



# NewsFlash

## Tax and Legal

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Dear readers,

**On 1 July 2019 a new Law<sup>1</sup> on Currency Control and Currency Regulation (hereinafter - the "Law") entered into force. In connection with this, the National Bank approved new rules establishing procedures for currency control and regulations. In this issue, we offer you an overview of some of the most significant, in our view, developments related to the adoption of the Law and the new rules.**

### Determination of Residency

The Law introduced significant changes to the determination of the residency status for foreign organizations. Now, in addition to Kazakhstan entities, the following organizations are recognized as residents for foreign currency regulation purposes:

- A branch of a foreign financial organization carrying out banking and/or insurance activities in Kazakhstan (starting from 16 December 2020);
- A branch (a representative offices) of a foreign non-financial organization, constituting a Kazakh permanent establishment of the organization under Kazakhstan tax legislation, except for a branch (a representative offices) regarded as a non-resident under an international agreement signed by Kazakhstan;
- An international organization located in Kazakhstan, if the corresponding international foundation agreement regards the organization as a resident of Kazakhstan.

As the result of these changes, resident branches and representative offices of foreign organizations will be subject to Kazakh foreign currency regulations similar to Kazakh entities and will be required to carry their operations in Kazakhstan in Tenge (except for transactions with other foreign branches / representative offices).

The Law stipulates that the following organizations are regarded as nonresidents:

- Foreign legal entities and organizations and their branches (representative offices) not creating a permanent establishment in Kazakhstan under Kazakhstan tax legislation;
- Branches (representative offices) of foreign nonfinancial organizations recognized as nonresidents for the foreign currency regulations purposes under agreements concluded with Kazakhstan before the Law came into effect. A Governmental resolution<sup>2</sup> approved the list of such branches (representative offices) that now includes 25 entities.

The procedure for the determination of the residency status for individuals remain unchanged – an individual not falling within the definition of a resident is regarded as a nonresident.

<sup>1</sup> Law No. 167-VI of Kazakhstan On Foreign Currency Regulation and Control, dated 2 July 2018

<sup>2</sup> Governmental Resolution № 179 On Approval of the List of Branches (Representative Offices) of Foreign Nonfinancial Organizations Recognized as Nonresidents for the Foreign Currency Regulations Purposes under Agreements Concluded with Kazakhstan, dated 11 April 2019

## Foreign Currency Operations Rules

The National Bank established rules<sup>3</sup> for foreign currency operations in Kazakhstan stating:

- the procedure for the execution of bank transactions in foreign currency and a threshold (US\$50,000 or an equivalent money amount) exceeding which the authorized banks are required to notify the National Bank of the executed foreign currency bank transfer or payment;
- the list of documents and information that a resident or a non-resident is obliged to submit to an authorized bank in connection with foreign currency payments and (or) transfers;
- the reporting procedure and the forms of reports that a taxpayer conducting a foreign currency transaction exceeding the established threshold of US\$50,000 (or the equivalent value) is required to submit to an authorized bank;
- the procedure for the execution of noncash foreign exchange transactions in Kazakhstan and the threshold (US\$100,000 or the equivalent) exceeding which a resident entity purchaser (except for an authorized bank) is obliged to confirm the purpose of the purchase of foreign currency for Tenge;
- the procedure for the executions of bank account transactions related to withdrawal, crediting and use of foreign currency in cash.

## Registration and Monitoring of Foreign Currency Transactions

The Law introduces a single registration procedure for residents' (except for banks and branches of foreign organizations) foreign currency contracts and accounts in foreign banks. The registration procedure includes an assignment of a registration number to a foreign currency contract and/or a foreign bank account for the foreign currency operations accounting and reporting purposes.

The rules<sup>4</sup> for the monitoring of foreign currency transactions in Kazakhstan (hereinafter - the "Monitoring Rules") establish:

- the procedure for residents to obtain registration numbers for foreign currency contracts on movement of capital;
- the procedure for resident entities to obtain registration numbers for foreign bank accounts;
- the procedure for the monitoring of cash flows and other execution of obligations under foreign currency contracts on movement of capital and foreign bank accounts;
- the notification procedure for the authorized banks on the executed foreign currency operations.

<sup>3</sup> Resolution No. 40 of the Board of the National Bank of Kazakhstan On Approval of Rules for Foreign Currency Operations in Kazakhstan, dated 30 March 2019

<sup>4</sup> Resolution No. 64 of the Board of the National Bank of Kazakhstan On Approval of Rules for the Monitoring of Foreign Currency Operations in Kazakhstan, dated 10 April 2019



Branches of the National Bank situated at the location of applicants assign registration numbers to foreign currency contracts on capital movement and to foreign bank accounts. The Monitoring Rules establish the list of information and documents that an applicant should submit to the National Bank to obtain a registration number for a contract on capital movement.

According to the Monitoring Rules, a foreign currency agreement on movement of capital is subject to the registration, if the agreement triggers:

- an inflow of property (money) to Kazakhstan and (or) an obligation of a resident to return property (money) to a nonresident for an amount exceeding US\$500,000 (or an equivalent);
- a transfer of property (money) from Kazakhstan and (or) a claim of a resident to a nonresident to return property (money) in an amount exceeding US\$500,000 (or an equivalent).

