



Doing business in Kazakhstan: tax and legal highlights

2019

**KPMG in Kazakhstan
and Central Asia**

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Our goal is to facilitate tax compliance and improve business performance by providing guidelines to cope with changes in tax and legal issues.

In 2018, Kazakhstan adopted a number of laws introducing significant changes to tax legislation of the country. A new Tax Code replaced the old tax law that acted since 2008. Following the Base Erosion and Profit Shifting (BEPS) Action Plan of the Organization for Economic Cooperation and Development (OECD), the President signed a law obligating certain member firms of multinational enterprises operating in Kazakhstan to file with the tax authorities three-tiered transfer pricing documentation.

Below we outline some of the key tax and legal issues that are important for those who are planning to do business in Kazakhstan. We hope the information in this publication will be beneficial to your company. For more detailed information specific to your particular tax situation, please contact a KPMG tax advisor.





CERTAIN LEGAL CONSIDERATIONS

Business Structures

The Civil Code and related laws in Kazakhstan permit both local and foreign entities a high degree of flexibility in structuring their business activity in Kazakhstan. Available business structures include a representative office, a branch office, a legal entity, and a simple partnership of companies (or consortium). As a general rule, the law does not discriminate between

domestically-owned legal entities and Kazakhstan subsidiaries of foreign legal entities. The most common forms of organization of a legal entity are a limited liability company (LLC) and a joint stock company (JSC).

Currency Regulations

The national currency, the tenge, is freely exchangeable within Kazakhstan, and few restrictions

are placed on the import and export of foreign currency to and from Kazakhstan. Foreign currency transactions between residents are prohibited, with certain exceptions. Transactions between residents and nonresidents may be conducted in any currency.

TAXATION



The new Tax Code introduced a new principle – the principle of taxpayer's good faith. According to this principle:

- In a tax dispute between a taxpayer and the tax authorities all gaps and ambiguities of tax legislation will be interpreted in the favor of the taxpayer;
- The tax authorities bear the burden of proving tax violations;
- If a taxpayer acted on the basis of a tax ruling that the tax authorities personally issued to the taxpayer and subsequently cancelled, the violation is exempt

from fines and interest penalties and the taxpayer is responsible only for the amount of the underpaid tax.

Corporate Income Tax

Registered taxpayers

The corporate income tax rate payable by most legal entities is 20% of taxable income. Various small companies may qualify for special tax regimes specifying lower tax rates. The taxable income is measured as gross income less expenses connected with the generation of income. Interest expense, entertainment expenses,

and certain other expenses are deductible only within established limits. Besides deducting expenses, legal entities may carry operating losses forward for up to ten years for offset against income of future periods.

In addition to corporate income tax, a permanent establishment of a foreign legal entity is subject to branch profits tax equal to 15% of its net after-tax income. This results in an effective tax rate of 32% for permanent establish companies.



The following are exempt from income tax in Kazakhstan:

-  certain qualifying dividends
-  income from operations involving state securities
-  income from securities listed on a Kazakh stock exchange
-  gains on sales of stakes or shares in Kazakh legal entities, subject to certain conditions

A controlled foreign company (hereinafter, the "CFC") is a non-resident legal entity or another organisational form of entrepreneurial activities abroad meeting simultaneously the following conditions:

- A Kazakhstan resident owns directly, indirectly or constructively 25 or more percent of a participation stake (voting shares) of the CFC or the CFC is controlled¹ by a Kazakhstan resident;
- The CFC or the CFC permanent establishment is registered² in a tax haven³ or the effective income tax rate for the CFC or the CFC permanent establishment is less than 10%.

