

Dear readers,

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

Taxation

Legalization of Russian Tax Residency Certificates

The Government of the Russian Federation approved¹ an agreement between Russia and Kazakhstan on the procedure for the recognition of tax residency certificates for the application of the tax treaty benefits. According to the agreement, tax residency certificates issued and sealed since 1 January 2011 by the competent state authorities of one participating country must be accepted in the other participating country with no special certification, apostillization or consular legalization.

The agreement will come into force after the completion of the ratification procedures (as planned, by the end of 2015).

Tax Audit Rules

To implement Article 37-2 of the Tax Code, the Ministry of Finance developed and approved Rules² for Conducting a Tax Audit and Providing the Auditors' Opinion on Tax Position. According to the rules:

- An audit organization performs a tax audit of a taxpayer upon the taxpayer's request under an agreement concluded between the audit organization and the taxpayer.
- A tax audit may cover the period for which the tax authorities did not conduct a comprehensive tax audit of a taxpayer within the statute of limitation period established by the Tax Code.
- An audit organization may not conduct a tax audit of a company if the audit triggers a conflict of interest for the audit organization under the Law on Audit.
- An audit organization reflects the results of a tax audit in a report prepared in the established form and attaches to the report copies of documentation, calculations, and other materials supporting tax exposures detected in the course of the tax audit.

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¹Order No.1531-p, dated 8 August 2015, On Approval of the Note of the Agreement between the Republic of Kazakhstan and the Russian Federation on the Procedure for the Recognition of Official Documents Confirming Residency in the Frame of Convention for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains

²Order No. 293 of the Minister of Finance of the Republic of Kazakhstan, dated 30 April 2015, On Approval of Rules for Conducting a Tax Audit and Providing of an Audit Opinion on Tax Position

- An audit organization provides a tax audit report to the state revenue authorities at the place of location of the audited taxpayer within five business days after it presents the report to the taxpayer.

Under current legislation, only local small and medium size entities and individual entrepreneurs may engage audit organizations for the final tax audit in the liquidation process. The order came into effect on 15 July 2015.

Taxation of Autonomous Educational Organizations

On 21 July 2015, the President signed a law³ introducing amendments and additions to certain legislative acts regulating activities of autonomous educational organizations. The Tax Code amendments exempt from taxation the following types of personal income:

- Payments from autonomous educational organizations to certain talented students for their participation in educational or academic programs;
- Material benefits in the form of compensations for meal, medical insurance and accommodation in the hostels of autonomous educational organizations.

To simplify the application of income tax benefits, the amendments stipulate that remuneration that an autonomous educational organization pays to a nonresident in the form of royalty or for the provision of works or services is not regarded as a nonresident's Kazakh-source income. Earlier, such remuneration was treated as income exempt from taxation in Kazakhstan.

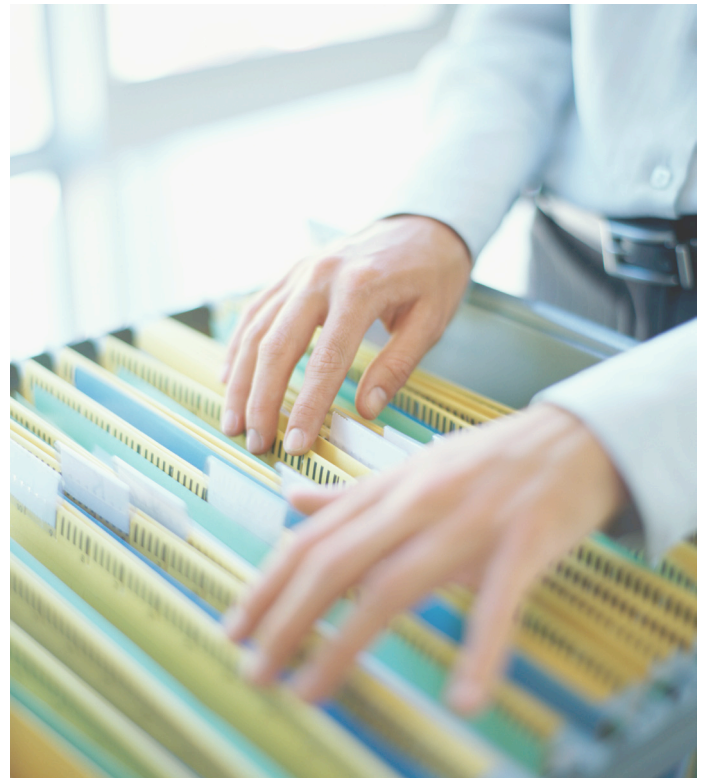
To clarify the VAT treatment of autonomous educational organizations activities, the amendments specify that financing of operations of autonomous educational organizations via purpose-oriented contributions specified in the state budget legislation is exempt from VAT. The turnover is the amount of the contribution, and the date of the turnover is the last day of the month in which an autonomous educational organization receives the contribution. Autonomous educational organizations must record input VAT related to VAT-exempt turnovers separately from turnovers subject to VAT.

