



NewsFlash

Tax&Legal

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Dear readers,

We offer you a short overview of some of the most important recent amendments and additions to Kazakhstan legislation.

Taxation

Tax Treaty between Kazakhstan and Vietnam

On 15 April 2015, the President signed a law¹ ratifying the Convention on the Avoidance of Double Taxation and the Prevention of Evasion from Taxes on Income between Kazakhstan and Vietnam. The treaty will come into effect on the 30th day after Kazakhstan and Vietnam receive the final diplomatic notes to inform each other about the completion of necessary internal procedures.

Risk Management System for Confirmation of a VAT Refund Claim

The Government introduced amendments² to the rules for the application of the risk management system for the confirmation of VAT for which a taxpayer claims a refund (hereinafter - the "Rules"). The new wording of the Rules provides a more detailed description of the procedures for the risk assessment of a taxpayer claiming the VAT refund and for the confirmation of the VAT refund and establishes deadlines for each phase of the process:

- ☐ The claimant's operations are assessed on the basis of the risk criteria - within seven business days after the start of a tax audit on the validity of the VAT for which a refund is claimed;
- ☐ If the risk assessment indicates that the claimant is in the risk zone, the tax authorities issue an analytical report "Suppliers Pyramid" for a claimant:
 - for small entities - within 20 business days after the assessment;
 - for medium and large entities - within 30 business days after the assessment;
- ☐ The tax authorities conducting a tax audit send a written notification on the detected violations to the territorial tax authorities at the place of the tax registration of the relevant supplier - within five business days after the completion of the analytical report;

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¹Law No.303-V of the Republic of Kazakhstan on the Ratification of the Convention on the Avoidance of Double Taxation and the Prevention of Evasion from Taxes on Income between the Government of the Republic of Kazakhstan and the Government of the Social Republic of Vietnam, dated 15 April 2015
²Governmental Resolution No.214, dated 10 April 2015 On Introduction of Amendments to Governmental Resolution No.279, dated 27 March 2013 On Approval of the Rules for the Application of the Risk Management System for the Confirmation of the VAT Claimed for a Refund and Risk Criteria

- The territorial tax authorities send a request to the relevant supplier to eliminate violations - within five business days after the date of receipt of a notification;
- A request should not be sent to taxpayers that already eliminated the detected violations after previous tax audits;
- The territorial tax authorities finally respond to the tax authorities conducting a tax audit:
 - within five business days after the date of elimination of the violations; or
 - within five business days after the date of receipt of the notification if the violations were already eliminated after previous tax audits.

According to the amendments, if a taxpayer qualifies for the simplified VAT refund procedure, only first-tier suppliers of this taxpayer are subject to the cross-check review during the tax audit described above.

The amendments excluded two items from the risk criteria:

- Continuous excess of input VAT over output VAT during the last three years;
- Sale of goods, works, services at a price below the purchase price during the last five years.

The amendments separated the following criteria into individual items (with assigned risk scores from five to ten):

- Conducting transactions with fictitious entities during the last five years;
- Conducting transactions with taxpayers not filing or filing any nil tax reports during the last five years;

- Conducting transactions with dormant taxpayers during the last five years;
- Conducting transactions with liquidated taxpayers during the last five years;
- Conducting transactions with taxpayers deregistered from VAT during the last five years;
- Conducting transactions with bankrupt taxpayers during the last five years.

In previous edition of the Rules, the above-listed criteria were combined in one item with a risk score of 35.

The amendments came into effect on 3 May 2015.

Rules for Receipt, Storage and Transfer of Data from Cash Registers by a Fiscal Data Operator

In accordance with Article 645-1 of the Tax Code, the Ministry of Finance developed and approved rules³ for the data receipt, storage and transfer by the fiscal data operator (hereinafter - the "Operator") to the state revenue authorities from cash registers equipped with the data registration and (or) transfer function. The rules establish the following:

- Goals and functions of the Operator;
- Procedure for the registration, re-registration and de-registration of cash registers by the Operator;
- Procedure for the receipt of data by the Operator from cash registers;
- Procedure for the storage of data received by the Operator from cash registers;
- Procedure for the data transfer from cash registers to the Operator and from the Operator to the state revenue authorities.

The rules are effective from 14 May 2015.

List of Goods for which Import VAT is Payable by the Credit Method

An order⁴ of the Minister of the National Economy approved a list of goods, for which import VAT is payable by the credit method. Previously this list was governed by a Governmental resolution⁵. The newly-approved list duplicates the list that was previously approved by the Government. The order came into effect on 18 April 2015.