A resident legal entity or a branch (representative office) of the entity is obliged to obtain a registration number for a foreign bank account before the company starts its operations via the bank account. The registration numbers are published on the official web-site of the National Bank.

The Monitoring Rules oblige a resident party to a foreign currency agreement on movement of capital and a resident holder of a foreign bank account to submit reports in the established form to a branch of the National Bank situated at the location of the reporter. The filing deadline is the 10th day of the month following the reporting quarter.

Reporting obligations starts with a report for the period of the assignment the registration number and ends with a report for the period in which the National Bank deregisters the corresponding agreement on movement of capital or the foreign bank account.

## Control of Cross-Border Deals

The new Law reserves the requirement to repatriate the national or foreign currency on cross-border deals within the deadlines established by the related foreign trade agreements. The Rules<sup>5</sup> for the Control of Foreign Currency Transactions under Cross-Border Agreements (hereinafter - the "Rules for Export-Import Control") establish the procedure for the monitoring of the fulfillment of the repatriation requirements by exporters and importers. The Rules for Export-Import Control regulate the procedures for:

- obtaining registration numbers for cross-border foreign currency agreements;
- the control over the fulfillment of the repatriation requirements under cross-border foreign currency agreements;
- the monitoring of the movement of funds and the fulfillment of other obligations under cross-border foreign currency agreements;

- deregistration of cross-border foreign currency agreements.

A cross-border foreign currency agreement is subject to registration if the value of the agreement exceeds US\$50,000 or an equivalent value. A contract with no specified value at the date of the conclusion is also subject to registration.

An exporter or an importer applies for the registration number:

- to an authorized bank (or a branch of it) - if the importer/exporter executes transactions under the contract only via an account with the authorized bank (a branch of the bank) or using accounts with the authorized bank and a foreign bank account;
- to a branch of the National Bank situated at the location of the importer/exporter - if the importer/exporter executes all contract transactions using a foreign bank account.

The Rules for Export-Import Control also determine provisions under which the National Bank refuses to assign a registration number to a cross-border contract or where a registration number is not required.

A cross-border agreement with a repatriation period of more than 360 days (under the initial terms or after the agreed amendments) is subject to control under the anti-laundering legislation. In addition, the authorized banks monitor payments and (or) money transfers under foreign currency cross-border agreements with the value from US\$10,000 to US\$50,000 (inclusive) or an equivalent.

The Rules for Export-Import Control also states the procedure for the reconciliation of information on foreign currency cross-border agreements between branches of the National Bank, the authorized banks and the state revenue authorities.

<sup>5</sup> Resolution No. 42 of the Board of the National Bank of Kazakhstan On Approval of Rules for the Control of Foreign Currency Transactions under Cross-Border Agreements, dated 30 March 2019

According to the transitional provisions stated in the Rules for Export-Import Control, a foreign currency cross-border agreement registered before 1 July 2019 requires no registration. The National Bank restricts payments/transfers under nonregistered foreign currency agreements on export or import of works/services with a value exceeding US\$50,000 (or an equivalent amount of money). An exporter/importer under such an agreement is obliged to apply for a registration number for the agreement by the end of 2019 but before it starts the fulfillment of obligations under the agreement.

## Reporting Obligations of Foreign Branches (Representative Offices)

Branches (representative offices) of foreign non-financial organizations operating in Kazakhstan for more than one year are required to submit reports to the National Bank in accordance with the requirements established in the Rules<sup>6</sup> for the Submission of Information by Branches (Representative Offices) of Foreign Non-Financial Organizations Operating in Kazakhstan (hereinafter - the "Rules for the Provision of Information")

Branches of the National Bank send a written request to foreign branches (representative offices) for the provision of administrative data. The foreign branches (representative offices) that received the request are required to provide the National Bank with the requested data in the approved form within 10 business days after the receipt of the request.

On the basis of the collected information, the National Bank will form a list of foreign branches (representative offices) that are required to submit to the National Bank reports on transactions with residents and non-residents following the procedures provided by the Rules for the Provision

of Information. The National Bank will inform the foreign branches (representative offices) of their inclusion on the list and of the related reporting obligations.

The list of foreign branches (representative offices) will be posted on the official web-site of the National Bank and regularly updated. The list of foreign branches (representative offices) will include companies carrying out the following activities:

1. extraction of crude oil, natural and associated gas;
2. construction services;
3. mining-related services;
4. architectural, engineering and other technical services;
5. research and development work.

The Rules for the Provision of Information determines reporting forms, procedures and deadlines.

The Law and the rules entered into force on 1 July 2019, except for the provision recognizing branches of foreign financial organizations as residents that will come into force on 16 December 2020.

<sup>6</sup> Resolution No. 41 of the Board of the National Bank of Kazakhstan On Approval of Rules for the Submission of Information by Branches (Representative Offices) of Foreign Non-Financial Organizations Operating in Kazakhstan, dated 30 March 2019

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