

# Tax and Legal Alert

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### **International Taxation**

#### ***Double Tax Treaty between the Republic (“RK”) of Kazakhstan and UAE is ratified***

On 4 October 2013 the President of RK signed the law “On ratification of Convention between the Government of the Republic of Kazakhstan and the government of United Arab Emirates for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the Protocol to the Convention”.<sup>1</sup>

### **Financial Sector**

#### ***Rating Agencies and Minimum Required Rating for Securities***

The Decree of the Management Board of the National Bank of RK dated June 28, 2013 No. 141 has determined rating agencies and minimum required rating (1) for securities pursuant to which second-tier banks may perform sales and purchase transactions, as well as (2) for government securities of

Countries pursuant to which second-tier banks may perform broker and/or dealer activities.

If the rating of bonds in the abovementioned clause (1) decreases below the level, set by this Decree, banks most alienate such securities with low rating **within six calendar months** following the month, in which the indicated decrease was observed.

If the sovereign long-term rating in foreign currencies of countries, using government securities of which banks may perform broker and/or dealer activities, decreases below the level, set by this Decree, banks most alienate such securities of countries with low rating **within three calendar months** following the month, in which the indicated decrease was observed.

In addition, if as of the effective date of this Decree a bank has securities not having ratings, bank may trade securities indicated and pursuant to accounting policies transfer these

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securities to “financial instruments held to maturity” category in cases, not conflicting with the requirements of International Financial Report Standards, i.e. IAS 39 “Financial Instruments: Recognition and Measurement”.

The Decree is effective upon expiry of ten calendar days after the date of its first official publication and applies to relationships arising from July 1, 2013.<sup>2</sup>

### **Forms of Financial Statements and Presentation Rules**

The Decree of the Management Board of the National Bank of RK dated May 27, 2013 No. 130 approved the forms of financial statements (balance sheet and income statement) of financial organizations, special financial companies, Islamic special financial companies, micro-financial organizations, “Development Bank of Kazakhstan” Joint Stock Company and investment funds, as well as their Presentation Rules.

The Decree is effective upon expiry of ten calendar days after the date of its first official publication (“Legal Newspaper” dated September 10, 2013 No 135 (2510); dated September 12, 2013 No 137 (2512)).<sup>3</sup>

### **Rules for Presenting Statements on Balances on Balance Sheet and Off-Balance Sheet Accounts of Second-Tier Banks**

The Decree of the Management Board of the National Bank of RK dated June 28, 2013 No. 147 approved Rules for Presenting Statements on Balances on Balance Sheet and Off-Balance Sheet Accounts of Second-Tier Banks.

The Decree is effective upon expiry of ten calendar days after the day of its first official publication and applies to relationships arising from January 1, 2013.<sup>4</sup>

### **Rules for Creating Provisions**

The Decree of the Management Board of the National Bank of RK dated February 25, 2013 No. 65 approved Rules for Creating Provisions in accordance with International Financial Reporting Standards and legislative requirements of RK on accounting and financial reporting for banks (except for the bank, which is the national development institution, the majority interest of which is owned by the national managing holding) and organizations, performing individual types of banking transactions.

In accordance with these Rules, provisions shall be created pursuant to legislative requirements of RK on accounting and financial reporting, International Financial Reporting Standard No 39 “Financial Instruments: Recognition and Measurement” and, if provisions are created with respect to contingent liabilities, pursuant to International Financial Reporting Standard No 37 “Provisions, Contingent Liabilities and Contingent Assets”.

The Decree is effective upon expiry of ten calendar days after the date of its first official publication and applies to relationships arising from January 1, 2013.<sup>5</sup>

Banks and organizations, performing individual types of banking transactions (except for the bank, which is the national development institution, the majority interest of which is owned by the national managing holding) shall develop and approve the Provisions Calculation Methodology in accordance with Rules **within one month** from the effective date of Decree.

### **Changes in Some Regulatory Legal Acts (RLA) of RK on the Issues of Regulation, Control and Supervision of the Financial Market and Financial Organizations**

The Decree of the Management Board of the National Bank of RK dated July 26, 2013 No. 204 introduced amendments to some regulatory legal acts of RK on the issues of regulation, control and supervision of the financial market and financial organizations. In particular,

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changes were made to instructions on regulatory values and prudential ratios calculation methodology, rules for presenting statements on such ratios, as well as rules for applying early response actions and methodology for determining factors impacting the worsening of a second-tier bank financial position and Decree of the Management Board of the National Bank of RK dated February 25, 2013 No. 74.<sup>6</sup>

### ***The rules on publication of the information on the investment portfolio profile of the Unified Accumulative Pension Fund in the virtue of benefit assets (“UAPF”)***

The Rules are approved by the Resolution of the Board of the National Bank of Kazakhstan No. 199 dated July 26, 2013, elaborated in accordance with the state Law on pension coverage and stipulate the procedure and terms of publication of the information on the structure of investment portfolio profile of UAPF by the means of benefit assets in mass media sources.

