On 5 December 2013, the President of the Republic of Kazakhstan signed a Law “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on taxation issues”.

As we have noted in previous Alert, the main amendments envisaged by this Law, which include:

• Amendments to provisions on long term contracts;
• Prolongation of statute of limitation for submission of additional CIT returns with respect to losses carry forward for three calendar years;
• Specification of the date of execution of turnover in the presence of various provisions regulating transfer and delivery of goods to customer in a contract;
• Tax accounting on temporary termination of use of fixed assets;
• Introduction of universal declaring of income;
• Increase in tax rates for the lands which are not developed within the specified period of time after their provision;
• Increase in tax rates for property of individuals, vehicles and rates of excise tax.

Current changes will take effect on 1 January 2014.¹

EXPO-2017

On 18 November 2013, draft law on amendments and additions to the Law of the Republic of Kazakhstan (“RK”) on organization and realization of international specific exhibition EXPO-2017 in Astana was reviewed in the first reading during the enlarged session of the Committee on Economic Development and Entrepreneurship of the Senate of the Parliament of RK.
According to Mrs. Abylkassymova, the Deputy Minister of Economy and Budget Planning of RK, “in order to fulfill commitments agreed within the framework of competition among the candidate countries to hold EXPO-2017, the draft law contains amendments to the Tax Code providing exemption for “Astana EXPO-2017” national company from CIT, land tax and introduction of decreased rate for property tax in amount of 0,1% to the tax base”.

Moreover, she said exemption from CIT is also provided to companies involved in design and construction of EXPO-2017 objects. List of such companies will be specified by separate resolution of the Government.

**Tax audits**

According to the Order of the Deputy Minister of Finance of RK, the plan of planned tax audits for the first half-year of 2014 was approved on 6 December 2013. Current plan includes 1,235 taxpayers and covers large, medium and small enterprises.

**Subsurface Users**

**Contractual activity**

As it stated by the Deputy Prime Minister and Minister of Industry and New Technology Asset Issekeshev on 6 January 2013, 40 contracts of inactive geologic fields will be cancelled before the end of 2013. “Currently we are doing substantial work on inactive geologic fields. Before the end of this year not less than 40 contracts will be canceled, and this work will be continued until all fields are working for the benefit of the state” - said A. Issekeshev.

In addition, the Minister said that until the end of 2013, contracts with foreign investors will be amended by an obligation to pay 27 bln USD for development of subsurface use in Kazakhstan.

**Customs Union**

**Import of petrol**

The Government of Kazakhstan removed restrictions on the import of Russian oil products which had been effective in Kazakhstan since May, 2013.

In April 2013, the Government of Kazakhstan approved the Resolution on restriction of import of petrol from Russia. As it is known, these restrictions were introduced in order to protect domestic market from surplus. Kazakhstan has restricted import of petrol from Russia, particularly AI-80 mark and fuel oil till the end of 2013.

**Export duties**

During the “governmental hour” in the Majilis of the Parliament of RK, the Minister of Economic Integration Zhanar Aitzhanova informed that current export duties will remain the same in Kazakhstan after joining the World Trade Organization (WTO), while there is probability to increase export duties on oil and oil products.

“Negotiations are still in progress, we are on final step of discussion with EU about fixing maximum rate of export duties which Kazakhstan can apply after entering WTO” – said Mrs. Aitzhanova.

According to her, export duties are applied to 206 commodity items - which are oil and oil products, non-ferrous scrap and iron scrap, aluminum and alloys, wood and skins.

“We agreed to keep named export duties rates the same after Kazakhstan enters WTO, while we have an opportunity to increase export duties rates on oil and oil products” – said the Minister.

She added that in respect to other commodity items, which are not liable to the Republic, Kazakhstan has a right to change export duties.
Eurasian Economic Union

On 15 November 2013 the Senate of the Parliament of RK held a hearing on “Legislative support and protection of interests of domestic producers as well as governmental support in terms of Eurasian integration and during joining the World Trade Organization”.