³Order No.135 of the Minister of Finance of the Republic of Kazakhstan, dated 27 February 2015 On Approval of the Rules for Receipt, Storage and Transfer to the State Revenue Authorities of Data on Cash Operations in Sale of Goods, Works and Services from Cash Registers Equipped with the Registration and (or) Transfer of Data Function by the Fiscal Data Operator
⁴Order No.93 of the Minister of the National Economy of the Republic of Kazakhstan, dated 13 February 2015, on Approval of the List of Imported Goods for which VAT is Payable by the Credit Method under a Procedure Established in the Code of the Republic of Kazakhstan, dated 12 June 2001 on Taxes and Other Obligatory Payments to the Budget (the Tax Code), the Law of the Republic of Kazakhstan, dated 10 December 2008, on Implementation of the Code of the Republic of Kazakhstan on Taxes and Other Obligatory Payments to the Budget (the Tax Code) and Rules for its Creation
⁵Governmental Resolution No.269 of the Republic of Kazakhstan, dated 19 March 2003, on Approval of the List of the Imported Goods for which the VAT is Payable by the Credit Method under a Procedure Established by the Code of the Republic of Kazakhstan, dated 12 June 2001, on Taxes and Other Obligatory Payments to the Budget (the Tax Code), the Law of the Republic of Kazakhstan, dated 10 December 2008, on Implementation of the Code of the Republic of Kazakhstan on Taxes and Other Obligatory Payments to the Budget (the Tax Code) and Rules for its Creation

List of Goods Produced within a Free Warehouse which Realization is Exempt from VAT

The Ministry of Investments and Development approved a list⁶ of goods that are produced within a free warehouse zone and the sale of which to other territories in Kazakhstan is exempt from VAT. Previously the list was approved by a Governmental resolution⁷. The following two points were added to the new list:

- Bulldozers, graders, road rollers and excavators;
- Tractors and wheeled tractors for semi-trailers.

The new list came into effect on the date of its first official publications – 27 April 2015 and is valid until 1 January 2017.

Investment legislation

Employment of Foreign Personnel for Investment Priority Projects

A Governmental resolution⁸ sets separate quotas and approves special terms for the issuance of permits to employ foreign personnel for the following seven investment priority projects:

- Construction of a rails and sleepers production plant (the applicant – “Aktubinsky Rails and Sleepers Plant” LLC);
- Extracting and processing of iron ore to produce cast-iron by using innovative technologies (the applicant - “Bapy Mining” LLC);
- Construction of a cement plant (the applicant – “Production Association “Kokshe-Cement”);
- Construction of a cement plant in Rudny town (the applicant – “Rudnensky Cement Plant” LLC);
- Modernization of a cement plant (the applicant – “Shimkentcement” JSC);
- Construction of a railway wheels production complex (the applicant – “Prommashcomplex” LLC);
- Increase of high-carbon ferrochrome production by using innovative technologies (the applicant – “Transnational Company “Kazchrome” JSC).

The resolution came into effect on 30 April 2015.

The State's Participation in Investment Projects

A Governmental resolution⁹ introduced amendments to the rules for the provision of investment subsidies¹⁰. The amendments relate to the participation of state and quasi-state entities (hereinafter - “the State”) in investment projects and stipulate the following:

- Now the State can participate in a Kazakh operating entity, and the State's participation interest in a Kazakh operating entity should not exceed 25 percent;
- The State's possession of a stake in a Kazakh operating company should not exceed five years from the date of registration of the relevant investment contract;
- If the State does not cease its participation in a Kazakh operating company within the five-year period, the investment preferences will be suspended until the State fully disposes its participation interest in the Kazakh company. The suspension period may not exceed one year.
- If the State does not cease its participation in a Kazakh operating company during the suspension period, the investment contract will be terminated, and the Kazakh operating company will be obliged to reimburse the earlier provided investment preferences to the state budget.

The amendments also add the following provisions to the model investment contract:

- An investor agrees that within five years from the date of registration of an investment contract, the State will dispose its participation interest in a Kazakh operating company;
- To confirm the fact that the State ceased its participation in a Kazakh operating company, an investor is required to submit to the competent state authorities a copy of the duly signed and sealed charter documents. The documents are due within thirty calendar days after the deadline for the State to exit from the participation in a Kazakh company.

