

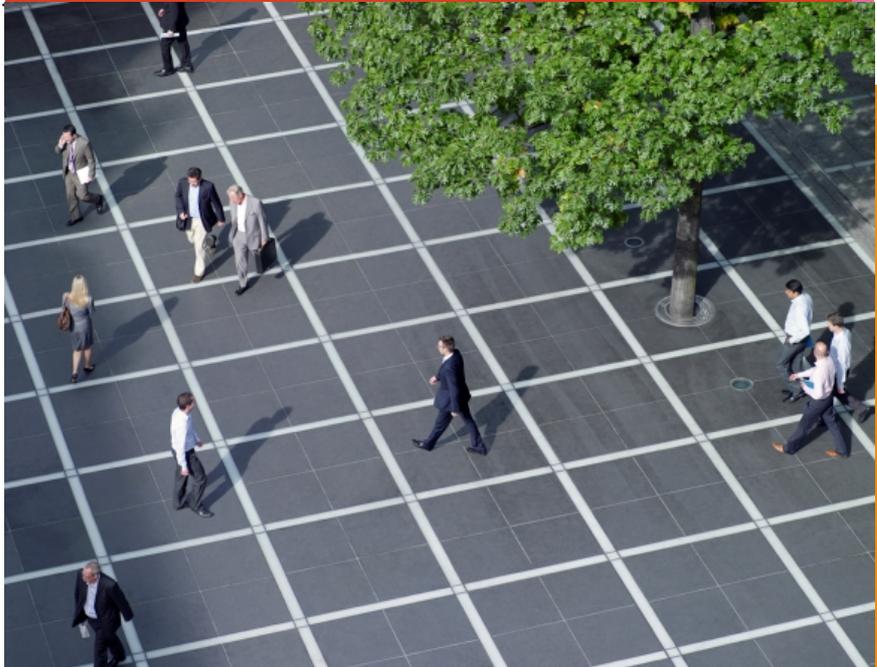
March 2011

# *Tax and Legal Alert*

## Issue №4

### **Overview of latest legislative changes**

- A law on mediation
- A law on government control and supervision
- Minerals and extractive industry development programme through 2014
- Changes to advance pricing agreement rules
- Uranium concentrate pricing rules
- Preemptive right of the Republic of Kazakhstan to purchase mineral resources
- Representation of government interests in subsoil use contracts by a national company
- Review of draft subsoil use contracts for legal and regulatory compliance
- Historical expenditures and the cost of geological information
- Classifying subsoil use contracts as low profit contracts
- Employment of expatriates
- Changes to legislation relating to mortgage lending and protection of rights of consumers of financial services and investors



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### ***A law on mediation***

On 28 January 2011, the President of Kazakhstan signed the Law on Mediation.<sup>1</sup> Mediation is a process aimed at resolving a dispute (conflict) between two or more parties with the help of a mediator that assists in reaching a solution that is mutually agreeable and may be voluntarily implemented by the parties in dispute.

The law regulates relations in connection with mediation in Kazakhstan, establishes principles and procedures for mediation and determines the status of mediators.

Mediation is applicable to disputes arising from civil, labor, family and other relations involving individuals and/or legal entities, as well as disputes considered in the course of criminal lawsuits over minor crimes.

The law will become effective as of 5 August 2011.

### ***A law on government control and supervision***

On 6 January 2011, the President of Kazakhstan signed the Law on Government Control and Oversight and related amendments whereby changes were made to laws relating to business controls and oversight.<sup>2</sup>

The law provides for various kinds of government control and oversight, establishes procedures and timing for performing audits, and outlines spheres of activity of private sector businesses that are subject to government control and supervision.

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### *(continued)*

Under the law, a uniform legal framework is to be formed that will govern issues pertaining to control and supervisory activities of government bodies and envisage underlying principles thereof. In particular, the law determines:

- the frequency for scheduled audits in respect of organizations classified as high risk, moderate risk or low risk organizations, respectively;
- the scope of rights and responsibilities vested with officials of government bodies and officers of organizations in connection with control and oversight procedures.

The law became effective on 25 January 2011.

### *Minerals and extractive industry development programme through 2014*

The Government of Kazakhstan adopted the programme for the continued development of the minerals and extractive industry until 2014.<sup>3</sup> The programme seeks to supply more resources for the active development of industrial sectors by expanded exploration of the territory of Kazakhstan to estimate forecasted resources, increase reserves of key mineral resources (gold, copper, uranium, oil and gas) and establish a data bank of geological information.

