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Tax and Legal Alert

Issue No 3

Overview of latest legislative changes

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- Reporting forms to be filed by subsoil users; subsoil use model contracts; research and development expenditures under subsoil use contracts; gas flaring in the course of petroleum operations
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- Alcohols restamping deadline rescheduled; marking of excisable goods
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- Central Bank's refinancing rate



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New tax reporting forms adopted

The Minister of Finance approved new tax reporting forms applicable to 2011. The approving order became effective on January 1, 2011.¹

Proposed changes to the Tax Code

The Majilis of Parliament was presented draft amendments proposed to legislative acts relating to tax issues purporting to clarify a range of international taxation issues. Particularly, the following issues are addressed:

- criteria of formation and procedures for registration of a nonresident's permanent establishment;
- procedures for taxation of income from work performed (services rendered) as part of a

single contract implemented both inside and outside of Kazakhstan;

- procedures for refunding nonresidents income tax amounts withheld in Kazakhstan;
- new procedures for identifying indirect participation of residents in equity of a nonresident legal entity registered in a low tax jurisdiction to enable consolidation of residents' income for tax purposes;
- income from 'active' business activity and income from 'passive' activities are proposed to be distinguished in respect of nonresidents that earn incomes from sources in Kazakhstan;
- definitions of relatedness of parties and a more specific list of persons that are to be treated as related parties for the purposes of the Tax Code.

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(continued)

Also, procedures for recognition of structural subdivisions of a resident legal entity as tax agents are further detailed, and amendments aimed at clarifying certain tax administration provisions are included.

List of major taxpayers subject to monitoring updated

The Government of Kazakhstan approved an updated list of 300 major taxpayers that are subject to monitoring.

The government resolution² became effective on January 1, 2011.

Tax treaty with Spain ratified

The President signed a law that ratifies a tax treaty with the Kingdom of Spain and a protocol thereto, both signed in Astana on July 2, 2009.³

The tax treaty is supposed to enter into force three months after the date of receipt of a final notice in writing stating that all necessary procedures have been completed by both states.

It is worth mentioning that after the tax treaty becomes effective the ordinance establishing a list of low tax jurisdictions⁴, which includes the Kingdom of Spain in respect of the Canary Islands, will cease to apply to economic relations between the two states.

Changes to the tax treaty with the Czech Republic

The President approved in his decree a protocol to the treaty whereby amendments are made to the tax treaty with the Czech Republic⁵. In particular, the rate of tax on dividends is to be reduced from 10% to 5%.

The protocol is supposed to become effective as of the date when a final written notice to the effect that all necessary procedures have been finalized by both states is received and enters into force in both states on or after 1 January of the calendar year following the year in which the protocol became effective.

Documents establishing a common economic zone signed

On December 9, 2010 the presidents of Kazakhstan, Russia and Belarus signed a declaration on establishment of a Common Economic Zone (CEZ). Under the current action plan, all documents relating to the formation of CEZ will become effective on 1 January 2012 when the CEZ is expected to become fully operative. The agreements deal with systemic issues, regulate free movement of goods and services, as well as free movement of labor and capital within the CEZ.

The documents are expected to be considered and ratified by the Parliament of Kazakhstan by 1 July 2011. On December 22, 2010 the Parliament of Belarus approved the CEZ agreements within the framework of the Customs Union among Kazakhstan, Russia and Belarus.

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Effective dates of resolutions of the Customs Union Commission revised

The Eurasian Economic Community Interstate Council, the supreme body of the Customs Union, made amendments to the Customs Union Commission Treaty under which the Commission's binding resolutions will become effective 30 calendar days after the date of their official publication. However, in exceptional cases a different effective date may be established, but not earlier than the date of official publication. Previously, resolutions used to become effective 'not earlier than one month after the date of their official publication'.

The resolution was published on December 10, 2010.⁶

CIS Economic Court authorized to settle disputes in EAEC

On January 17, 2011 the Eurasian Economic Community (EAEC) and the CIS Economic Court signed a protocol to make amendments to the Agreement between the EAEC and the CIS to enable the CIS Economic Court to act as EAEC court.⁷

Under the amendments, disputes within the Customs Union (CU) will be referred to and settled by the CIS Economic Court. The court will be responsible for hearing lawsuits over conformity of statutes issued by CU bodies with international treaties that form a legal framework of the CU, appeals filed against resolutions, actions (inaction) of CU bodies, disputes between the CU Commission and member states, as well as disputes between member states over their compliance with obligations arising from or in connection with the CU.