Treaty on EEU should be agreed by May, while in the second half year of 2014 it should be ratified in the Parliaments of member - states. Current document is supposed to cover wide range of issues. It contains 114 articles and 35 appendices, which amount to 850 pages. It is planned to consider provisions of 234 international agreements and other documents.

Draft treaty does not provide free warehouse regime despite the fact that under the effective Treaty of CU on free warehouses, this regime is valid till 1 January 2017. In the opinion of Rakhim Oshakbayev, the member of the Board of National Chamber of Entrepreneurs, cancellation of this regime, envisaging customs and tax benefits, from 2015, not from 2017, will lead to closure of number of perspective projects that have not yet reached necessary level of processing and localization.

Draft Treaty also covers loss of agreements, achieved by the Agreement on single rules for provision of industrial subsidies, which will lead to significant financial losses to many businesses. This Agreement envisaged that before 2017 exemption of Kazakhstan goods from customs duties and taxes during export from “Free Warehouse” customs regime and export from the territories of special economic zones.

IT technologies in Customs Union

According to the press realize of the Majilis, on 13 November 2013 the Majilis of the Parliament of RK approved draft law “On ratification of Agreement on application of IT technologies while exchanging electronic documents in foreign and mutual trade on the single customs territory of Customs Union”.

Realization of this Agreement will increase quality of customs, tax, transport and other governmental control with application of IT technologies.

Implementation of the document will provide efficient regulation of foreign and mutual trade on the territory of Customs Union as well as promote creation of favorable environment to business entities.

Pension provision

Unitary Pension Fund

Investment management of the whole volume of pension assets in country should start in the first quarter of 2014. This was informed by the Head of the National Bank of RK Mr. Kairat Kelimbetov at the plenary session of the Majilis of the Parliament of RK.

According to the Head of the National Bank, process of transfer of pension assets and obligations existing in pension funds to the Unitary Pension Fund (hereinafter – the Fund) is divided into 2 phases.

The first phase – transfer of individual pension accounts of depositors and investment portfolio to the Fund, the second phase – transfer of historical documentation and information.

According to him, completion of the second phase will mark the completion of consolidation of pension savings in the Fund.

As of 1 October, based on data of the National Bank, pension savings in the whole system amounted to 3.6 trillion tenge or more than 11% to GDP.

In addition, the Rules on selection of foreign organization managing pension assets of the Fund have been approved.
The Rules were developed in accordance with the Law of RK dated 30 March 1995 “On National Bank of the Republic of Kazakhstan”, the Law of RK dated 21 June 2013 “On Pension Provision of the Republic of Kazakhstan” and regulate principle of selection of foreign organizations managing pension assets of the Fund, including requirements applicable to them during fulfilment of actions necessary to manage pension assets of the Fund.

Part of pension assets of the Fund will be transferred for external management in order to:

1) Decrease level of risks associated with concentration of management control through diversification of management;
2) Increase profitability of pension assets of the Fund through the use of experience, analytical materials and technical sources of the external manager;
3) Receive additional expertise in the area of assets management, staff training;
4) Enjoy opportunity of using new class of assets which does not have an experience in the internal management.

The Resolution comes into force after ten calendar days from the date of its first official publication.

Some letters from the tax authorities

Tax accounting of interest free loan

According to the letter of the Tax Committee No. HK-21-9124-HK-8596 dated 14 November 2013, for the purposes of CIT interest free loans should be considered as follows:

- Income arising in accounting of a taxpayer in connection with recognition of liabilities at amortized cost using the effective interest rate should not be included into the aggregate annual income of a taxpayer. In case when based on provisions of accounting policy, organization recognizes income not related to the effective interest rate (for example, using refinancing rate to the amount of interest free loan), such income should be included into the aggregate annual income as income from provision of free of charge services.

For the purposes of VAT, interest free loans should be recognized according to paragraph 2-1 of Article 238 of the Tax Code.