¹ "Control" is defined under the International Financial Reporting Standards or another internationally recognized standards for the preparation of financial statements accepted by stock exchanges

² The Tax Code stipulates that a CFC or the CFC permanent establishment is considered as registered in a tax haven, if the CFC or the CFC permanent establishment foundation documents or the CFC's participant responsible for accounting of income and expenses or asset management of the CFC or the CFC permanent establishment is registered in the tax haven

³ The list of tax havens is approved by the state authorities

Controlled Foreign Companies

A portion of profit of the CFC or the CFC permanent establishment that corresponds to a participation/control share of a Kazakhstan resident is subject to income tax in Kazakhstan. If a Kazakhstan resident is in loss position, the related portion of the CFC or the CFC permanent establishment's profit reduces the resident's net operating losses. An excess of the CFC or CFC permanent establishment's profit over the resident's net operating losses is taxable to the resident in Kazakhstan.

A failure to declare or an understatement of the CFC or the CFC permanent establishment taxable income in Kazakhstan are subject to administrative penalties. The Tax Code also stipulates provisions under which the administrative and interest penalties do not apply to a Kazakhstan resident if the resident is not able to obtain necessary information to assess the Kazakhstan tax liabilities related to the CFC or the CFC permanent establishment in time.

A Kazakhstan resident holding or acquiring a participation or a control stake in the CFC is required to submit to the state revenue authorities a statement on participation (control) of a CFC.

Income Tax at Source

If a foreign entity does not have a registered permanent establishment in Kazakhstan, it is subject to income tax at the source of payment on its gross income from sources in Kazakhstan. The payer of the income is responsible for withholding and remitting the tax to the state by acting as a tax agent.

These taxes may be reduced or eliminated under Kazakhstan tax treaties. There are currently over 50 tax treaties in force. Many of these tax treaties also provide for a reduced rate of branch profit tax.

TAX APPLIES TO:

15% capital gains, dividends, interest and royalties

5% income from international transportation services

15% insurance premiums

5% reinsurance premiums

20% service fees and other income not indicated above

20% income paid to residents of jurisdictions that Kazakhstan recognizes as tax havens

Transfer Pricing

Kazakhstan's Transfer Pricing Law applies to any cross-border transactions for the sale or purchase of goods and services if the transaction price deviates from an arm's length price. As a rule, the Transfer Pricing Law does not stipulate any safe harbor for any price deviation. Companies engaged in cross-border transactions, subsoil users, and companies enjoying tax preferences or reporting tax losses must comply with the provisions of transfer pricing legislation in Kazakhstan.

In January 2017, Kazakhstan joined the Inclusive Framework on BEPS under which it commits to comply with the minimum standards contained in OECD Action 5 (Harmful tax practices), Action 6 (Treaty abuse), Action 13 (Transfer pricing documentation), and Action 14 (Dispute resolution). In line with BEPS Action 13, Kazakhstan adopted amendments to local transfer pricing legislation introducing three-tiered documentation requirements for multinational enterprises operating in Kazakhstan.

The amended Transfer Pricing Law establishes criteria under which certain member firms of multinational enterprises operating in Kazakhstan are required to file with the tax authorities one or more of the following three-tiered transfer pricing documentation:

- Local File;
- Master File;
- Country-by-country (hereinafter, "CbC") report.

The member firm of a multinational enterprise having obligations to file any of the three-tiered transfer pricing documentation is required to file with the tax authorities a Notification of Membership in a Multinational Enterprise (the Notification) by 1 September of the year following the reporting year.

According to the OECD recommendations, the first reporting period for CbC report is 2016. Law requirements regarding submission of the Notifications entered into force on 1 January 2018. The first reporting period for Local File and Master File will be 2019.

Value-Added Tax

Registration as a VAT payer is required for all individuals and companies that conduct business activities in Kazakhstan and have cumulative taxable revenues in excess of 30 000 times monthly index factor⁴ during a calendar year.

The standard VAT rate is 12% and applies to revenues derived from the sale of goods or services within Kazakhstan and to the importation of goods into Kazakhstan. 0% VAT applies to exports of goods from Kazakhstan and to international transport services. Certain activities



Starting from 2019, a failure to file the required transfer pricing documentation or filing misleading reports will be subject to administrative penalties.

are specifically exempt from VAT. The list of exempt activities includes, among others, sale and lease of land and land use rights (except for land used for parking passenger vehicles), financial services, insurance services, and medical services.

