

# Tax and Legal Alert

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### General

#### Statute of limitation

At the plenary session on 23 October 2013 the Majilis of the Parliament of Republic of Kazakhstan (“RK”) approved the second and final reading of the draft law “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on taxation issues”.

One of the important amendments of the draft law is to extend the statute of limitations in case of filing an additional CIT tax return. Thus, p. 5 of the Article 46 of the Tax Code is complemented by a second paragraph:

“In case a taxpayer (a tax agent) submits an additional tax return with changes and additions related to carry-forward of the losses for the period for which the statute of limitations, established by p. 1 of this Article shall expire in less than one calendar year, such statute of limitations is extended with regard to assessment and (or) revision of

the assessed amount of corporate income tax to the budget for **the three calendar years.**”<sup>1</sup>

The proposed amendment implies that any changes made, for instance, in 2014 to the CIT return for 2009 with regard to change in losses extends the statute of limitations for the year 2009 to 2016.

Moreover, amendments include a higher tax rate on lands which are not cultivated within a certain period after they were provided.

The amendments also include higher tax rates on “luxury” goods: transport and property as well as excise taxes on tobacco and alcohol.<sup>2</sup>

#### Primary supporting documents

The Order of the Minister of Finance of RK No. 402 dated 19 August 2013 “On Changes and Additions to the Order of the Minister of Finance of RK No. 562 dated 20 December 2012 “On

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Establishment of Forms of Primary Supporting Documents” was published on 26 October 2013. The Order approved forms of act of acceptance.

The Order shall become effective after ten days from the day of its official publication. (“Kazakhstanskaya Pravda” No. 302 (27576) dated 26 October 2013).<sup>3</sup>

### ***Realization of a taxpayer’s property limited in disposition***

According to the Decree of the Government of RK, JSC “Company for Rehabilitation and Asset Management” is the authorized body responsible for realization of a taxpayer’s property limited in disposition in respect of taxes payable and customs payments and taxes, and (or) goods detained by customs authorities.

The Decree is effective after ten days from the day of its official publication. (“Kazakhstanskaya Pravda” No. № 295 (27569) dated 17 October 2013).<sup>4</sup>

### ***State procurement***

According to Mr. B. Zhamishev, a new law on state procurement may be adopted next year.

According to the Minister, measures will be taken to prevent disruption of tenders and purchase from a single source.

“A single organizer will conduct tenders, and all documentations will be prepared by the administrators of the budget programs,” said Zhamishev. Tenders are often disrupted if a tender participant did not submit some documents, and such participant is excluded from the tender. To prevent such disruptions, a draft law includes a provision allowing to submit documents at a later date”.

Moreover, the draft law provides that administrators of the budget programs will be able to choose the best technical specification, so that all participants with the chosen specification can offer their prices.

In addition the Head of the Ministry of Finance noted, the draft law introduces some other provisions which would ensure a competitive environment.<sup>5</sup>

### ***SEZ***

Changes have been introduced to the Decree of the Government of RK “On Establishment of a List of Goods (Works, Services) of Own Production According to the Types of Activities Corresponding with the Purpose of a Set-Up of Special Economic Zones”. The list of goods (works, services) of own production according to the types of activities corresponding with the purpose of a set-up of special economic zones “Pavlodar”, “Saryarka” and “Khorhos-Eastern Gates” has been supplemented.

The Decree is effective starting from 1 January 2013 and is subject to official publication.<sup>6</sup>

### ***Amendments to the Criminal and Criminal Procedural Codes***

A new revision of Criminal Code and Criminal Procedural Code has been introduced in Astana. According to the deputy of the General Prosecutor Johann Merkel, criminal liability for fake entrepreneurship and tax evasion will diminish. Imprisonment will not be enforced for economic crimes if the guilty person voluntarily reimburses the damages.

New revision will be affective from 1 January 2015.<sup>7</sup>

### ***International Taxation***

#### ***Ratification of Convention between the Government of RK and Government of the Grand Duchy of Luxembourg***

On 10 October 2013 at the plenary session the Senate of RK has adopted a law “Concerning the Ratification of Convention between the Government of RK and Government of the

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Grand Duchy of Luxembourg for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Income and Capital Taxes and Protocol on introducing amendments to Convention”.

The Protocol provides for wider cooperation between two tax bodies with the help of information exchange on the taxation issues to prevent tax evasions and avoidance of double taxation of legal entities and individuals, who are residents of Kazakhstan or Luxembourg.<sup>8</sup>

### ***Pension provision***

#### ***The Rules for pension payments***

The rules for making pension payments from a unitary pension fund generated from the mandatory pension contributions, mandatory professional pension contributions as well as procedure for calculation of amounts of pension payments have been established.<sup>9</sup>

The rules are developed in accordance with p. 5 of the Article 6 of the Law of RK “On Pension Provision in the Republic of Kazakhstan”.