Public procurement

Proposed amendments to the public procurement

The draft law “On amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of public procurement” was introduced by the Ministry of Finance of the Republic of Kazakhstan and aims to ensure fair competition, reducing corruption and improving the efficiency of public procurement. This draft law provides amendments to a number of the legislative acts including to the Administrative Offences Code, Budget Code, the Law “On public procurement” and other laws of the Republic of Kazakhstan.

Under the proposed changes and following the Agreement on governmental procurements of the Common economic space, the national regime will be in effect within all member-states of the mentioned Agreement, from January 1, 2014. As per the national regime, requirements for admission of goods, works and services originating from foreign countries allow potential suppliers to bid public procurement, however, conditional discount will be only applicable to potential suppliers from the states that are parties to the Agreement (the Republic of Belarus, the Republic of Kazakhstan and Russian Federation).

In addition, as outlined by the amendments, it is not possible for state owned entities and companies affiliated with the government (50% and more shares of which owned by the government) to bid in public procurement.
The draft law also envisages the creation of a single organizer of public procurement, the competence of which will include the organization and execution of procedures of public procurement by way of competition and auction for budgetary programs and / or goods, works and services, determined by the Government’s decisions respectively. In addition, the draft law provides suppliers with the right to amend or supplement the missing documents of the tender documentation. This innovation will prevent cases of recognition of competition that were not held on formal grounds.

The draft law was approved in the first reading of Majilis on November 27, 2013.

Bankruptcy regulation

The draft law "On the rehabilitation and bankruptcy"

The draft law excluded external observation procedure with the introduction of compulsory analysis of the debtor’s financial and economic activity when the bankruptcy case is under court’s consideration. According to the suggested wording of the law, rights on coordination of all business processes in bankruptcy proceedings were transferred to the creditors.

The draft law provides for the establishment of the mechanism for set off of secured creditor claims by transferring the property in kind. The draft law also introduced rules for the strengthening of the responsibility for all management staff and additional advanced requirements in respect of their professional level.

This draft law also establishes increase of responsibility of the participants of the bankruptcy procedures. Thus, it provides for introduction of administrative sanctions in cases of non-fulfillment or improper fulfillment of the requirements of the law on the inventory, acceptance under control and protection of the debtor’s property, planning the sale and the final report as well as the failure to submit information on the implementation of bankruptcy procedures to an authorized body and creditors. Moreover, the draft law introduces administrative liability in respect of officers of the debtor in case of failure made in accounting and other records and for impossibility to restore them. The draft law sets forth prohibition of registration of enterprises by the people held vicariously liable by the court, either for intentional or false bankruptcy for the period of one year.

The law was approved in the first reading Majilis on November 20, 2013.

Labor migration

The draft law "On amendments and additions to some legislative acts of Kazakhstan on issues of labor migration"

The main purpose of the draft law is to legalize migrant worker and improve state regulation of migration processes in terms of determining the authorization of immigrant labor for carrying out work for individuals. This draft law provides for amendments and additions to the Law "On Migration", the Labor Code and the Code of the Republic of Kazakhstan "On taxes and other obligatory payments to the budget".

Draft Law was approved by the Parliament on 27 November 2013.

Project quota for foreign employees to perform work in the territory of the Republic of Kazakhstan as for 2014

Pursuant to the draft Government Decision "On the establishment of quotas for a foreign labor force to work in the territory of the Republic of Kazakhstan for 2014", the quota is set at 0.7 % of the economically active population, including the priority projects in the annex to the mentioned decision. Currently, the quota is 1.2 % of the economically active population of Kazakhstan.

Accordingly, the number of permits issued may be significantly reduced from 103,200 to 60,200 people.
References:


3. The Order of the Deputy Minister of Finance No. 561 dated 6 December 2013.


12. The draft law “On amendments to some legislative acts of the Republic of Kazakhstan on matters related to the state procurement”.


14. The draft law “On amendments and additions to some legislative acts of Kazakhstan on labor migration”.