⁴ Monthly index factor for 2019 is 2,525 tenge

Payroll-Related Taxes and Contributions

Personal Income Tax

As a rule, all types of compensation and benefits that an employee receives for employment services in Kazakhstan constitute taxable income. The standard personal income tax rate is a flat 10% for both resident and nonresident employees. Employers in Kazakhstan, including Kazakh legal entities as well as branch and representative offices of foreign legal entities, are regarded as tax agents and are required to withhold personal income tax and remit it to the state from payments they make to individuals in cash or in kind.

Social Tax

Employers in Kazakhstan, including foreign employers operating in Kazakhstan through a branch or representative office, must pay social tax for their local and expatriate employees and secondees. Social tax is levied at a flat rate of

- 9.5% – from 1 January 2018;
- 11% – from 1 January 2025.

The tax applies on the gross income of employees, including all fringe benefits, whether received in cash or in kind. There is no maximum threshold for the social tax base. The tax is borne entirely by the employer, and no part is withheld from employee salaries.

Social Security Contributions

Employers in Kazakhstan must make contributions to the State Social Security Fund. Contributions are required for local employees as well as for expatriate personnel who have a permit for permanent residence in Kazakhstan. A foreign national without a permanent residence permit is not subject to this contribution requirement.

The rate of contributions is:

- 3.5% – from 1 January 2018;
- 5% – from 1 January 2025.

It applies to monthly gross salary up to a maximum monthly income of 7-times minimum monthly salary⁵. Social security contributions are fully creditable against social tax and therefore do not represent an additional tax burden for an employer.

Obligatory Pension Contributions

Kazakh nationals must pay 10% of their gross income as obligatory contributions to the Unified Accumulative Pension Fund in Kazakhstan. The gross monthly income amount subject to obligatory pension contributions is capped at 50-times minimum monthly salary. Employers of Kazakh nationals must withhold the pension contributions from the amounts due to the individuals and remit these amounts to the pension fund.

In addition to obligatory pension contributions, employers in Kazakhstan must pay obligatory professional pension fund contributions for certain local employees working in health-hazardous working conditions. The professional pension contributions is borne entirely by the employer at a flat rate of 5% on the gross income of the qualifying employees.

Starting from 1 January 2020, employers in Kazakhstan must pay a new component of the accumulative pension system – employer's obligatory pension contributions (EOPC) – to the Unified Accumulative Pension Fund. The EOPC rate is 5% of gross employment income. The EOPC will be borne entirely by Kazakhstan-based employers. The Unified Accumulative Pension Fund will record EOPC on nominal pension accounts opened for each employee.

Foreign nationals who do not have a permanent residence permit in Kazakhstan are not required to join Kazakh pension plans.

Obligatory Medical Insurance Contributions

Starting from 1 July 2017, the state introduced new statutory payments – obligatory social medical insurance contributions to the Social Medical Insurance Fund (the Fund). The contributions are required for local individuals and for foreigners who have a permit for permanent residence in Kazakhstan. Foreigners and members of their families staying in Kazakhstan on a temporary basis will enjoy the benefits and be subject to the requirements of the obligatory social medical insurance (the OSMI) system as Kazakhstan citizens, if it is established in the corresponding international agreement ratified by Kazakhstan.

⁵ Minimum monthly salary for 2019 is 42,500 tenge

The contributions for employees consist of two components: employer's contributions borne by the employer and employees' contributions withheld by the employer from the amounts payable to the employees. Employers are required to remit the total amount of the contributions to the Social Medical Insurance Fund on a monthly basis.