The Rules are effective ten calendar days after their first official publication.

#### ***Accounting and disclosure of transactions with pension assets***

The Standard of financial reporting “Accounting and Disclosure of Transactions with Pension Assets” has been approved. The Standard was developed in accordance with the Law of the RK dated 30 March 1995 “On the National Bank of the Republic of Kazakhstan”, the Law of RK dated 28 February 2007 “On Accounting and Financial Reporting”, the Law of RK dated 21 June 2013 “On Pension Provision in the Republic of Kazakhstan”, and is intended for accounting of pension assets and preparation of financial statements with respect to pension assets of a unitary pension fund and voluntary pension funds (hereinafter - the Fund).

The purpose of the Standard is to define the characteristics of the accounting and reporting of pension assets to be disclosed in the financial statements of the Fund.

Issues not covered by the Standard are governed by the Law of RK “On Accounting and Financial Reporting “ and IFRS.

IFRS should be used for accounting and preparation of financial statements for the Fund’s own assets.

The Standard comes into force after ten calendar days from the date of its first official publication.<sup>10</sup>

#### ***The Rules for remittance of mandatory pension contributions from income of former employees***

The regulations was approved for mandatory pension contribution withheld but not remitted by tax agents with respect of income of former employees, whose location is unknown, due to lack of Social Individual Code and (or) agreement on pensions security with pension funds as of 1 January 2005.

Rules are developed in accordance with p. 9 of Article 24 of the Law “On Pension Provision in the Republic of Kazakhstan”.

The taxpayer (the tax agent) having tax liability of pension contributions in respect of former employees fills out and submits a form according to Attachment 1 of the Rules to the tax authorities at its location (residence) no later than 24 December 2013 indicating total liability with a breakdown of principal payments and fine for late transfer of amounts of pension contributions accrued before 1 January 2005 , and the total amount of liability of the former employees.

The tax authority, who received information from the tax agent, within three working days completes and sends an electronic register of agents who have a tax liability with respect to pension contributions of former employees,

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indicating the name and BIN of agents, as well as the name and BIN of tax authority to the Tax Committee of the Ministry of Finance of RK. During the same period, the tax authority shall make relevant records in the pension contributions tax account of the agent and open a tax account with the budget classification code 206108 "Other non-tax revenue to the state budget".

After remittance of tax liability to the budget, the tax agent reconciles the tax account for budget code 206108 "Other non-tax revenue to the republican budget" with the tax authority within five working days. The tax account for budget code 206108 shall be closed after tax liability and fine in respect of mandatory pension contributions is settled in the full amount.

In the event of non- payment or incomplete payment until 1 April 2014 of pension contributions and interest accrued up to 1 January 2005 the tax authority within ten working days produces the corresponding entries on the tax account of the agent.

The Rules are effective after ten calendar days from their first official publication.<sup>11</sup>

### **Customs Union**

#### **Customs Duty Rates**

At the plenary session of the Majilis the draft law "On ratification of the Protocol amending the Protocol on the conditions and procedures for use of the rates of import Customs Duties other than the rates of the Single Customs Tariff dated 12 December 2008 in Exceptional Cases" was approved.

The above mentioned Protocol is proposed to amend the Protocol signed 2008, according to which one of the Parties on the basis of the decision of the Commission may apply a higher or lower rate of import duty in respect of the goods, compared with the current rate of the Single Customs Tariff in exceptional cases. A higher rate may be applied by the Party, if such

measure is a necessary condition for the development of the economy of the state of the Party. A lower rate may be applied in the event of an acute shortage of goods in the domestic market, which is largely dependent on traditional import from third countries and cannot be satisfied by the manufacture of this or similar good in the Customs Union.

In accordance with the Protocol of 2008, higher or lower rate cannot be applied by the Party for more than 6 months. According to the amendments, the Parties have agreed to extend the period of application of duties other than the Single Customs Tariff.<sup>12</sup>

#### **Technical Regulations for Meat and Milk**

At the meeting in Kazan, the Council of the Eurasian Economic Commission has approved the technical regulations of the Customs Union "On the safety of milk and milk products" and "On the safety of meat and meat products".