List of imported goods intended for industrial processing

Rules were published that provide guidance on how to determine a list of goods imported to Kazakhstan from member states of the Customs Union that are intended for industrial processing, and a list of finished products derived from such industrial processing, as well as a list of taxpayers in Kazakhstan that import such goods.⁸

The lists are to be approved by the government and are drawn up in respect of taxpayers who are registered as VAT payers, are not classified as dormant entities and use imported goods for industrial processing.

The relevant resolution became effective as of the date when first published in an official media, i.e. from January 29, 2011.

Rates of custom duties increased

The Government of Kazakhstan passed a resolution that establishes new, higher rates of duties and fees charged by customs authorities for customs declaration of goods, customs escort and preliminary decisions.⁹

The relevant resolution became effective as of the date when first published in an official media, i.e. from January 29, 2011.

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Reporting forms to be filed by subsoil users

The Government of Kazakhstan passed a resolution approving reporting rules for subsoil users to disclose semiannual and annual information about their subsoil use operations. The resolution became effective 10 calendar days after the day on which it was published in an official media for the first time, i.e. from February 5, 2011.

Also, the Government passed a resolution whereby they approved special geological reporting forms to be filed by subsoil users to disclose information about the status of and changes in subsoil resources based on their accounting source documents. These comprise 12 forms, including disclosures about balance reserves of crude oil, natural gas, coal, etc.¹¹ The resolution became effective 10 calendar days after the day when it was first published in an official media, i.e. from February 7, 2011.

Subsoil use model contracts

The Government passed a resolution that establishes subsoil use model contracts for exploration, production and combined exploration and production. Competent authorities and local executive bodies are required to draw up new contracts with bid winners named prior to the date of enactment of the Subsoil and Subsoil Use Act of 24 June 2010 using such contracts for reference.

The resolution became effective 10 calendar days after the date when officially published for the first time, i.e. from January 29, 2011.

Research and development expenditures under subsoil use contracts

The Government of Kazakhstan passed a resolution that establishes rules providing guidance to the competent authority and local executive bodies on determination of the amount of research and development expenditures (RDE) needed for the performance of work under a subsoil use contract in Kazakhstan¹³. The rules apply to all sorts of RDE associated with exploration and production of natural resources in the extractive industry.

The resolution became effective on the date when first published in an official media, i.e. from January 12, 2011.

Gas flaring in the course of petroleum operations

The Government of Kazakhstan passed a resolution that establishes a methodology for calculation of limits and volumes of flaring of associated and/or natural gas in the process of petroleum operations¹⁴:

- during well tests;
- during field production tests, and
- where gas flaring is inevitable due to technological reasons: when commissioning technological equipment, while servicing and repairing technological equipment.

The resolution became effective 10 calendar days after the day on which it was published in an official media for the first time, i.e. from January 18, 2011.

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Rules for reimbursement of exporters' costs

The Government of Kazakhstan passed a resolution whereby they approved the rules for provision of government support (grants) to promote domestic products to foreign markets by reimbursing costs incurred by eligible exporters (resident legal entities). The resolution establishes a list of reimbursable costs, a list of qualifying domestic products, and a model agreement for reimbursement of costs.

The resolution became operative as of the day when first officially published, i.e. from December 9, 2010.

Alcohols restamping deadline rescheduled

The Government of Kazakhstan postponed the deadline by which new control stamps should be attached to alcohol products marked with old fashion control stamps from 1 April 2010 to 1 March 2011.

The resolution became effective on December 1, 2010.

Marking of excisable goods

Amendments were made to the resolution relating to the affixation of control stamps and excise stamps to certain excisable goods. In particular, alcohol or tobacco products imported to Kazakhstan are required to be marked with stamps outside of Kazakhstan.

The resolution became effective 10 calendar days after the day on which it was published in an official media for the first time, i.e. from February 9, 2011.

Expatriate staffing quota for 2011

The Government of Kazakhstan seeks to increase the quota for inviting expatriate personnel to work in Kazakhstan in 2011. The quota is proposed at 0.85% of the total economically active population (2010-2009: 0.75%, 2008: 1.6%).

Based on information published by the Statistics Agency, the number of economically active population stood at 8,458 thousand people and 8,653 thousand people in 2009 and as at the end of the third quarter of 2010, respectively.