Tax agents are obliged to withhold the OSMI contributions from income payable to individuals working under service agreements. Other self-employed individuals (private entrepreneurs, private notaries, private court officers, lawyers, professional mediators)

must remit the contributions for themselves. Kazakhstan citizens living abroad and other payers remit the contributions by themselves or a third party may pay the contributions on their behalf. The state will make contributions for certain categories of socially vulnerable citizens (e.g. children, retired individuals, women on maternity).

The taxable base for the OSMI contributions of employers, employees and individuals working under service agreements is income payable to the employees and individuals working under service agreement less allowed deductions and exempted income. The gross monthly income subject to the

OSMI contributions is capped at 10-times minimum monthly salary. Legislation establishes a fixed taxable base as multiples of the minimum monthly salary (the MMS) or the average monthly salary (the AMS).

Rates for the OSMI contributions will gradually increase to 2022 as follows:

	EMPLOYER'S CONTRIBUTIONS	EMPLOYEE'S AND SERVICE AGREEMENTS CONTRIBUTIONS	SELF-EMPLOYED CONTRIBUTIONS FOR THEMSELVES	THE STATE'S CONTRIBUTIONS	OTHER PAYER'S CONTRIBUTIONS
Tax Base	Revenues	Revenues	1.4 * the MMS	The AMS	The MMS
2019	1.5%	-	-	-	-
2020	2%	1%	5%	4%	5%
2021	2%	2%	5%	4%	5%
from 1 January 2022	3%	2%	5%	4% to 5%*	5%

* The exact rate will be established annually by the Budget Law



Other Taxes

Excise Tax

Certain items imported into or produced in Kazakhstan are subject to excise tax. These goods include all kinds of alcohol spirits and beverages, tobacco products, petrol (except for aviation fuel), diesel fuel, certain motor vehicles, crude oil, gas condensate, and medical products containing spirits. Tax rates are measured as a fixed amount per unit or volume, depending on the type of excisable good.

Land Tax

Entities that own or use a land parcel are required to pay a land tax. The tax rate depends on the quality score assigned to the land by the governmental authorities and is established in the form of annual fixed payments per unit of land area.

Property Tax

Entities owning or using buildings, structures, dwellings, premises and other structures firmly fixed on the ground must pay property tax on such assets. The property tax rate payable by most legal entities in Kazakhstan is 1.5% of the average annual book value of the taxable assets. Property tax applies regardless of whether profit is derived from the use of the assets.

Vehicle Tax

Entities that own or use vehicles registered in Kazakhstan are subject to an annual vehicle tax. The tax rate depends on the vehicle's engine volume and the type of vehicle.

Subsoil Use Taxes and Payments

The subsoil use taxes and payments apply in addition to the above-mentioned taxes and obligatory payments stipulated by Kazakhstan tax legislation.

Subsoil use payments

Subsoil use payments include subscription bonus and reimbursement of historical expenses. The new Tax Code abolished commercial discovery bonus since 2018 to stimulate the subsoil use development. The payment procedures, tax amounts and other terms pertaining to the special subsoil use payments are stipulated within the subsoil user's contract with the State for use of the subsoil.

The new Tax Code also introduced rental payments for the use of land plots for mining companies operating under subsoil use license for the development or production of minerals. Rates of the rental payments during the development stage of a license range from 15 to 60 times MIF for one block depending on the period a subsoil user operates under

the license. Rental payment rate during the production stage of the license is 450 times MIF for one square kilometer of the land plot. The rental payments apply annually.

Mineral Extraction Tax

Mineral extraction tax applies to the value of extracted hydrocarbons, metals, coal and other extracted minerals, separately for each type of extracted resource. The rate of mineral extraction tax depends on the type and/or annual volume of the extracted resources.

Excess Profit Tax

Starting from 2018 excess profit tax does not apply to mining companies. Excess profits tax ranges from 0% to 60% and is payable annually on the net profits earned under each subsoil use contract, if in any reporting year the ratio of a subsoil user's gross annual income to tax deductions is more than 1.25.

