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Tax and Legal Alert

Issue №2

Overview of the latest legislative changes

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- Changes to public procurement legislation, changes to investing legislation
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Should you be interested in additional information, please contact your usual PwC client service team or any of those listed below.

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Gas law

The President of Kazakhstan signed a law on gas and gas supply. The law is aimed at creating an integrated marketable gas supply system (IGS), developing a general gasification scheme, establishing a national gas operator and setting maximum wholesale prices of gas to be used in the domestic market. Also, the government was vested with the priority right to acquire IGS assets and stakes (interests) in legal entities which own such assets, and the preferential right to purchase crude gas and marketable gas sold or otherwise disposed of by subsoil users at such prices as are fixed by the government. Finally, the law states that associated gas will be viewed as state property.

The law took effect on 29 January 2012.¹

Support for industrial innovations law

The President of Kazakhstan signed a law on support for industrial innovations. The law is aimed at

promoting industrial innovations and developing priority economic sectors.

The law includes provisions which oblige subsoil users to invest 1% of their gross annual income in research and development (see issue 18, December 2011). On 14 February 2012 the Minister of Industry and New Technologies explained that mechanisms as to how the provisions will be enforced and rules as to how funds so invested will be used will be finalised by the end of March 2012 and will become operative by the middle of 2012.

The law establishes the scope of powers and authorities of the Government and various government bodies, creates an industrial innovation system comprising entities responsible for government support for industrial innovations, and determines the structure of industrial innovation infrastructure (special economic zones, technological parks, etc.).

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The law also lists available measures of government assistance.

The law took effect on 6 February 2012.²

Energy efficiency law

The President of Kazakhstan signed a new law on energy efficiency. The law requires that a national register of power consumers (NR), i.e. a list of legal entities which consume certain amounts of energy resources, is created, that legal entities included in the NR undergo energy audits each 5 years, and that such entities must implement an energy management system under international standards. NR consumers are supposed to obtain their first energy audit opinion within 3 years after the effective date of the law. Under the law, services relating to energy efficiency assessments and energy audits will be rendered on a competitive basis under contracts with accredited legal entities and an expert opinion (report) will be issued based on the findings of such assessments and audits.

The law was published on 26 January 2012 and will become effective 6 months after the date of publication.³

Changes to public procurement legislation

The President of Kazakhstan signed an amendment to the legislation relating to public procurement. The amendment is aimed at enhancing the transparency of the public procurement system by introducing online auctions.

The law took effect on 27 February 2012.⁴

Changes to investing legislation

On 20 February 2012 the President of Kazakhstan signed an amendment to certain laws relating to investing. The amendment provides an exemption from customs duties for technological equipment, including related accessories and spare parts, as well as raw

materials and commodities which are being imported for the purposes of an investment project implemented in a CU member state.

The amendment has not been published yet.⁵

New rules of employment of foreign labor force

The Government of Kazakhstan approved new rules and terms of issuance of permits to foreign employees to hold a position and employers to hire expatriate employees.

The rules allow foreigners seeking a job to obtain work permits on their own.

Also, it should be noted that the rules do not prohibit transfers of expatriate employees from one legal entity to other legal entities.

The rules do not apply to citizens of states which are signatories to the Treaty on the legal status of migrant workers and members of their families.

Categories of employees were revised. The first category includes chief executive officers and their deputies, the second category includes managers of business units, the third category comprises skilled employees, and the fourth category covers any other workers.

The requirement as to the minimum local-to-foreign staff percentage ratios was retained.

The resolution will become effective 10 March 2012.⁶

Quota on employment of expatriate employees in 2012

The Government of Kazakhstan established the expatriate staffing quota in 2012 at 1.0% of the total number of the economically active population. As reported by the Statistics Office, economically active population stood at 8,945 thousand in December 2011 (2010: 8,615 thousand).

The resolution will become effective 10 calendar days after the date of first official publication.⁷

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Regulation of VAT in the Customs Union

The Government of Kazakhstan approved the following rules relating to VAT:

- Rules of control of payment of VAT on trade at exhibitions and fairs (par. 4 of article 276-18 of the Tax Code);
- Rules of refund of excessive VAT (article 35 of the Tax Code);
- Rules and forms of filing and honoring a letter of promise to export (import) products intended for processing (article 276-13 of the Tax Code);
- Rules of revocation of a letter of statement on importation of goods and payment of indirect taxes (article 276-22 of the Tax Code);
- Rules of provision of VAT exemptions on temporarily imported goods;
- Rules of honoring the tax obligation to pay VAT by nonresidents which carry on activities without forming a permanent establishment when temporarily importing goods not included in the list of goods the temporary importation of which is VAT-exempted (article 276-15 of the Tax Code);
- Rules of payment of VAT on goods imported to Kazakhstan from a CU member state (par. 3 of article 276-15 of the Tax Code);
- Rules of withdrawal of a letter of statement on importation of goods and payment of indirect taxes on goods when importing them to the CU (articles 276-22 and 276-23 of the Tax Code);
- Rules of confirmation by tax bodies of payments of VAT on goods and excise taxes on excisable goods imported from a CU member state (articles 276-20 and 292 of the Tax Code);
- A template of the application form one needs to file to have one's deadline for paying VAT on imported goods altered (subpar. 1) of par. 4 of article 249 of the Tax Code).