### *Changes to advance pricing agreement rules*

Under the government resolution of 24 December 2010, changes were made to the advance pricing agreement rules under the Transfer Pricing Law.

Particularly, a transacting party is now required to file an application for an advance pricing agreement (APA) and submit necessary documents. The scope of the rules has been extended to apply not only to purchases of goods (works, services) from related companies, but also sales of goods (works, services) to related companies. Also, the procedures and the deadline for consideration of an application filed, discussion of a draft APA and adoption of a final determination thereon have been revised. Also, the period of handling of an application has been extended from 60 to 90 working days.

Under the amended rules, the term of an APA cannot exceed 3 years after the date on which it was signed. The rules further include a list of situations where authorized government bodies may refuse to sign an APA with a transacting party.

Provisions relating to the initiation by authorized government bodies of changes to an APA in response to changes in market prices and the implementation by government authorities of control measures where the transaction price is proved to have deviated from the market price as a result of APA violations have been excluded.

The resolution<sup>4</sup> will become effective on 6 March 2011.

### *Uranium concentrate pricing rules*

Under subpar. 3 of par. 10 of article 10 of the Transfer Pricing Law, the Government of Kazakhstan approved a pricing methodology for natural uranium concentrate (U<sub>3</sub>O<sub>8</sub>) that establishes the procedure for calculation of selling prices for transactions operated under spot, short-term, mid-term and long-term sale and purchase contracts.

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### *(continued)*

The resolution<sup>5</sup> will become effective 10 calendar days after the day on which it is published in official media for the first time.

### *Preemptive right of the Republic of Kazakhstan to purchase mineral resources*

Under the Subsoil and Subsoil Use Law, the Government of Kazakhstan has approved rules that establish the procedure for the government's exercising of its preemptive right to purchase mineral resources. Purchases of oil and gas resources will be made by the Oil & Gas Ministry of Kazakhstan, while purchases of mineral resources, other than commonly occurring mineral resources, will be made via the Industry and New Technologies Ministry of Kazakhstan. A maximum quantity of mineral resources to be so purchased will be set out in a subsoil use contract. A purchase price, terms of delivery and terms of payment will be agreed upon by a subsoil user and a competent authority through negotiations.

The rules<sup>6</sup> are expected to become effective 10 calendar days after the day when first published in official media.

### *Representation of government interests in subsoil use contracts by a national company*

In accordance with the Subsoil and Subsoil Use Law, the Government of Kazakhstan has adopted rules that establish the procedure for representation by a national company of government interests in subsoil use contracts in which the national company is supposed to hold an equity

stake. Under the rules, the Government draws up a list of subsoil blocks for which tenders are to be initiated where the size of stake a national company or its affiliate is expected to hold is specified.

The resolution<sup>7</sup> will become effective on 9 March 2011.

### *Review of draft subsoil use contracts for legal and regulatory compliance*

Under the Subsoil and Subsoil Use Law, the Government of Kazakhstan has adopted rules for review of draft subsoil use contracts. The rules establish procedures and timings for performance of economic, environmental and legal reviews to ensure a draft contract is in compliance with legal and regulatory requirements of Kazakhstan.

The resolution<sup>8</sup> will become effective 10 calendar days after the day on which it is officially published for the first time.

### *Historical expenditures and the cost of geological information*

Under the Subsoil and Subsoil Use Law, the Government of Kazakhstan has approved rules for determination of historical expenditures and the cost of geological information. The government resolution contains general definitions of and provides guidelines for determination of historical expenditures and the cost of geological information.

The resolution<sup>9</sup> will become effective 10 calendar days after the day on which it is first officially published.

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### **Classifying subsoil use contracts as low profit contracts**

Under article 18 of the Tax Code, the Government of Kazakhstan has approved rules for classification of contracts for development of fields of crude hydrocarbons as low profit contracts and fields as high viscosity, flooded, marginal or exhausted fields, including the rates of mineral production tax (MPT) applicable to subsoil users operating such fields.

MPT rates are set with reference to production quantities and the degree of viscosity, floodedness, exhaustion and well yield.

Under the rules, a subsoil user files an application with the Economy and Budget Planning Ministry of Kazakhstan according to an established form.