The resolution is supposed to become effective 10 calendar days after the day on which it is published in an official media for the first time.

Central bank's refinancing rate

Effective 1 January 2011, the official refinancing rate of the National Bank of the Republic of Kazakhstan was retained at 7.0 per annum.

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Reference

1. Order of the Minister of Finance of the Republic of Kazakhstan N 644 of 20 December 2010, Approval of tax reporting forms and form completion rules
2. Resolution of the Government of the Republic of Kazakhstan N 1514 of 31 December 2010, Approval of a list of major taxpayers that are subject to monitoring
3. Law of the Republic of Kazakhstan N 386-IV of 14 January 2011, Ratification of the convention between the government of the Republic of Kazakhstan and the government of the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion in respect of taxes on income and on capital and a protocol thereto
4. Resolution of the Government of the Republic of Kazakhstan N 1318 of 31 December 2008, Approval of a list of low tax jurisdictions
5. Decree of the President of the Republic of Kazakhstan N 1106 of 24 November 2010, Signing of a protocol to make amendments to the convention between the Republic of Kazakhstan and the Czech Republic for the avoidance of double taxation and the prevention of fiscal evasion in respect of taxes on income and on capital
6. Resolution of the Eurasian Economic Community N 68 of 9 December 2010, Amendments to the Customs Union Commission Treaty and the rules and procedures of the Customs Union Commission
7. Agreement between the Commonwealth of Independent States and the Eurasian Economic Community on vesting the Economic Court of the Commonwealth of Independent States with the functions of the Court of the Eurasian Economic Community (Minsk, 3 March 2004)
8. Resolution of the Government of the Republic of Kazakhstan N 1518 of 31 December 2010, Approval of rules of determination of a list of goods imported to Kazakhstan from member countries of the Customs Union and intended for industrial processing and a list of finished products resulting from such industrial processing, and a list of taxpayers in the Republic of Kazakhstan that import such goods
9. Resolution of the Government of the Republic of Kazakhstan N 24 of 21 January 2011, Approval of rates of customs duties charged by customs authorities, Resolution of the Government of the Republic of Kazakhstan N 669 of 8 July 2003, Approval of rates of customs duties, duties and fees charged by customs authorities
10. Resolution of the Government of the Republic of Kazakhstan N 1455 of 30 December 2010, Approval of rules of submission by subsoil users of reports on performance of subsoil use operations
11. Resolution of the Government of the Republic of Kazakhstan N 1459 of 30 December 2010, Approval of special geological reporting forms filed by subsoil users to report on the status of subsoil resources on the basis of accounting source documents
12. Resolution of the Government of the Republic of Kazakhstan N 1412 of 25 December 2010, Approval of subsoil use model contracts
13. Resolution of the Government of the Republic of Kazakhstan N 1449 of 30 December 2010, Approval of rules for determination of research and development expenditures in the territory of the Republic of Kazakhstan needed to perform work under a contract
14. Resolution of the Government of the Republic of Kazakhstan N 1319 of 8 December 2010, Approval of a methodology of calculation of limits and volumes of flaring of associated and/or natural gas in the conduct of petroleum operations
15. Resolution of the Government of the Republic of Kazakhstan N 1265 of 29 November 2010, Certain issues relating to the provision of government support in respect to promotion of domestic products to foreign markets by reimbursing for costs incurred by exporters
16. Resolution of the Government of the Republic of Kazakhstan N 1473 of 30 December 2010, Amendments to the resolution of the Government of the Republic of Kazakhstan N 2041 of 8 December 2009, Resolution of the Government of the Republic of Kazakhstan N 2041 of 8 December 2009, Certain issues relating to affixation of control stamps to alcohol products
17. Resolution of the Government of the Republic of Kazakhstan N 8 of 17 January 2011, Amendments to the resolution of the Government of the Republic of Kazakhstan N 1349 of 31 December 2008, Resolution of the Government of the Republic of Kazakhstan N 1349 of 31 December 2008, Affixation of control stamps and excise stamps to certain excisable goods
18. Resolution of the Government of the Republic of Kazakhstan N 1479 of 30 December 2010, Quota on expatriate personnel invited to work in the Republic of Kazakhstan in 2011 (not yet operative)
19. Resolution of the Government of the Republic of Kazakhstan N 104 of 27 December 2010, Official refinancing rate of the National Bank of the Republic of Kazakhstan