April 2014 the President of RK signed the Law of RK “On ratification of the Convention on international exhibitions dated 22 November 1928, Protocols to Convention dated 10 May 1948, 16 November 1966, 30 November 1972 and Amendments to the Convention dated 24 June 1982 and 31 May 2988”.

The ratification of the Convention will allow to regulate the main aspects of exhibition activities, as well as to create favorable conditions for

organization and conduct of International specialized exposition EXPO-2017 in Astana.

The Convention establishes how the exhibition organizer should be determined as well as obligations of the organizers of the registered expositions and member countries. Moreover, the Convention determines classification, frequency, duration of expositions as well as customs rules. Such rules provide for preferential regime for import of goods, designated for demonstration or use at EXPO expositions.⁵

A new edition of the Civil Procedure Code

A new edition of the Civil Procedure Code is considered in the Supreme Court of the Republic of Kazakhstan, which is designed to enhance the efficiency and effectiveness of the courts when considering civil cases.

Thus, for development of extrajudicial dispute resolution mechanisms it is proposed to introduce a new chapter named “Pre-trial settlement of disputes” in separate categories. In particular, the pre-trial settlement is planned to resolve property disputes between legal entities and citizens by means of a written claim to the offender in a timely manner. In addition, the project provides an opportunity to file a claim in respect of acts of state and local self-government bodies and their officials.

The project proposes to reduce the bases for direction of cases for a new trial in the court of appeal by the court of cassation. To this end, the project contains a chapter “conciliation procedure”, which is designed to regulate the procedure and consequences of amicable agreements and treaties of the dispute by way of mediation.

Regarding the question of representation in court, the project established a ban on its implementation by persons without a legal education. The Code makes provision containing the accreditation of a lawyer who carries out representation of parties in the Supreme Court on the revision of judicial acts in exercise of supervisory functions.⁶

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General declaration of incomes of the population

The Ministry of Finance of the RK developed a draft law “On amendments and additions to some legislative acts of Kazakhstan on declaration of income and property of the citizens of Kazakhstan and persons holding a residence permit”, whose main objective is the fight against corruption and shadow economy.

The draft law is intended to introduce a phased general declaration of incomes of the population in 2015. The government officials, national companies, government agencies and state enterprises will be the first to provide declaration of assets and liabilities. Starting from 2016, the declaration must be provided by the remaining individuals, and in 2017 – by all individuals.

All citizens, including minors, as well as foreign nationals in cases defined by the draft law will be the subjects of declaring.

It is planned to indicate in the declaration the income and assets (money, property, vehicles), payables and receivables in excess of 160 times the monthly calculated indicators without specifying livelihoods. In addition, individuals will be required to indicate the information on jewelry and precious metals, works of art and other property in case of excess of the cost of 20,000 dollars.

Amendments to the Code of Administrative Offences provides for a sanction of a warning or a fine of up to 30 monthly calculated indicators for failure to present tax reporting documents related to the conditional bank deposit as well as the submission of incomplete, inaccurate information in tax reporting.⁷

The draft law on permissions and notifications

The draft law “On permissions and notifications” developed by the Ministry of Regional Development of the Republic of Kazakhstan to implement the President's Address on December 14, 2012 “Strategy of Kazakhstan – 2050”: a new policy of established state”.

The draft law aims to establish common principles and approaches in relation to the licensing system, contains an exhaustive list of permits and notifications, and also amends 83 normative legal acts of the Republic of Kazakhstan.

One of the innovations of the draft law is the establishment of a new type of license - "operating license" which will be issued for execution of certain operations in the banking and insurance areas for individual classes of insurance.

It's planned to shorten the period of the application for renewal of the license from 10 to 3 business days. The persons who apply for a permit may carry out activities without authorization or action requiring that permission before issue of reasoned issuance or refusal.

The draft law establishes the right of foreign legal entities to receive permission / license through their affiliates and (or) representatives. Moreover, in the absence of documents required to obtain a license foreign entities entitled to submit documents containing similar information.