In addition, the amendments stipulate that investment subsidies are payable upon the fulfilment of the investor's investment obligations (in previous version – “on the fulfilment of obligations on utilization of production capacities per the results of the year”).

The amendments came into effect on 3 May 2015.



⁶Order No.99 of the Minister of Investments and Development of the Republic of Kazakhstan, dated 30 January 2015, on Approval of the List of Goods Produced within a Free Warehouse which Realization to other Places in Kazakhstan is Exempt from VAT

⁷Governmental Resolution No.133, dated 19 January 2012, on Approval of the List of Goods Produced within a Free Warehouse which Realization to other Places in Kazakhstan is Exempt from VAT

⁸Governmental Resolution No.296 of the Republic of Kazakhstan, dated 25 April 2015, on Setting Quotas for the Employment of Foreign Personnel for the Priority Projects and Approval of the Terms for the Issuance of Permits to Employ Foreign Personnel for the Priority Projects

⁹Governmental Resolution No.210, dated 9 April 2015, on Amendments to Governmental Resolution No.436, dated 8 May 2003, on Some Issues of Implementation of the Law of the Republic of Kazakhstan on Investments and to Governmental Resolution No.1175, dated 4 November 2014, on Approval of the Rules for the Provision of Investment Subsidies

¹⁰Investment subsidy is a subsidy that the state provides as investment preferences on the gratuitous and irrevocable basis to a Kazakh entity implementing a priority investment project under an investment contract concluded with the Kazakh government

Legislation on competition

Restrictions on the State's Participation in Commercial Activities

On 22 April 2015, the President signed a law¹¹ restricting the state's participation in commercial activities. The law provides a more clear ground for the establishment of a state-owned entity and its subsidiaries. The amendments replaced the criteria of "public demand in commodity production" in the Law on Competition by a detailed list of cases when the state may participate in commercial activities.

A state-owned entity can be established in the following cases:

- For conducting operations in a sector of economy regarded as a state monopoly;
- For conducting operations in the form of an organisation established to analyse and improve the effectiveness of the national policy;
- For conducting operations in the absence of private entities producing and (or) selling similar or interchangeable commodities on the relevant commodity market;
- For conducting operations in the form of an affiliate of a national management holding established for developing the economy and improving the management of financial organisations and development institutions;
- If directly prescribed by a law, a Presidential decree or a Governmental resolution.

The Government will establish a list of business activities to be performed by state-owned entities and their affiliates. The law prohibits the state from establishing or participating in small enterprises. In addition, the law introduced amendments with respect to share acquisition transactions to the Civil Code and to the Law on Joint Stock Companies:

- A subsidiary may not purchase shares of the parent entity, except for financial organisations entitled to own less than 10 percent of the parent's voting shares¹²;
- Public entities are prevented from crossholding of more than ten percent of shares in circulation¹³;

The law came into effect on 4 May 2015.

Procedures for Detecting Noncompetitive Prices

Orders of the Minister of the National Economy approved the following procedures for detecting noncompetitive prices:

- A procedure for detecting a monopsony low price¹⁴;
- A procedure for detecting a monopolistically high price¹⁵;
- A procedure for detecting a monopolistically low price¹⁶;

The procedures were developed in accordance with Article 30.16 of the Law on Competition and aimed to detect violations of antimonopoly legislation with respect

to establishment of noncompetitive prices. The procedures approved earlier by the Agency for Protection of Competition ceased to be valid. The newly approved procedures are almost identical to the old procedures, except for some minor editorial changes. The orders came into force on 9 May 2015.

Currency regulation

Rules for Currency Transactions

A Resolution¹⁷ of the Board of the National Bank of Kazakhstan introduced amendments restricting acquisitions of foreign currency by Kazakh entities on the local currency market. According to the amendments, a Kazakh entity purchasing foreign currency for the national currency in an amount exceeding the equivalent of USD 100,000 is obliged to provide to the authorised bank a copy of the relevant contract or other document that necessitates the purchase of foreign currency.

The authorised bank selling foreign currency for the national currency is required to verify whether the purpose and amount of the foreign currency indicated on the corresponding application form agree to the contract and/or other documents.

The new rules came into force on 10 May 2015.