Alternative Subsoil Use Tax

The new Tax Code provides a subsoil user with a right to apply alternative subsoil tax substituting the historical costs, mineral extraction tax and excess profits tax. The right is available for subsoil users developing or producing hydrocarbons on deep or continental shelf deposits. The alternative subsoil use tax applies from the beginning of the production

stage of a subsoil use contract to the end of the contract and cannot be changed.

The rate of alternative subsoil use tax ranges from 0% to 30% depending on the market oil prices (0% for the oil price of up to USD 50 per barrel and 30% for the oil price exceeding USD 90 per barrel). The tax applies to the adjusted net profits under each subsoil use contract determined as prescribed in the Tax Code for the alternative subsoil tax purposes.

Rental Tax

Individuals and legal entities exporting crude oil, coal and gas condensate, other than certain qualifying subsoil users operating under a production sharing agreement, are subject to a special tax on exports of crude oil and gas condensate. The tax rate ranges from 0% to 32% of the government-determined market value of the exported crude oil or gas condensate. The tax rate for the export of coal is a flat 4.7%.

Tax Incentives

Special Economic Zones (SEZ)

Kazakhstan has established 11 SEZs to facilitate the development and support of the economy sectors other than resources-oriented sectors. Companies operating in SEZ are exempt from corporate income tax, property tax and land tax. Sales of certain qualifying goods within SEZ are subject to VAT at a rate of 0%. Legal entities operating within the Information Technology Park special economic zone are entitled to a 100% exemption from social tax for their employees if they met certain conditions.

Investments in Priority Sectors

The following incentives are granted for investments in priority sectors of the economy on the basis of an investment contract concluded between the investor and the state.

- Exemption from customs duties;
- Exemption from corporate income tax (up to 10 years), land tax (up to 10 years) and property tax (up to 8 years);
- Reimbursement of up to 30% of the actual investments in fixed assets;
- Stability of tax legislation.

The list of priority sectors of the economy currently includes industrial infrastructure, processing industries, housing construction, the social sphere (education, medical, sports and entertainment facilities), tourism, communication, production of nuclear materials and agriculture.

CUSTOMS



Kazakhstan is a member state of the Eurasian Economic Union (hereinafter, the "EEU") with Russia, Belarus, Armenia and Kyrgyzstan. Import customs duty rates are established by the decision of the Eurasian Economic Commission on the Unified Customs Tariff of the EEU, while export customs duty rates are set by the Government of the Republic of Kazakhstan.

Most customs duties vary between 0% and 30% and are imposed on the transaction value of the imported goods (the price of the goods

plus all associated costs, such as transportation).

In 2015, Kazakhstan successfully completed its membership negotiations with the World Trade Organization and became the 162nd member of the WTO. In the frame of the WTO, import customs duty rates for a number of goods (so-called List of Exemptions) are below the rates established by the Unified Customs Tariff of the EEU.

Taking into account the position of the other EEU member-states, Kazakhstan committed to prevent the export of goods imported into Kazakhstan at the reduced WTO rates to other member-states of the EEU. Taxpayers may import goods into Kazakhstan either at the WTO rates, but without the right to export the imported goods from Kazakhstan, or at the rates established by the Unified Customs Tariff of the EEU with the right to export these goods in other member-states of the EEU.

Why KPMG?



The KPMG tax and legal practice in Kazakhstan employs highly qualified local and expatriate experts who form a dynamic, passionate team able to provide business-oriented tax and legal strategies for improving operations in Kazakhstan and aimed at adding value to your business.



We have experience with all types of taxes in Kazakhstan, including corporate income tax, payroll taxes, VAT, property tax, and taxes withheld from payments to nonresidents of Kazakhstan. We also have experience with taxation of subsoil users and with taxation under tax treaties.



Our consulting services can enhance business planning and decision-making processes. By helping our clients start operations in a tax-compliant manner and then stay informed of legislative and procedural changes, we aim to be an integral part of their successful business in Kazakhstan.

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