The draft law provides obligation of the licensees who have received general and exclusive licenses, quarterly, until the fifteenth day of the month following the reporting quarter and submit a report on the execution of a license in the form of an electronic document. This obligation will be considered as a special condition of licensing operations in the export and import of goods.

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The draft law tightens the responsibility of the authorized bodies, licensors for refusing to issue permits. So, the representative of licensing authority is responsible for the damages caused by the unreasonable refusal to grant a permit or violation of the rights of the licensee or holder of permission of the second category.

Draft Law was approved by the Senate on 24th of April 2014.⁸

Combating legalization of proceeds (money laundering) received from crime and terrorist financing

On the 9th of 2014 Majilis approved on second reading the draft law “On amendments and additions to some legislative acts on combating legalization of proceeds (money laundering) received from crime and terrorist financing”.

In order to counteract the shadow economy it includes measures extending the list of subjects of financial monitoring.

During consideration of the draft law it was amended by deputies, in particular, on change of the concept of “suspicious transactions with money and (or) other property” as well as the procedure for their detection.

According to international standards in Kazakhstan it’s necessary to cover by the system of financial monitoring all persons and entities representing financial services. In this regard the list of monitoring subjects includes three new subjects: accounting companies, microfinance institutions, operators of electronic money which are not banks.

The draft law clarifies the following: “transactions subject to financial monitoring, “correspondent relationships”, “beneficiary (beneficiary owner)”, “competent authority of a foreign state”, “business relationship”, “customer”, “shell banks”, “system of money translation”.

These amendments are made in accordance with international standards.

The bill provides for amendments in many legislative acts. So amendments to the Civil Code of the Republic of Kazakhstan provides for a mandatory requirement of pawnshops for compliance with legislation of the Republic of Kazakhstan on countering the legalization of proceeds (money laundering) received from crime and terrorist financing.

In addition the Law of the Republic of Kazakhstan “On state registration of legal entities and registration of branches and representative offices” imposes a duty of the legal entity to specify the type of activity in constituent documents, if the activity is related to the implementation of operations with precious metals, precious stones and their products, maintenance of electronic money as well as business activities in the field of providing legal or accounting services.

In banking the draft law provides for an outright ban on the establishment and operation of shell banks in the Republic of Kazakhstan and that the provision of the authorized agency for financial monitoring data and information on transactions subject to financial monitoring and reporting suspicious transactions is not a disclosure of bank secrecy. Also the draft law prohibits the bank to open anonymous bank accounts or bank accounts in fictitious names.⁹

Some letters of tax authorities

Application of the Kishinev Convention

The Association of the Taxpayers of Kazakhstan received a letter from the Tax Committee of the Ministry of Finance of RK with respect to some issues related to application of the Kishinev Convention.

As announced previously, the tax authorities believe that provisions of the Kishinev Convention are not applicable to tax relations.

However, at this moment the tax authorities are working on conclusion of Protocols on

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amendments to the Conventions on avoidance of double taxation with Russia and Belarus and Memoranda of Understanding with respect to application of provisions of Conventions on avoidance of double taxation with the Ukraine, Armenia and the Kyrgyz Republic, with respect to cancellation of apostille for tax residency certificates issued in abovementioned countries in the past periods (retrospectively).

In reality there are cases when companies who are resident in the member countries of the Kishinev Convention, cannot have their certificates apostilled, because the competent authorities refuse to apostille a tax residency certificate by referring to the Kishinev Convention. In such cases, according to the tax authorities, a tax agent is obliged to withhold a tax from income paid to such non-residents.

Due to established practice of application of the Kishinev Convention, during tax audit if the tax authorities identify cases when a tax residency certificate was not apostilled according to requirements of the Kazakh legislation, tax authorities will send requests to the competent authorities of the respective countries to confirm tax residency status.¹⁰

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- 8.The Letter of the Tax Committee of the Ministry of Finance of the Republic of Kazakhstan No HK-13-452-HK-3204 dated 22 April 2014.
- 9.Draft law “On permissions and notifications”.
10. Draft law “On amendments and additions to some legislative acts on combating legalization of proceeds (money laundering) received from crime and terrorist financing”.