¹¹Law No.308-V of the Republic of Kazakhstan, dated 22 April 2015, on Amendments to Certain Legislative Acts of the Republic of Kazakhstan with Respect to a Restriction on the State Participation in Commercial Activities

¹²Point 2 of Article 94 of the Civil Code of the Republic of Kazakhstan (General Part) adopted by the Supreme Board of the Republic of Kazakhstan on 27 December 1994

¹³Article 69 of Law No.415 of the Republic of Kazakhstan, dated 13 May 2003, on Joint Stock Companies

¹⁴Order No.300 of the Minister of the National Economy of the Republic of Kazakhstan, dated 2 April 2015, on Approval of a Procedure for Detecting a Monopsony Low Price

¹⁵Order No.301 of the Minister of the National Economy of the Republic of Kazakhstan, dated 2 April 2015, on Approval of a Procedure for Detecting a Monopoly High Price

¹⁶Order No.302 of the Minister of the National Economy of the Republic of Kazakhstan, dated 2 April 2015, on Approval of a Procedure for Detecting a Monopoly Low Price

¹⁷Resolution No.32 of the Board of the National Bank of the Republic of Kazakhstan, dated 16 March 2015, on Introduction of Amendments and Additions to Resolution No.154 of the Board of the National Bank of the Republic of Kazakhstan, dated 28 April 2012, on Approval of Rules for Foreign Currency Transactions in the Republic of Kazakhstan

Customs regulation

Customs Reporting

In accordance with Articles 30, 58, 353, 364 and 377 of the Customs Code of Kazakhstan, the Ministry of Finance developed and approved¹⁸:

- Rules for the submission of reports by customs representatives to the state revenue authorities;
- Rules for the accounting of acquisitions and realizations of goods in duty free shops and for filing reports on those goods with the state revenue authorities;
- A form of a report on the customs procedure for processing of goods in the customs territory;
- A form of a report on the customs procedure for processing of goods outside the customs territory;
- A form of a report on the customs procedure for processing of goods for an internal consumption.

The corresponding order came into effect on 2 May 2015.

Goods for Personal Use

An order¹⁹ of the Minister of Finance approved criteria to consider goods imported by individuals into the Customs Union as “goods for a personal use”. According to the order, the following goods do not qualify as “goods for a personal use”:

- Raw materials;
- Semi-finished products for manufacturing of goods;
- Spare parts;
- Goods intended for personal use (clothes, footwear, home appliances, etc.), if their quantity exceeds the established limits.

An individual may import goods for the personal use once per month.

The above criteria do not extend to second-hand goods, except for vehicles for personal use. Vehicles imported for a personal use are regarded as vehicles for commercial purposes, if their quantity exceeds one unit per person per year.

Other

New Legislative Acts of the Ministry of Finance

Orders of the Minister of Finance approved:

- A list of goods (works, services) cross-border transactions with which are subject to the state monitoring (hereinafter - the “List for Monitoring”), effective from 20 April 2015²⁰;
- Rules for monitoring of transactions (hereinafter - the “Rules for Monitoring of Transactions”), effective from 27 April 2015²¹;

- Rules for preparing, receiving, issuing, recording, storing and presenting documentation related to transportation of oil products, effective from 23 April 2015²²;
- Forms and rules for the submission and preparation of declarations on oil products turnover, effective from 16 April 2015²³;

These legislative acts replaced similar documents previously approved by Governmental resolutions. The new wording of the documents contain some minor editorial changes. In particular, the List for Monitoring refer to the Classifier of International Trade Activities of the Eurasian Economical Union (instead of the Classifier of the Customs Union). The documents indicate the state revenue authorities (instead of the tax authorities) as the authorized regulatory authorities. In addition, the Rules for Monitoring of Transactions no longer contain provisions:

- Obliging the state revenue authorities to notify a party to a transaction of a deviation of the transaction price from the market price to enable the company to adjust the related tax liabilities;
- Permitting taxpayers to provide detailed information on characteristics of goods (works, services), reputation, transfer pricing methodology, etc., to be reflected on monitoring reports upon a written request of the regulatory authorities.

Amendments to Intellectual Property Legislation

On 7 April 2015, the President signed a law²⁴ amending the following legislative acts regulating intellectual property issues (hereinafter - the “Law”):

- Law “On Copyright and Related Rights;”
- Law “On Protection of Selective Breeding Achievements;”
- “Patent Law of the Republic of Kazakhstan;”
- Law “On Trademarks, Service Marks, and Names of Places of Goods Origin.”