In accordance with the Rules, the UAPF publishes the information on the identity and quantity (nominal) of financial instruments as well as percentage ratio of the investments into these financial instruments to the investment portfolio of the UAPF. The information should be published in mass media source quarterly not later than the latest date of the month following the reporting quarter. The Rules also oblige the UAPF to provide the information on fulfillment of the requirement on publishing the information with indication of the mass media source to the Committee for the control and supervision of the financial market and financial organizations of the National Bank of Kazakhstan not later than ten working days after publication of the information concerning structure of the investment portfolio.

The Rules were not published at the moment of preparation of this Tax and Legal Alert. The Rules are effective upon expiration of ten

calendar days after the day of first official publication and regulating the relations originated from August 22, 2013.<sup>7</sup>

### ***Insurance Sector***

#### ***Rules for Creating Insurance Provisions***

The Decree of the Management Board of the National Bank of RK dated February 25, 2013 No. 75 approving Rules for Creating Insurance Provisions.

Insurance provisions shall be formed by an insurance (re-insurance) organization separately upon each insurance (re-insurance) contract and upon each class of insurance, depending on the type of insurance provision. Insurance provisions shall be calculated taking into account the scope of liabilities undertaken by an insurance (re-insurance) organization under all signed insurance (re-insurance) contracts irrespective of subsequent re-insurance of risks.

Insurance (re-insurance) organizations shall present quarterly information in accordance with the established forms to the Committee on Control and Supervision of Financial Market and Financial Organizations of the National Bank of the Republic of Kazakhstan.

Information shall be provided by 18:00 Astana city time on the fifth working day of the month, following the reporting quarter, in Microsoft Office Excel format on electronic carrier ensuring impossibility to adjust data provided.

The Decree is effective upon expiry of ten calendar days after the day of its first official publication and applies to relationships arising from January 1, 2012.<sup>8</sup>

#### ***Instructions on Accounting Procedures with respect to Insurance and Re-Insurance Transactions in “General Insurance” and “Life Insurance” Areas***

The Decree of the Management Board of the National Bank of RK dated June 28, 2013 No. 149 approved Instructions on accounting

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procedures with respect to insurance and re-insurance transactions in “general insurance” and “life insurance” areas.

Instructions detail accounting procedures with respect to insurance and re-insurance transactions in “general insurance” and “life insurance” areas, performed by insurance (re-insurance) organizations and insurance brokers.

Requirements with respect to disclosure of financial statements by insurance (re-insurance) organizations and insurance brokers, as well as requirements with respect to preparation of accounting policy are set by International Financial Reporting Standards.

The Decree is effective upon expiry of ten calendar days after the date of its first official publication (“Legal Newspaper” dated September 5, 2013 No. 133 (2508)).<sup>9</sup>

### *Subsurface Use*

#### ***Construction and/or Operation of Underground Structures not Related to Exploration or Production***

The Decree of the Government of RK dated September 17, 2013 No. 981 introduced amendments to the Decree of the Government of RK dated May 26, 2011 No. 581, according to which the subsurface use right for the construction and/or operation of underground structures, not related to exploration or production, shall be granted through signing contract with local executive body of oblast, republican city, capital.

The Decree further provides for the procedure of holding direct negotiations and conclusion of contract as well as its state registration with the local executive body.

The Decree is effective upon expiry of ten calendar days after the day of its first official publication.<sup>10</sup>

### *Customs Union*

#### ***Customs Duties for Drilling Machines***

In accordance with the Resolution of the Eurasian Economic Committee’s Board dated August 20, 2013 No. 174 “Concerning Setting the Rates of Import Customs Duties of the Unified Customs Tariff of Customs Union with respect to Drilling Machines with the Drilling Depth of not less than 200 m”, the following customs duties for drilling machines with the drilling depth of not less than 200 m (codes of CN FEA 8430 41 000 1 and 8430 49 000 1) shall be set as follows:

- In the period from September 2, 2013 to July 25, 2014 – 3.5% of the customs cost, but not less than Euro 1.3 per 1 kg;
- In the period from July 26, 2014 to December 31, 2014 – 2% of the customs cost, but not less than Euro 0.7 per 1 kg.

