



Doing business in Kazakhstan: tax highlights



2022

KPMG in Central Asia

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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 establishments of foreign companies.

The following types of income are excluded from either gross annual income or taxable income for corporate income tax purposes in Kazakhstan:

- certain qualifying dividends;
- income from operations involving state securities;
- income from securities listed on the Kazakh Stock Exchange or AIX;
- gains on sales of stakes or shares in Kazakh legal entities, subject to certain conditions.

Controlled Foreign Companies

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

- As of 31 December of the reporting period, a Kazakhstan resident owns directly, indirectly or constructively 25% or more of a participation stake (voting shares) of the CFC or directly, indirectly or constructively control¹ the CFC;
- The CFC is registered² in a tax haven³ or the effective income tax rate for the CFC is less than 10%.

A foreign entity should not be regarded as a CFC if the entity:

- is registered in a tax treaty country with a nominal income tax rate of more than 75% of the corporate tax rate in Kazakhstan. The tax authorities approve the list of such countries on an annual basis; or
- has the aggregate income less than the established threshold of 150 495 times the monthly index factor.⁴ This provision does not apply to companies registered in tax havens; or
- reports losses on its stand-alone financial statements.

A portion of financial profit of the CFC that corresponds to the participation/control share of a Kazakhstan resident is subject to corporate income tax in Kazakhstan. CFC’s financial profit should not be subject to taxation twice, so the following ways are prescribed in order to eliminate the double taxation with respect to financial profit:

- exemption of financial profit;
- adjustments to financial profit;
- reduction of financial profit;
- foreign tax credit.

A resident taxpayer may credit its net operating losses for the reporting and two previous tax periods against the taxable income of the CFC (except for those registered in tax havens).

A failure to declare or an understatement of the CFC taxable income in Kazakhstan are subject to administrative penalties.

A Kazakhstan resident holding a participation stake (shares) in or controlling the CFC is required to file with the state revenue authorities a statement on participation (control) of the CFC as of 31 December of the reporting period.

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 is considered as registered in a tax haven, if the CFC’s foundation documents or the CFC’s participant responsible for accounting of income and expenses or asset management of the CFC is registered in a tax haven

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

⁴ Monthly index factor (MIF) for 2022 is 3,063 tenge

Corporate 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.

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 persons registered in jurisdictions that Kazakhstan recognizes as tax havens

These taxes may be reduced or eliminated under Kazakhstan tax treaties. There are currently 55 tax treaties in force. Many of these tax treaties also provide for a reduced rate of branch profit tax.

In 2020, Kazakhstan ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (hereinafter – the MLI). The MLI applies to taxes on income withheld at the source of payment in Kazakhstan from 1 January 2021.

Kazakhstan's position with respect to application of the MLI assumes:

- The tax treaty should not apply to create opportunities for non-taxation or reduced taxation in both tax treaty countries;
- Prevention of granting tax treaty benefits to arrangements the principal purposes of which is to obtain the treaty benefits (Principal Purpose Test);
- Introduction of certain criteria for persons to qualify for tax treaty benefits (Simplified Limitation on Benefits);
- The minimum shareholding period to qualify for a reduced tax rate

on dividends - the beneficiary should hold a required amount of the capital or voting power of the company paying the dividends for more than a year;

- Anti-abuse rules for permanent establishments preventing the artificial avoidance of permanent establishment status, through splitting-up of contracts, commissionaire arrangements or specific activity exemptions;
- Taxation in Kazakhstan of capital gains from alienation of shares or interests in entities deriving their value principally from immovable property located in Kazakhstan, regardless of the tax treaty exemptions, if any.

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 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 is 2019.

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



VALUE-ADDED TAX (VAT)

Registration as a VAT payer is required for all individual entrepreneurs and companies that conduct business activities in Kazakhstan and have cumulative taxable revenues in excess of 20 000 times MIF during a calendar year.

The standard VAT rate is 12% and it applies to revenues derived from sales of goods or services within

Kazakhstan and to imports of goods into Kazakhstan. Zero-percent VAT applies to exports of goods from Kazakhstan and to international transportation services. Certain activities are specifically exempt from VAT. The list of exempt activities includes, among others, sales and leases of land plots and land use rights (except for land plots used for parking passenger vehicles), financial services,

insurance services, and medical services.

