KPMG

NewsFlash

Tax and Legal

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Dear readers,

In this News Flash issue we outline the most important changes to corporate income tax resulted from the adoption of the new Tax Code.[1] We hope this information will assist you in the preparation of corporate income tax declarations for 2018.

Income

— Taxable income of a taxpayer includes the consolidated profit of the taxpayer's controlled foreign companies or permanent establishments of the controlled foreign companies.[2]

— Date of recognition of a taxpayer's sales proceeds is determined under the International Financial Reporting Standards (IFRS) and Kazakhstan legislation on accounting and financing reporting.[3]

— The Tax Code specifies a procedure for the recognition of a taxpayer's income from the write-off of liabilities if the creditor ceases to exist.[4]

— Tax Code provisions on recognition of income from doubtful liabilities will not apply to obligations originated from non-deductible interest payable to banks or other financial organisations.[5]

— The Tax Code specifies that income from goods, works or services received for no fee is determined on the basis of accounting data but not less than their cost including VAT indicated on acts of acceptance (if any).[6]

Income from Social Sphere Objects

— The amendments changed a procedure for the recognition of revenues related to social sphere objects. If an entity's revenues from its social sphere objects do not exceed five percent of the total aggregate annual income of the entity, including such revenues, the entity includes in its aggregate annual income an excess of income generated from the social sphere objects over the related expenses.

— Property operated in medical or educational sphere is excluded from social sphere objects. In contrast, property operated in leisure activities relates to social sphere objects with no requirement to use the property for serving employees or their related parties.[7]

Nontaxable Income

— The following items are not regarded as income for taxation purposes:[8]

- – The value of property that a shareholder/ stakeholder receives upon a distribution of the company's property during the company's liquidation or a reduction of the company's capital or upon a buyback of shares/ownership stake;
- – The value of property that an issuer receives upon a placement of the issued shares;
- – Interest penalty and fines that a taxpayer writes-off in accordance with tax legislation of Kazakhstan;

[1] Code No. 120-VI of the Republic of Kazakhstan on Taxes and Other Mandatory Payments to the State Budget (the Tax Code), dated 25 December 2017
[2] Article 224 of the Tax Code
[3] Article 227 of the Tax Code
[4] Article 229 of the Tax Code
[5] Article 230, p.3 of the Tax Code
[6] Article 238, p.3 of the Tax Code
[7] Article 239 of the Tax Code
[8] Article 225 of the Tax Code

- Cost of goods that a taxpayer receives for no fee for advertisement purposes, if the cost of the good is up to five times the MIF;
- Insurance payment, if the payment reduces the tax balance of the beneficiary's fixed assets up to the reduction amount;
- Cost of goods, works or services that a customer receives as a result of the guarantee coverage during the guarantee period;
- Interest receivable by which a taxpayer reduces the value of its construction in progress up to the amount of interest payable by which a taxpayer increases the value of the construction in progress under the IFRS;
- Human-made mineral resources that a taxpayer receives from the state on a gratuitous basis.

— The following income is exempt from taxation:[9]

- Dividends of a company reducing the CIT by 100 percent provided that a share of the reduced CIT accounts for less than 50 percent of the total CIT of the company.
- Investment income earned in accordance with the mandatory social medical insurance legislation and directed to increase the assets of the Social Medical Insurance Fund;
- Income of an attorney (agent) of the state educational authorities received in connection with activities on the reimbursement of the state funds and return of the state educational and state student loans.

— A taxpayer performing electronic trade of goods may decrease its CIT by 100 percent, if the taxpayer's income from the electronic trade, including a net foreign exchange gain, accounts for at least 90 percent of the aggregate annual income. If the taxpayer fails to meet this requirement, the tax exemption will not apply.[10]

Deductions

— The Tax Code introduces a new article on Deductions of Certain Types of Expenses stipulating that the following expenses are deductible:[11]

- expenses related to a loss of goods – within the rates of natural losses established by legislation;
- carrying amount of damaged goods not deducted before, for which a taxpayer received a compensation – within the amount of the compensation;
- costs to organize mandatory regular medical examinations and pre-shift, post-shift and other medical check-up of employees;
- costs to arrange work places and recreation and eating facilities for employees in accordance with labour legislation of Kazakhstan;
- costs to arrange public catering for preschool employees and personnel working in the sphere of social protection of children, old people and disabled persons;
- expenses of a power transmission organisation to provide gratuitous electricity power to entities exploiting renewable energy sources;
- costs to support and (or) to increase the sales volume of goods by a taxpayer having a license or a sub-license registered in Kazakhstan to produce and(or) to sell the goods, irrespective of an ownership rights to the goods.

— A borrower in Kazakhstan may deduct income tax paid at its own expense in connection with the payment of interest to a foreign bank with the foreign state's participation in the charter capital, provided that the loan exceed 10 000 000 times the MIF.[12]

Deductions for Business Trips Expenses

— Business trip place is defined as a point of destination specified in an order or a written instruction of the employer sending an employee to the business trip and where the employee performs his/her labour duties or participate in a training.[13]

— In addition to employees' business trip expenses, a taxpayer may deduct the following travel expenses of the members of the board of directors or lower management executives related to the execution of their management duties during the business trip:

- Cost of travel to the place of the execution of management duties and back;
- Accommodation expenses during the business trip;
- Amount established by the taxpayer payable to the management executive for the period of the business trip;
- Visa expenses.