The above resolutions took effect on 1 January 2012.⁸

Rules of recording and monitoring of government inspections

The General Prosecutor of Kazakhstan approved rules of registration, recording and monitoring of inspections initiated and performed by government authorities in accordance with the State Control and Oversight in Kazakhstan Act. The rules are aimed at providing accurate statistical information while enhancing the effectiveness of legal remedies.

The rules took effect on 21 February 2012.⁹

Rules of keeping accounting records, rules of filing financial reports to the depository

Under the Financial Accounting and Reporting Law promulgated in Kazakhstan, the Government of Kazakhstan approved rules of keeping accounting records. The rules establish accounting procedures intended to be used by sole proprietorships, legal entities, branches, representative offices and permanent establishments of foreign legal entities registered in Kazakhstan. Financial institutions and special purpose vehicles, including Islamic ones, are outside the scope of application of the rules.

Also, the Government of Kazakhstan approved rules of filing of financial statements to the government's depository of financial statements by public interest companies.

The above resolutions took effect on 19 February 2012.¹⁰

Banks' report on export transactions in gold and silver bullion

The Governing Board of the National Bank of Kazakhstan approved a reporting form to be filed by banks with respect to export transactions involving refined gold and silver bullion.

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The resolution will become effective 10 calendar days after the date of its first official publication.¹¹

Standard of public services 'Registration of foreign currency transactions'

The President of Kazakhstan approved the standard of rendering public services relating to the registration of foreign currency denominated transactions. The services include the issuance of a certificate of registration of a foreign currency transaction and are rendered by offices of the National Bank of Kazakhstan to resident legal entities in connection with foreign currency transactions. The standard establishes timings and procedures for rendering the services and procedures for filing complaints. Enclosed to the standard are a list of addresses and contact details of servicing offices of the National Bank of Kazakhstan and a template of the application form (notice about a foreign currency transaction) to be filed to obtain a certificate of registration.

The presidential decree took effect on 4 January 2012.¹²

Fuels export ban extended

The Government of Kazakhstan prolonged the fuels export ban till 1 July 2012.

On 2 February 2012 the Oil and Gas Minister said there was an intention to further extend the ban till the end of 2012.

The resolution took effect on 1 January 2012.¹³

Rules of issuing waybills

Under the Law on government regulation of production and circulation of certain oil products, the Government of Kazakhstan approved rules of preparing, accepting, issuing, recording, retaining and filing waybills for oil products where oil products are being sold or shipped by refiners, suppliers of crude oil and persons engaged in

sale or shipment of oil products from terminals, etc.

The resolution took effect on 29 February 2012.¹⁴

Lists of formally recognised sources of information about market prices

The Government of Kazakhstan made changes to the list of formally recognised sources of information about market prices for transfer pricing purposes. Argus Media Limited was added to the list as a source of prices of crude oil, oil products, gas, coal and marine shipment services.

The resolution took effect on 1 January 2012. A separate list of formally recognised sources of information about market prices of crude oil, oil products and gas, which includes The McGraw-Hill Companies (Platts) and Argus Media (Russia) Ltd., but does not include Tomson Reuters is intended for purposes of implementation of the Law on government regulation of production and circulation of certain oil products.

The resolution will become effective on the date of publication and has not been published yet.¹⁵

Official refinancing rate

Effective 14 February 2012 the official refinancing rate was established by the National Bank of Kazakhstan at 7.0%. The refinancing rate had stood at 7.5% since 9 March 2011.

The National Bank of Kazakhstan expects inflation to remain within 6-8% in 2012.¹⁶

Listed below for your information are references to legal and regulatory documents based on which this issue has been drawn up.