"With regard to the responsibility of the Board , most important issues in the form of the technical regulations were adopted. These are two technical regulations discussed by the industrialists of all countries - about the safety of milk and dairy products, and meat and meat products. There was a lot of debate on these documents. At the meeting, a consensus was reached, and the middle of next year, these technical regulations will take effect ," said First Deputy Prime Minister of RF Igor Shuvalov.<sup>13</sup>

#### **Customs Value of Goods**

The Eurasian Economic Commission is drafting a decision of the Board "On Approval of Procedure of the Application of the Deferred Determination of Customs Value of Goods".

According to the Commission, a need for such document is due to cases when, because of a lack of information it is not possible to determine the exact customs value of goods.

Such situations require the development of mechanisms to determine the customs value on

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the basis of the transaction value of imported goods without additional financial costs associated with its determination, without lowering the level and efficiency of customs control.

The draft is being developed in order to optimize and speed up customs operations, increase the efficiency of customs control and provide for the introduction of a mechanism for deferred determination of the customs value of declared goods, as well as determine the cases in which such mechanism is applicable.<sup>14</sup>

### **Import quotas on combine harvesters**

According to the Decision of the Supreme Eurasian Economic Council, the Board of the Eurasian Economic Commission determined a type of special protective measures for combine harvesters and their modules.

Special safeguard measure is introduced in the form of import quotas and will be effective from 1 January 2014 to 21 August 2016, inclusive.

The Board has allocated the amounts of quota in 2014, 2015 and 2016 as follows: for Russia – 424, 437 and 288 units, respectively, for Kazakhstan - 300, 309 and 204 units, respectively, for Belarus - 50, 52 and 34 units, respectively.

Import of harvesters exceeding the amount of quotas during the period of safeguard measure will be banned.

The authorized bodies of the Customs Union will allocate the quantities of import quotas between importers and issue import licenses for harvesters. The size of the quota allocated to each importer will be calculated taking into account the amount of imported combine harvesters during previous years.

Based on a special safeguard investigation undertaken by the Eurasian Economic Commission, analysis of the obtained information allows to conclude that there are grounds for the application of a safeguard

measure. During the analyzed period a sharp increase in import was recorded, which allegedly caused damage to the economy of the Customs Union.

This Decision shall enter into force on the date of its official publication.<sup>15</sup>

### **Trends**

On 20 September 2013 in Almaty the Eighth Tax Conference “The Customs Union: issues of customs and tax administration. In-house supervision and tax audits: problems and solutions” was held. The conference focused on innovations in customs and tax administration.

Thus, according to the chairman of the Customs Control Committee of the Ministry of Finance Mazhit Yesenbayev, paperless electronic declaration for all customs procedures will be possible in two years.

According to Mr. Yesenbayev, for the purposes of automation of customs procedures, a phased implementation process of the electronic declaration is under way. “As of today, information system ( IS) “Electronic declaration” is developed. As part of its creation integration with the State databases “Individuals” and “Legal Entities”, the IS “E-Licensing”, the “Payment Gateway E-Government”, the “National Certification Authority” and the personal accounts of payers IS “TAIS -2” and “SKUR” has been implemented.

He also said that starting from 1 January 2014 IS “Electronic declaration” will be put into commercial operation for paperless declaration of export goods. And by the end of the year the functionality of the system will be expanded: electronic declaration of goods subject to customs duties and the electronic declaration alcohol products”.<sup>16</sup>

Until the end of 2013 it is planned to introduce an integrated customs tariff in Kazakhstan. It is a systematic and codified list of all the information on all tariff and non-tariff measures applied for import, export or transit, including all state requirements for a particular product.

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According to Mr. Yesenbayev, this will allow to increase transparency of customs procedures, eliminate unfounded requests of authorized officials for provision of documents for customs clearance of goods, shorten a period of review of customs declaration and documents attached to it during customs clearance.<sup>17</sup>

In addition, it is also planned to introduce a unified tax account for tax and customs payments by 2015.

In the opinion of Mr. Yesenbayev, this will have a positive impact on the possibility of offset and refund of paid customs and tax duties in the one state body as well as collection of tax and customs liabilities. Work on a unified tax account is planned to be completed by 2015.

Also in his speech, Mr. Yesenbayev noted that the main aim now is to minimize a number of regulatory authorities, bringing them to two bodies at the border.

If today around 12 documents are required for export and 13 documents for import, already now only up to 4 documents will be required at the border: bill of consignment, invoice, document confirming payment of taxes and customs duties, customs declaration. In the future it is planned to reduce the number of documents to two.<sup>18</sup>

Innovations are also expected in the area of tax audits. A new approach of auditing taxpayers has already been tested - centralized audit, as well as exploring the use of two more approaches (preliminary and alternative audit), according to Ruslan Dalenov, Vice-Minister of Finance of RK.