Interest Deductions

— Calculation of the average annual amount of liabilities for the determination of the threshold for interest deductions should not account for the contingent liabilities accrued under the IFRS or accounting and financial legislations of Kazakhstan.[14]

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[9] Article 241 of the Tax Code
[10] Article 293 of the Tax Code. This provision is in force until 1 January 2023
[11] Article 243 of the Tax Code
[12] Article 263 of the Tax Code
[13] Article 244 of the Tax Code
[14] Article 246 of the Tax Code

- Interest on loans from the bank that is the national development institute controlling stake of which belongs to the national managing holding is deductible in full.[15]

- The rules for the deduction of interests applicable to interests payable to banks and microfinance organizations (accrued interest is deducted upon the payment) now also apply to interests payable to the following finance organizations specified by the Law on Banks and Banking Activities:[16]

  - Debt collection agencies;
  - Organizations carrying out certain banking operations;
  - Bank subsidiaries acquiring doubtful and bad assets of their parent banks;
  - Organizations specializing on improving of the quality of loan portfolio of second-tier banks;
  - The special finance company established under project financing and securitization legislation of Kazakhstan.

- The amendments also specify that a third party may pay interest on behalf of a taxpayer against the third party's obligations before the taxpayer.

Doubtful Claims

- The Tax Code indicates the list of instances triggering doubtful claims and the amount of the doubtful claim deductible for each specified instance, which is as follows:[17]

  - A taxpayer realized goods, works or services and did not assign the claim for the sales proceeds – the amount of the claim limited by the recognised proceeds;
  - A taxpayer realized goods, works or services and assigned the claim for the sales proceeds – an excess of the amount of the claim (limited by the earlier recognised income) over the assignment proceeds;
  - A taxpayer acquired a claim for realized goods, works or services – the amount of the claim (limited by the earlier recognised income) increased by the acquisition cost of the claim;
  - A taxpayer included in its aggregate annual income fines and interest penalties on a loan agreement or a microcredit agreement on the basis of a court decision – the amount of the recognised income.

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[15] Article 246 of the Tax Code
[16] Article 246 of the Tax Code
[17] Article 248 of the Tax Code

For each of the abovementioned instances, the Tax Code specifies the starting date for the calculation of the 3-year period upon expiry of which a taxpayer is allowed to deduct the doubtful claims.

Taxation of Fixed Assets

— Subsequent expenses that a lessee incurs on leased property, except for property received under a leasing agreement, and accounts as a non-current asset for its book purposes are regarded as the lessee's fixed assets for corporate income tax purposes.[18]

— A lessor transferring property to a lessee under a rental agreement, except for a leasing agreement, is obligated to account for the transferred assets for corporate income tax purposes, although for book purposes these assets are accounted by the lessee. Therefore, assets that a lessee receives under a rental contract (except for the assets received under a leasing agreement) and reflects on its financial statements as property, plant and equipment, investments in real estate, intangible or biological assets – are not regarded as the lessee's fixed assets for corporate income tax purposes.[19]

— The Tax Code Article on Fixed Assets Additions is supplemented with the following provisions:[20]

  – The initial cost of a fixed asset contributed to an entity's charter capital is regarded as the cost specified in the acceptance act (previously – in the foundation documents) or in other document confirming the contribution and the value of the asset, if the acceptance act is not available. The cost of the contributed asset is capped by the value of the stake in the charter capital for the payment of which the contributor transfers the asset.

  – A fixed asset that a taxpayer disposes due to a temporary discontinuance of the use may be restored as a fixed asset at the disposal value plus any related expenses increasing the cost of the asset in a tax period in which the taxpayer re-starts using the asset.

  – An asset excluded from the investment tax preferences is regarded as an addition to the tax balance of fixed assets at the initial cost.

  – An asset subject to investment tax preferences adds up to the tax balance of fixed assets after three tax periods following the commissioning of the asset at nil value.

  – The initial cost of a fixed asset transferred to a taxpayer under a lease agreement will be the cost of the asset at which the taxpayer receives the asset.

  – If a lessee returns a leased asset to a lessor, the initial cost of the returned asset for the lessor is the excess of the asset price under the lease agreement over the total lease payments for the period from date of the transfer of the asset to the date of the return.

Taxation of Financial Organizations

— A bank or a financial organization listed in the Law on Banks and Banking Activities or in the Law on Microfinance Organizations should recognize a gain related to the acquisition of a claim on a loan (microloans) in the period in which the total proceeds on the acquired claim exceeds the acquisition cost of the claim.[21]

— The amendments exclude the provisions related to dynamic reserves. Dynamic reserves reflected on a bank's financial statements as at 31 December 2017 and deducted in the prior tax periods are recognised as taxable income for 2018 from a decrease of the bank reserves. This provision does not apply to the national development institution controlling stake of which belongs to the national managing holding.[22]

— There is a right to deduct the one-time increase in provisions triggered by the transition to IFRS 9.[23]

Net Operating Losses

— Net operating losses originated from a realization of construction in progress or uninstalled equipment, except for assets purchased for the state needs, are carried forward for the ten years similar to net operating losses generated from entrepreneurial activities.[24]

— The Tax Code establishes that a reorganized (via a split or a spin-off) entity transfers its net operating losses to the newly organised taxpayers proportionally to the value of the transferred assets (instead of the successors' participatory interests in the reorganised entity) as at the date preceding the date of separation balance sheet.[25]

Report on Advance Corporate Income Tax Payments

— Taxpayers are entitled to submit amended reports on advance corporate income tax payments by 31 December of the reporting tax period.[26]

[18] Article 266 of the Tax Code
[19] Article 266 of the Tax Code
[20] Article 268 of the Tax Code
[21] Article 233, p.2 of the Tax Code
[22] Article 51 of the Law on Enactment of the Tax Code
[23] Article 250 of the Tax Code. This provision was in force until 1 January 2019
[24] Article 300 of the Tax Code
[25] Article 301 of the Tax Code
[26] Article 305 of the Tax Code

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