The Law eliminates the concept of “innovation patent.” With respect to innovation patents for which applications were submitted before the enforcement of the Law, the state expert authorities will continue applying the legislative provisions that were in effect before the Law came into force. Innovation patents issued before the Law came into force will be valid until the expiry date of these patents.

The Law modifies some existing definitions and introduces new definitions as follow:

- Eurasian patent – a patent issued in accordance with the Eurasian Patent Convention of 9 September 1994;
- Singaporean Agreement – the Singaporean Agreement on Trade Marks Legislation of 27 March 2006;
- Similar marks – marks or symbols having minor differences in some elements, so that consumers perceive them as identical;

¹⁸Order No.168 of the Ministry of Finance of the Republic of Kazakhstan, dated 11 March 2015, on Approval of Rules for Submission by a Customs Representative of Reports to the State Revenue Authorities, also with Help of Information Technologies, Rules for Accounting of Acquisition and Realization of Goods in Duty Free Shops and Submission of Reports on Those Goods to the State Revenue Authorities and Forms of Reports on Customs Procedures for Processing in/outside the Customs Area and for Internal Consumption

¹⁹Order No.250 of the Ministry of Finance of the Republic of Kazakhstan, dated 31 March 2015, on Approval of Criteria to Treat Goods Imported by Individuals into the Customs Union as “Goods for Personal Use”

²⁰Order No.194 of the Minister of Finance of the Republic of Kazakhstan, dated 19 March 2015, on Approval of the List of Goods (Works, Services) Cross-Border Transactions on which are Subject to the State Monitoring

²¹Order No.176 of the Minister of Finance of the Republic of Kazakhstan, dated 16 March 2015, on Approval of the Rules for Monitoring of Transactions

²²Order No.138 of the Minister of Finance of the Republic of Kazakhstan, dated 27 February 2015, on Approval of Rules for preparing, receiving, issuing, recording, storing and presenting the accompanying notes on oil products

²³Order No.119 of the Minister of Finance of the Republic of Kazakhstan, dated 24 February 2015, on Approval of Forms and Rules for Submission and Preparation of Declarations on Oil Products Turnover

²⁴Law No.300-V of the Republic of Kazakhstan, dated 7 April 2015, on Amendments to Some Legislative Acts of the Republic of Kazakhstan on Intellectual Property

- Identical trademarks – marks or symbols identical in all elements;
- Similar goods or services – goods or services that serve for the same purpose and belong to the same type of goods or services, so that when marked by identical or similar marks, consumers can regard these goods or services as produced by the same producer;

The Law also introduces amendments to:

- Operations of organizations managing property rights;
- Procedures for the examination of applications on the issuance of different patents;
- Procedures for the legal protection and registration of trademarks.

Correspondingly, an order²⁵ of the Minister of Justice introduces amendments to certain legislative acts regulating the procedures for the submission of applications and for the issuance of certificates related to intellectual property.

In addition, the Civil Code was supplemented by a new requirement on registration of a contract on a complex business license (franchising). The Law came into effect on 20 April 2015.

Social Contributions and Obligatory Pension Contributions

A Governmental resolution²⁶ introduced the following editorial changes to the rules for the calculation and remittance of social contributions and obligatory pension contributions:

- The amendments introduce the term *professional mediator*²⁷. Professional mediators calculate and transfer social contributions and mandatory pension contributions similar to individual entrepreneurs and lawyers;
- The state revenue authorities are indicated as the authorized regulatory authorities instead of the tax authorities.

The resolution entered into force on 24 May 2015, except for amendments related to professional mediators, which are effective from 1 January 2015.

²⁵Order No. 158 of the Minister of Justice of the Republic of Kazakhstan, dated 17 March 2015, on Amendments to Some Orders of the Ministry of Justice of the Republic of Kazakhstan on Intellectual Property Issues

²⁶Governmental Resolution No. 255, dated 23 April 2015 on Introduction of Amendments and Additions to Governmental Resolution No. 683, dated 21 June 2004 on Approval of Rules for the Calculation and Transfer of Social Contributions and to Governmental Resolution No. 1116, dated 18 October 2013, on Approval of Rules and Deadlines for the Calculation, Withholding and Transfer of Mandatory Pension Contributions and Mandatory Occupational Pension Contributions to the Unified Accumulation Pension Fund

²⁷Professional mediator – an independent individual hired to settle a dispute or a conflict between parties to achieve a mutually acceptable solution. Activities of professional mediators are regulated by the Law on Mediation



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