The rules establish the deadline for filing an application, a list of documents to be presented, the period of time during which the application should be considered and the procedures for including a field in either of the mentioned field categories.

The resolution<sup>10</sup> became effective as of 1 January 2011.

### **Employment of expatriates**

The Government of Kazakhstan has made changes to a government resolution relating to measures aimed at implementing the Employment of Populace Law. Revised were the rules for determination of quotas and the conditions and procedures for authorizing employers to employ foreign workforce in Kazakhstan. Between 1 July 2011 and 1 January 2012, a total number of hired or planned to be hired first-class expatriate specialists should not exceed

50% of the total number of employees falling within the first class category.

The first class category comprises chief executive officers, their deputies, financial and technical directors, as well as chief engineers, designers, technologists, power engineers, metallurgists, architects, geologists and geophysicists that hold a higher education degree and have at least 5 years of experience in same positions in relevant industries.

A total number of hired or planned to be hired second-class and third-class foreign specialists should not exceed 30% of the total number of employees falling within the second and third-class categories between 1 July 2011 and 1 January 2012.

The resolution<sup>11</sup> became effective on 27 February 2011.

### **Changes to legislation relating to mortgage lending and protection of rights of consumers of financial services and investors**

Changes were made to certain legislative acts relating to mortgage loans and the protection of rights of consumers of financial services and investors under law dated 10 February 2011. The law primarily seeks to improve the system of protection of rights of consumers of financial services and the mechanisms of social guarantees for citizens in connection with mortgage loans, to tighten punishments for officers of joint stock companies by making them personally responsible for decisions they make.

The law introduces the institution of banking ombudsman. The banking ombudsman is responsible for settling disputes between banks and borrowers arising from mortgage loans.

The law<sup>12</sup> became effective on 25 February 2011.

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### Reference

1. Law of the Republic of Kazakhstan of 28 January 2011 N 401-IV 'On mediation' (still ineffective)
2. Law of the Republic of Kazakhstan of 6 January 2011 N 377-IV 'On government control and supervision', Law of the Republic of Kazakhstan of 6 January 2011 N 378-IV 'On amendments to certain legal acts of the Republic of Kazakhstan relating to government control and supervision'
3. Resolution of the Government of the Republic of Kazakhstan of 31 December 2010 N 1530 'On approval of programme for development of minerals and extractive industry in the Republic of Kazakhstan between 2010 and 2014'
4. Order of the Finance Minister of the Republic of Kazakhstan of 24 December 2010 N 649 'On amendments to the order of the Finance Minister of the Republic of Kazakhstan of 12 February 2009 N 63 'Approval of rules of conclusion of an advance pricing agreement'
5. Resolution of the Government of the Republic of Kazakhstan of 3 February 2011 N 74 'On approval of pricing rules (method) for natural uranium concentrate (U3O8)' (still ineffective)
6. Resolution of the Government of the Republic of Kazakhstan of 28 January 2011 N 38 'On approval of rules of exercising the preemptive right of the Republic of Kazakhstan to purchase mineral resources' (still ineffective)
7. Resolution of the Government of the Republic of Kazakhstan of 10 February 2011 N 122 'On approval of rules of representation by a national company of government interests in contracts in which a national company is supposed to hold an equity stake'
8. Resolution of the Government of the Republic of Kazakhstan of 10 February 2011 N 118 'On approval of rules of performance of a review of draft subsoil use contracts' (still ineffective)
9. Resolution of the Government of the Republic of Kazakhstan of 10 February 2011 N 120 'On approval of rules of determination of historical expenditures and the cost of geological information' (still ineffective)
10. Resolution of the Government of the Republic of Kazakhstan of 31 December 2010 N 1528 'On approval of classification of a subsoil use contract that provides for development of hydrocarbons fields as a low profit contract, and classification of a field (a group of fields, a part of fields) of crude hydrocarbons as high-viscosity, flooded, marginal or exhausted field and rates of mineral production tax for subsoil users that develop flooded, marginal, exhausted or high-viscosity fields of hydrocarbons'
11. Resolution of the Government of the Republic of Kazakhstan of 2 February 2011 N 71 'On amendments to the resolution of the Government of the Republic of Kazakhstan of 19 June 2001 N 836'
12. Law of the Republic of Kazakhstan of 10 February 2011 N 406-IV 'On amendments to certain legal acts of the Republic of Kazakhstan relating to mortgage lending and protection of rights of consumers of financial services and investors'