From 1 January 2022 electronic sales of goods and services by foreign entities to individuals in Kazakhstan is subject to VAT. Such foreign entities are required to undergo a notional registration procedure in Kazakhstan.



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 salary.⁵ Social security contributions are fully creditable against social tax and therefore do not represent an additional tax burden for an employer.

⁵ Minimum monthly salary for 2022 is 60,000 tenge

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 are borne entirely by the employer at a flat rate of 5% on the gross income of the qualifying employees.

Starting from 1 January 2023, 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 (except for citizens of the Eurasian Economic Union) are not required to join the Kazakh pension plan. On 1 January 2021, the Agreement on Pension Support for Employees of the Member States of the Eurasian Economic Union (hereinafter, the “EEU”) entered into force. Therefore, Kazakhstan employers are required to withhold obligatory pension contributions from employment or service income payable to citizens of the EEU countries and remit the pensions contributions to the Unified Accumulative Pension Fund similar to citizens of Kazakhstan.

Obligatory Medical Insurance Contributions

Starting from 1 July 2017, the state introduced 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.

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.

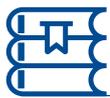
Tax agents are required to withhold the OSMI contributions from income payable to individuals working under service agreements. Other self-employed individuals (private entrepreneurs, notaries public, private court officers, lawyers, professional mediators) must remit the contributions for themselves. Kazakhstan citizens living abroad and other payers must remit the contributions by themselves; 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 employees and/or 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 are:

	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
from 1 January 2022	3%	2%	5%	4% to 5%*	5%

* The exact rate will be established annually by the State 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 land plots are required to pay land tax. The tax rate depends on the quality score assigned to the land plot by the governmental authorities and is established in the form of annual fixed payments per unit of land plot 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 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 Tax Code also establishes 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 mineral. The rate of mineral extraction tax depends on the type and/or annual volume of the extracted resources.

Excess Profits Tax

Excess profits tax does not apply to mining companies. Excess profits tax ranges from zero 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 Tax Code provides a subsoil user with a right to apply alternative subsoil tax substituting the payment for reimbursement of historical expenses, 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 market oil prices (0% is when the oil price is of up to USD 50 per barrel and

30% is when the oil price exceeds USD 90 per barrel). The tax applies to the adjusted net profits under each subsoil use contract the amount of which are calculated as stipulated in the Tax Code for the alternative subsoil tax purposes.

Rental Tax

Individuals and legal entities exporting crude oil and gas condensate, other

than certain qualifying subsoil users operating under production sharing agreements, are subject to a special tax on exports of crude oil and gas condensate. The tax rate ranges from 0% to 32% and applies to the government-determined market value of the exported crude oil or gas condensate.

TAX INCENTIVES

Special Economic Zones (SEZ)

Kazakhstan has established 13 SEZs to facilitate the development and support of the economy sectors other than resources-oriented sectors. Companies operating in SEZs are exempt from corporate income tax, property tax and land tax. The Tax Code establishes conditions under which goods manufactured and sold in SEZ are exempt from VAT. 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 meet certain conditions.

Investments in Priority Types of Activities

The following incentives are granted for implementation of projects within the priority types of activities approved

by the Government, on the basis of investment contracts concluded between investors 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);
- Stability of tax legislation.

For a project with investments exceeding 7 500 000 times the MIF, an investor may conclude an investment agreement with the state. If investments under an investment project exceed 15 000 000 times the MIF, the state may grant the investor a reduction of tax liabilities on corporate income tax, land tax and property tax for the amount of up to 20% of the actual expenses on the investment project. The reduction applies after ten years of the tax preferences within the term of

the investment agreement which does not exceed 25 years.

Astana Hub International Technology Park

Astana Hub was established in Kazakhstan for the development of technology companies, promotion of innovative projects and advancement of digitalization within the country. Astana Hub concentrates on specific priority activities in the information and communication technology sphere. For companies registered as Astana Hub participants, their owners, and their employees, the Tax Code stipulates tax benefits with respect to corporate income tax, corporate income tax at source of payment, VAT, payroll taxes.



ASTANA INTERNATIONAL FINANCIAL CENTER

Astana International Financial Center (hereinafter - the "AIFC") – a territory in Nur-Sultan city with the defined borders and with a special legislation regime, including tax regime. The purpose of the AIFC is to create an attractive environment for investments in the financial sector.

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