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Reference

1. Law of the Republic of Kazakhstan of 9 January 2012 No.532, Gas and Gas Supply; Law of the Republic of Kazakhstan of 9 January 2012 No.533, Amendments to certain laws of the Republic of Kazakhstan relating to gas and gas supplies
2. Law of the Republic of Kazakhstan of 9 January 2012 No.534, State Support for Industrial Innovations; www.kazenergy.com
3. Law of the Republic of Kazakhstan of 13 January 2012 No.541, Energy Saving and Enhancement of Energy Efficiency; Law of the Republic of Kazakhstan of 25 December 1997, Energy Efficiency
4. Law of the Republic of Kazakhstan of 13 January 2012 No.543, Amendments to certain laws of the Republic of Kazakhstan relating to public procurement
5. Law of the Republic of Kazakhstan, Amendments to certain laws of the Republic of Kazakhstan relating to investments (not published)
6. Resolution of the Government of the Republic of Kazakhstan of 13 January 2012 No.45, Approval of rules of establishing quotas on employment of foreign labor force in the Republic of Kazakhstan, rules and conditions of issue of permits to foreign employees to hold a position and to employers to hire foreign labor force, and amendments to the resolution of the Government of the Republic of Kazakhstan of 19 June 2001 No.836, Measures to implement the law of the Republic of Kazakhstan of 23 January 2001, Creation of Jobs for the Population
7. Resolution of the Republic of Kazakhstan of 28 December 2011 No.1623, The quota on employment of foreign labor force to engage in labor activities in the Republic of Kazakhstan in 2012
8. Resolution of the Government of the Republic of Kazakhstan of 30 December 2011 No.1713, Approval of rules of control of payment of VAT on trade at exhibitions and fairs; Resolution of the Government of the Republic of Kazakhstan of 30 December 2011 No.1707, Approval of rules of refund of excessive amounts of VAT; Resolution of the Government of the Republic of Kazakhstan of 30 December 2011 No.1712, Approval of rules and forms of filing and honoring a letter of promise to export (import) products intended for processing; Resolution of the Government of the Republic of Kazakhstan of 30 December 2011 No.1733, Approval of rules of fulfilling the tax obligation to pay VAT by nonresident legal entities carrying on activities without forming a permanent establishment when temporarily importing to the Republic of Kazakhstan goods which are not included in the list of goods the temporary importation of which to the Republic of Kazakhstan is exempted from VAT as approved by the Government of the Republic of Kazakhstan; Resolution of the Government of the Republic of Kazakhstan of 30 December 2011 No.1655, Approval of rules of exemption from paying VAT on goods temporarily imported to the Republic of Kazakhstan; Resolution of the Government of the Republic of Kazakhstan of 30 December 2011 No.1657, Approval of rules of revocation of the letter of statement on importation of goods and payment of indirect taxes; Resolution of the Government of the Republic of Kazakhstan of 30 December 2011 No.1658, Approval of the template of application form for the alteration of the deadline of paying VAT on imported goods; Resolution of the Government of the Republic of Kazakhstan of 30 December 2011 No.1706, Approval of rules of confirmation by tax authorities of payment of VAT on imported goods and excise taxes
9. Order of the General Prosecutor of the Republic of Kazakhstan of 25 November 2011 No.125, Approval of rules of official registration, recording and monitoring of inspections conducted by government authorities of the Republic of Kazakhstan
10. Resolution of the Government of the Republic of Kazakhstan of 14 October 2011 No.1172, Approval of rules of keeping accounting records; Resolution of the Government of the Republic of Kazakhstan of 14 October 2011 No.1173, Approval of rules of filing of financial statements to the depositary
11. Resolution of the Governing Board of the National Bank of the Republic of Kazakhstan of 25 November 2011 No.191, Approval of the form to be filed by second tier banks to report export transactions involving gold and silver bullion
12. Standard of public services, Registration of foreign currency transactions, approved by the Decree of the President of the Republic of Kazakhstan of 14 December 2011 No.196
13. Resolution of the Government of the Republic of Kazakhstan of 30 December 2011 No.1681, Introduction of a temporary ban on exportation of light distillates and products, kerosene and gas oils
14. Resolution of the Government of the Republic of Kazakhstan of 19 January 2012 No.135, Approval of rules of preparing, accepting, issuing, recording, retaining and filing of waybills
15. Resolution of the Government of the Republic of Kazakhstan of 16 January 2012 No.57, Amendments to the resolution of the Government of the Republic of Kazakhstan of 12 March 2009 No.292, Approval of a list of formally recognised sources of information about market prices; Resolution of the Government of the Republic of Kazakhstan of 21 December 2011 No.1568, Approval of a list of formally recognised sources of information about market prices of crude oil and/or gas condensate and oil products
16. Resolution of the Governing Board of the National Bank of the Republic of Kazakhstan of 13 February 2012 No.24, Official refinancing rate of the National Bank of the Republic of Kazakhstan, www.zakon.kz