This Resolution is effective from September 2, 2013.<sup>11</sup>

#### ***Rates of Import Customs Duties for Aluminum Products***

In accordance with the Decree of the Government of RK dated August 5, 2013 No. 788 “Concerning Amendments to the Decree of the Government of RK dated June 7, 2010 No. 520 “Concerning Customs Duties Rates in RK”, import customs duties for some aluminum products are cancelled (for example, wires, pipes, metal structures, reservoirs, etc.).

This Decree is effective upon expiry of ten calendar days after the date of its first official publication (“Kazakhstanskaya Pravda” dated August 10, 2013 No. 249 (27523)).<sup>1</sup>

### *General*

#### ***Changes in Tax Reporting Forms***

In accordance with the Decree of the Government of RK dated August 28, 2013 No. 874 “Concerning Amendments to the Decree of

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the Government of RK dated November 30, 2012 No. 1518 “Concerning Approval of Tax Reporting Forms and Their Preparation Rules”, new rules for the preparation of tax reporting under Form 140.00 are approved.

In addition, insignificant changes were made to the 240.00 PIT Return Preparation Rules.

Amendments are effective from January 1, 2013.<sup>13</sup>

### ***Draft Laws***

#### ***Double Tax Treaty between RK and Luxembourg***

In September 25, 2013 the Majilis of the Parliament of RK approved the draft law of RK “Concerning the Ratification of Convention between the Government of RK and Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Income and Capital Taxes”. In addition, Protocol on introducing amendments to Convention between the Government of RK and Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Income and Capital Taxes, signed in Astana in June 26, 2008, was approved as well.<sup>14</sup>

Thus, according to this Protocol, amendments were made to Articles on permanent establishment of a non-resident, on information exchange, and it was provided for that penalties for untimely payments shall not be considered as interest for the purposes of Article 11 of the Convention.

#### ***Property and Excise Taxes***

The Majilis of the Parliament of RK reviews the draft law, stipulating the increase of excises for tobacco and alcohol, as well as increase of transport and property taxes.

In particular, the twofold increase of a base cost

of the square meter of residential space is offered – up to Tenge 60 thousand for Almaty and Astana cities, and up to Tenge 36 thousand for oblast centers, i.e. the increase of base for property tax calculation.

Changes will not apply to regional cities, rural settlements, villages (auls).<sup>15</sup>

#### ***Universal Declaring of Income***

According to the Chairman of the Management Board of Taxpayers’ Association of Kazakhstan, Zhannat Yertlessova, the Government of RK prepared draft law on universal declaring of income, which will be submitted for review to Majilis this year already.<sup>16</sup>

#### ***Tax on Energy Consumption***

The draft Law of RK “Concerning Amendments to Some Legislative Acts of RK on the Issues of Energy Saving and Energy Efficiency Increase” is under discussion. According to the draft, it is offered to introduce from 2015 tax on energy consumption for entities, included to the state energy register, which is currently provided on the website of “Kazakhenergyexpertise” JSC.

It is supposed that tax introduction will motivate companies’ management to use energy saving technologies. Tax rate for each entity may accordingly be individual and may be calculated based on energy expenses of an entity.

It should be mentioned that “Atameken” Union” employees have already forwarded their negative expert report regarding the draft law to the Ministry of Justice of RK.<sup>17</sup>

#### ***Developments on VAT***

According to the Chairman of the Tax Committee of the Ministry of Finance of RK, A. Dzhumadildayev, for the purposes of settling the issue related to the execution of fictitious invoices, their replacement and late reaction to such facts, it is proposed to transfer to electronic invoices and introduce the experience of VAT payment to budget under “VAT Deposit Account” method. This action will allow

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excluding the application of fraudulent scheme impacting VAT return.

In accordance with the developed amendments to some legislative acts of RK on taxation issues from July 1, 2014, it is supposed to introduce electronic invoices in RK. From October 1, 2013 it is planned to launch the pilot mode of electronic invoices issue, which will involve the Group companies of “Samruk-Kazyna” JSC and other taxpayers.<sup>18</sup>

### ***State Procurement***

The Competition Protection Agency of RK (“CPA”) has initiated the creation of new law on state procurement, which will include unified requirements for all subjects irrespective for ownership forms.