Centralized audit implies that the audit is conducted not at the district, but at the regional level. This approach has several advantages: increasing the professional level of the auditors that avoids duplication of audits, elimination of unnecessary step during appeal, reduction of contact at the local level, impartiality of audits. To date, this method was used in the pilot mode in three oblasts of Kazakhstan. The practice will

be spread throughout the country.

Another idea, which is only being discussed with the business, is the introduction of a preliminary audit. The bottom line is that in addition to the tax audit there is a preliminary audit. "A taxpayer writes a request, the tax authority comes for audit. The difference from the tax audit is: the same thing happens, but when the tax authority in the course of tax audit says, where you have to pay additional taxes, you also have to pay a fine, which can reach up to 30-50% of the assessed taxes, plus litigation, etc. Preliminary audit is only a recommendation. A taxpayer may not agree, but if the taxpayer sees that the tax authority is right, he pays without sanctions," says Mr. Dalenov.

The third idea is the introduction of alternative audit. This method assumes that the taxpayer chooses who will do the audit- the tax authority or a private audit company, with the results of audit being recognized by the tax authorities. Private audit companies are selected, and the taxpayer, if not posing a risk to the tax authorities, submits an application, in which taxpayer indicates that he wants to be audited by private audit company. If the audit reveals any errors, audited company pays, but no sanctions or fines are imposed. The tax authorities audit only those taxpayers who have risks. Thus, the work load is removed from the tax authorities, and the audits are more focused.<sup>19</sup>

### ***Excise goods***

#### ***The minimum price on cigarettes with filter***

According to the Decree of Government of RK "On Establishment of Minimum Retail Prices on Cigarettes with Filter", the following minimum retail prices are established for 20 cigarettes with filter:

- 1) Until 31 December 2013 – 130 tenge;
- 2) From 1 January 2014 – 150 tenge.

The Decree is effective after 10 calendar days from its first official publication («Kazhastanskaya Pravda» dated 12 October 2013 No. 294 (27568)).<sup>20</sup>

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### *Agriculture*

#### **Increasing land tax**

At the regional seminar on improving taxation of agriculture, which took place in Ust – Kamenogorsk on 18 October 2013, the Minister of Finance Bolat Zhamishev announced the proposals prepared by the special working group on the modification of land tax rates on agricultural land for greater efficiency of land use.

The following proposals were announced at the meeting:

- 1) maintaining a single land tax for small farmers , agro-business, restrictions and simplifications;
- 2) additional incentives (reduction of the tax burden) for peasants or farms and entities applying general procedure of settlements with the budget;
- 3) application of a special tax regime for legal entities (agricultural producers);
- 4) change of land tax rates and payment of use of land plots.

At the seminar it was noted that while large areas of land are empty and their owners are not engaged in the cultivation of farmland, land become useless. Revision of agricultural land carried out in the country requires urgent action.

According to Mr. Zhamishev, “right now the legislation allows to withdraw unused agricultural land in favor of the state. This is a key point that we used in developing amendments. Of course, it would be better to abandon the special tax regimes. But we (the working group) propose to keep all these regimes by making some changes in 2016”.

The territory of the agricultural land is proposed to be divided into three categories , and for each to determine the area where special tax regime

may be applied. For the farms of North Kazakhstan , Aktobe, Akmola, Kostanai, West Kazakhstan, East Kazakhstan, Pavlodar and Karaganda regions the maximum area of a farm must not exceed 3,5 thousand hectares. For Almaty, Zhambyl, Kyzylorda, Mangystau and Atyrau regions - no more than 1.5 thousand hectares, while for South Kazakhstan - no more than 500 hectares.

As for the second category of businesses - legal entities , right now they have one special taxation regime - “minus 70%”. The working group proposed to keep this type of tax, but make a 5 times increase in land tax rates and exclude property and transport tax starting from 2015. Also legal entities may choose a simplified tax regime”.<sup>21</sup>

#### **Recycling of agricultural products**

Prime Minister of RK Serik Akhmetov instructed the Ministry of Finance and the Ministry of Economy and Budget Planning to resolve the issue of taxation of recycling of agricultural products.

As the head of the Government noted, the current agricultural development programs will not be effective until tax issues affecting the sales of domestic products have been resolved.

As was previously explained by the Minister of Agriculture Asylzhan Mamytbekov, “today the producers of agricultural products are not VAT payers, while agricultural processors are subject to VAT. As a result, tax that has to be assessed on the added value, is assessed on the total turnover.”<sup>22</sup>

#### **Some letters of the tax authorities**

##### **Legalization of residency certificates of Kishinev Convention member states**

As we wrote last month, the Tax Committee of the Ministry of Finances of RK forwarded requests to foreign member states of Convention indicated to clear up their position with respect to application of the Convention to the residence certificates.

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According to the reply of the Ministry of Justice of RF, in spite of the fact that the Convention directly regulates the provision of legal assistance in civil, family and criminal cases, law enforcement practice suggests that the competent authorities of the Parties accept official documents without authorization (including without apostille). In the event that the documents comply with Article 13 of the Convention, stamping of apostille for submission of documents to the tax authorities is not required.<sup>23</sup>

In addition, during the round table organized by the Association of Taxpayers of Kazakhstan, on 5 November 2013 the Tax Committee of the Ministry of Finance announced the following: “At this time, the Ministry of Finance of the Republic of Kazakhstan negotiates with the authorities of other countries (Russia, Belarus) and the decision is made: make amendments to the Kishinev Convention in the form of standards, eliminating the need for legalization of documents. This provision will be retrospective.”

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2. <http://www.parlam.kz/ru/mazhilis/page5/1020>
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4. The Decree of the Government of Republic of Kazakhstan dated 11 October 2013 No. 1088 "On Amendments to the Decree of the Government of Kazakhstan dated 29 April 2011 No. 463 "On Designation of Authorized Legal Body in the Area of Realization of Taxpayer's Property Limited in Disposition" ("Kazakhstanskaya Pravda" No. N<sup>o</sup> 295 (27569) dated 17 October 2013).
5. <http://www.zakon.kz/4581070-popravki-v-zakon-o-goszakupakh-mogut.html>.
6. The Decree of the Government of RK dated 23 September No. 993 "On Amendments to the Decree of the Government of RK dated 13 May 2009 No. 703 "On Establishment of a List of Goods (Works, Services) of Own Production According to the Types of Activities Corresponding with the Purpose of a Set-Up of Special Economic Zones".
7. <http://www.zakon.kz/4581054-v-astane-predstavili-ugolovnyjj-i.html>.
8. <http://kazpravda.kz/?p=9530>.
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10. The Decree of the Board of the National Bank of the Republic of Kazakhstan dated 26 July 2013 No. 195 "On Establishment of the Standard of financial reporting "Accounting and Disclosure of Transactions with Pension Assets".
11. Decree of the Government of the Republic of Kazakhstan dated 5 October 2013 No. 1058 "On Establishment of The Rules for Remittance of Mandatory Pension Contributions Withheld and not Remitted by Agents from Income of Former Employees Whose Whereabouts are not Known, due to the Lack of Social Individual Code and ( or) the Registration Number of the Taxpayer, and ( or) Agreement on Pensions Security with Pension Fnds as of 1 January 2005".
12. The Decree of the Government of the Republic of Kazakhstan dated 11 September 2013 No. 946 "On Ratification of the Protocol Amending the Protocol on the Conditions and Procedures for Use of the Rates of Import Customs Duties Other than the Rates of the Single Customs Tariff Dated 12 December 2008 in Exceptional Cases".
13. <http://www.zakon.kz/4580682-tekhreglamenty-ts-po-mjasu-i-moloku.html>.
14. <http://www.zakon.kz/4579331-ejek-vedet-razrabotku-reshenija-po.html>.
15. The Decision of the Supreme Eurasian Economic Council dated 25 September 2013 No. 42 "On Amendments to the Decision of the Board of the Eurasian Economic Council dated 25 June 2013 No. 143 (Official website of the Eurasian Economic Commission <http://www.eurasiancommission.org/>, 16.10.2013.)
16. <http://bnews.kz/ru/news/post/160034/>.
17. <http://kapital.kz/economic/21156/v-rk-vnedryat-integrirovannyj-tamozhennyj-tarif.html>.
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19. <http://www.millioner.kz/content/v-kazakhstan-approbировan-novyj-podkhod-k-nalogovym-proverkam>.
20. The Decree of Government of Republic of Kazakhstan dated 11 October 2013 No. 1087 "On Amendments to the Decree of the Government of the Republic of Kazakhstan dated 4 April 2007 No. 260 "On Establishment of Minimum Retail Prices on Cigarettes with Filter" ("Kazakhstanskaya Pravda" dated 12 October 2013 No.294 (27568)).
21. <http://www.uchet.kz/news/detail.php?EID=133693&icon=Y>.
22. <http://www.zakon.kz/4580252-premer-ministr-rk-serik-akhmetov.html>

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23. The Letter of the Tax Committee of the Minister of Finance of RK No. 428-09/13 dated 3 September 2013 (response of Ministry of Justice of RF).