According to the Chairman of CPA, B. Kuandykov, the prototype for new law will be the document of typical procurement rules, developed by OECD, which determines international requirements with respect to procurement, including non-allowance of discrimination, punitive actions, observance of objectivity and openness.

New law will contain not the procedural moments themselves, but principles, which shall be observed for making procurement.<sup>19</sup>

### ***Other***

#### ***Construction Pricing Center***

In September 19, 2013 legislative amendments on the issues of architectural, town planning and construction activities were presented in the Majilis of the Parliament of RK. According to the Vice-Minister of Regional Development, S. Nokin, the Ministry of Regional Development of RK plans to create by 2015 single construction pricing center. The center will be aimed at equaling prices for construction materials in all regions and elimination of corruption.<sup>20</sup>

#### ***Cooperation between Tax Committee and Financial Police of RK***

Joint Order approved Regulation for Interaction between Tax Committee and Financial Police.

According to the Chairman of the Tax Committee of the Ministry of Finance of RK, A. Dzhumadildayev, the format of cooperation with financial police agencies will be extended. Order sets regulations for information interaction and the format of data transferred that makes interaction between two state authorities more effective.<sup>21</sup>

#### ***New Method for Checking Counteragent***

According to amendments to the Tax Code of RK, from July 1, 2013 the tax authorities shall place information on taxpayer that based on tax investigation act could not be found upon location, or with respect to which mail or any other communication organization returned notification due to non-availability of taxpayer upon location.

At present, the portal of the Tax Committee of the Ministry of Finances of RK [www.salyk.kz](http://www.salyk.kz) in “Taxpayers’ Lists” mode has page under the name “List of Taxpayers Unavailable upon Location, Wanted by the Tax Authorities” allowing obtaining information on a taxpayer unavailable upon location.

Information, received using service indicated, may help in warning fair taxpayers of possible problems related to cooperation with unreliable counteragents.<sup>22</sup>

#### ***Creation of National Chamber of Entrepreneurs***

In September 9, 2013 the First Vice-Minister of Regional Development, Kairbek Uskenbayev, and the Chairman of the Management Board of “Atameken” Union” National Economic Chamber of Kazakhstan (NECK), Ablay Myrzakhmetov signed joint resolution of the Government of RK and “Atameken” Union” NECK on creation of the National Chamber of Entrepreneurs of RK.

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It should be mentioned that the main functions of the Chamber will be the representation and protection of the rights and legal interests of entrepreneurs, as well as the stimulation of foreign economic activity and attraction of investments.<sup>23</sup>

### ***Letter from the Tax Authorities***

#### ***Legalization of Residency Certificates of Kishinev Convention Member States***

As it was informed at the end of June, the tax authorities issued letter, according to which provisions of Convention “On Legal Aid and Legal Relations on Civil, Family and Criminal Cases” dated October 7, 2002 (“Kishinev Convention”) are not applicable to tax legal relationships and accordingly to residency certificates, provided by companies – residents of Kishinev Convention member states.

According to the tax authorities’ position, residency certificates, provided by residents of Kishinev Convention member states, shall be subject to mandatory diplomatic or consular legalization under procedure, established by legislation of RK.

The Taxpayers’ Association of RK has sent to the tax authorities letter, which contained arguments against position declared by them.

According to the response letter of the Tax Committee No. HK-13-ЮЛ-Е-883-HK-6539 dated August 26, 2013, the Tax Committee of the Ministry of Finance of RK forwarded requests to foreign member states of Convention indicated. More complete answer will be provided by the tax authorities after receipt by them of responses of such requests.<sup>24</sup>

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### References:

1. The Law of the Republic of Kazakhstan “On ratification of Convention between the Government of the Republic of Kazakhstan and the government of United Arab Emirates for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the Protocol to the Convention” No. 134-V dated 4 October 2013.
2. Decree of the Management Board of the National Bank of the Republic of Kazakhstan dated June 28, 2013 No. 141 “Concerning the Determination of Rating Agencies and Minimum Required Rating for Bonds, Using which Banks may Perform Transactions”.
3. Decree of the Management Board of the National Bank of the Republic of Kazakhstan dated May 27, 2013 No. 130 “Concerning Approval of the Forms of Financial Statements for Financial Organizations, Special Financial Companies, Islamic Special Financial Companies, Micro-Financial Organizations, “Development Bank of Kazakhstan” Joint Stock Company and Investment Funds, as well as their Presentation Rules”.
4. Decree of the Management Board of the National Bank of the Republic of Kazakhstan dated June 28, 2013 No. 147 “Concerning Approval of the Rules for Presenting Statements on Balances on Balance Sheet and Off-Balance Sheet Accounts of Second-Tier Banks”.
5. Decree of the Management Board of the National Bank of the Republic of Kazakhstan dated February 25, 2013 No. 65 “Concerning Approval of the Rules for Creating Provisions in accordance with the International Financial Reporting Standards and Legislative Requirements of the Republic of Kazakhstan on Accounting and Financial Reporting”.
6. Decree of the Management Board of the National Bank of the Republic of Kazakhstan dated July 26, 2013 No. 204 “Concerning Amendments to Some Regulatory Legal Acts of the Republic of Kazakhstan on the Issues of Regulation, Control and Supervision of Financial Market and Financial Organizations”.
7. Resolution of the Board of the National Bank of Kazakhstan No. 199 dated July 26, 2013
8. Decree of the Management Board of the National Bank of the Republic of Kazakhstan dated February 25, 2013 No. 75 “Concerning Approval of the Rules for Creating Insurance Provisions”.
9. Decree of the Management Board of the National Bank of the Republic of Kazakhstan dated June 28, 2013 No. 149 “Concerning Approval of Instructions on Accounting Procedures with respect to Insurance and Re-Insurance Transactions in “General Insurance” and “Life Insurance” Areas”.
10. Decree of the Government of the Republic of Kazakhstan dated September 17, 2013 No. 981 “Concerning Amendments to the Decree of the Government of the Republic of Kazakhstan dated May 26, 2011 No. 581 “Concerning Approval of the Rules for Granting the Subsurface Use Right for the Construction and/or Operation of Underground Structures not Related to Exploration and Production”.
11. Resolution of the Eurasian Economic Committee’s Board dated August 20, 2013 No. 174 “Concerning the Setting of Import Customs Duties Rates of the Unified Customs Tariff of Customs Union with respect to Drilling Machines with the Drilling Depth of not less than 200 m” (Moscow) .
12. Decree of the Government of the Republic of Kazakhstan dated August 5, 2013 No. 788 “Concerning Amendments to the Decree of the Government of the Republic of Kazakhstan dated June 7, 2010 No. 520 “Concerning Customs Duties Rates in the Republic of Kazakhstan”.
13. Decree of the Government of the Republic of Kazakhstan dated August 28, 2013 No. 874 “Concerning Amendments to the Decree of the Government of the Republic of Kazakhstan dated November 30, 2012 No. 1518 “Concerning Approval of the Tax Reporting Forms and their Preparation Rules”.
14. <http://www.inform.kz/rus/article/2592164>
15. [http://tengrinews.kz/kazakhstan\\_news/nalog-na-imuschestvo-planiryuyut-povyisit-v-kazhstane-240601/](http://tengrinews.kz/kazakhstan_news/nalog-na-imuschestvo-planiryuyut-povyisit-v-kazhstane-240601/)
16. Draft Law of the Republic of Kazakhstan “Concerning Amendments to Some Legislative Acts of the Republic of Kazakhstan on the Issues of Declaring Income and Property by Citizens of the Republic of Kazakhstan and Persons Having Residence Permit” (August, 2013).
17. Draft Law of the Republic of Kazakhstan “Concerning Amendments to Some Legislative Acts of the Republic of Kazakhstan on the Issues of Architectural, Town Planning, and Construction Activities” (May 29, 2013).

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### References:

18. <http://www.zakon.kz/4576947-k-update-nds-v-bjudzhet-po-metodu.html>
19. <http://www.bnews.kz/ru/news/post/158988/>
20. Draft Law of the Republic of Kazakhstan “Concerning Amendments to Some Legislative Acts of the Republic of Kazakhstan on the Issues of Energy Saving and Energy Efficiency Increase”.
21. <http://www.zakon.kz/4576942-vzaimodejstvie-nalogovogo-komiteta-i.html>
22. Law of the Republic of Kazakhstan dated December 26, 2012 No. 61-V “Concerning Amendments to Some Legislative Acts of the Republic of Kazakhstan on Taxation Issues” (amended as of June 21, 2013).
23. <http://www.zakon.kz/4575189-v-kazakhstane-sozdana-nacionalnaja.html>
24. Letter of the Tax Committee No. HK-13-ЮЛ-Е-883-HK-6539 dated August 26, 2013.