The amendments related to taxation of nonresidents will come into effect on 1 January 2016. The amendments related to VAT and taxation of individuals are effective retrospectively - from 1 January 2011 and 1 January 2015, accordingly.

International agreements

Agreement on the Encouragement and Mutual Protection of Investments with Japan

The President signed a law⁴ ratifying the Agreement on the Encouragement and Mutual Protection of Investments between Kazakhstan and Japan.



The agreement stipulates that:

- Each party will provide the other party's investors and investments with business regime that is as favourable as the regime provided to its own investors and investments.
- Each party will immediately publish or make publicly available its legislative acts, court decisions, and international treaties related to investment activities.
- Parties will not expropriate or nationalize the other party's investments or take any measures similar to the expropriation or nationalization.
- Each party will provide free money transfers in and outside of its territory in compliance with the procedures established by local legislation and with no delay.

The agreement will enter into force on the 30th day after the parties receive the last notice on the completion of the required internal procedures.

Kyrgyzstan in the Eurasian Economic Union

The President signed a law⁵ ratifying the Agreement on Accession of Kyrgyzstan to the Eurasian Economic Union. Actual accession of Kyrgyzstan to the Eurasian Economic Union took place on 12 August 2015 after the completion of internal ratification procedures in all member states of the union.

³Law No. 337-V of the Republic of Kazakhstan, dated 21 July 2015, On Changes and Additions to Certain Legislative Acts of the Republic of Kazakhstan Regulating Operations of Autonomous Educational Organizations

⁴Law No. 339-V of the Republic of Kazakhstan, dated 22 July 2015, On Ratification of the Agreement on the Encouragement and Mutual Protection of Investments between Kazakhstan and Japan
⁵Law No. 346-V of the Republic of Kazakhstan, dated 2 August 2015, On Ratification of the Agreement on the Accession of Kyrgyz Republic to the Eurasian Economic Union Agreement, dated 29 May 2014, Minutes on Amendments to the Eurasian Economic Union Agreement, dated 29 May 2014, and Separate International Agreements Being Part of the Law of the Eurasian Economic Union Due to the Accession of Kyrgyz Republic to the Eurasian Economic Union Agreement, dated 29 May 2014, and Minutes on the Terms and Transitional Provisions for Application by the Kyrgyz Republic of the Eurasian Economic Union Agreement, dated 29 May 2014, Separate International Agreements Being Part of the Law of the Eurasian Economic Union and Acts of the Authorities of the Eurasian Economic Union due to the Accession of Kyrgyz Republic to the Eurasian Economic Union Agreement, dated 29 May 2014



Other

Pension Legislation

A new law⁶ introduced amendments and additions to certain legislative acts regulating the pension system.

Starting from 1 July 2017 the procedure for the calculation of the basic pension will change. A basic pension will be granted to an individual upon the retirement and will depend on the time period that the individual participated in the local pension system. If an individual participated in the pension system 10 years or less, the basic pension will be 50 percent of the subsistence level⁷ established for a respective financial year. Each full year of participation in the pension system in excess of 10 years will increase the basic pension by two percent of the subsistence level. The basic pension is capped by the value of the subsistence level. The maximum basic pension will be assigned to individuals with 35 or more years of participation in the pension system.

Participation in the pension system includes:

- Period of employment before 1 January 1998;
- Period during which an individual's employer remitted mandatory pension contributions and (or) the employer's mandatory pension contributions;
- Period during which non-working parents take care of their infant children up to three years from the date of birth for each child but not more than 12 years in total;
- Period of taking care of a disabled child of up to 16 years old;
- Period of military service, service in the special governmental and law enforcement authorities;
- Period of living abroad of spouses of employees of Kazakhstan or international diplomatic services but not more than 10 years in total;
- Period of living of spouses of military men (except for compulsory-duty servicemen) and spouses of employees

of the special state authorities in locations where no employment for the spouses was available, but not more than 10 years in total.

Due to the introduction of the basic pension, the amendments cancel the retirement social allowances.

The law introduces a new component of the accumulative pension system – employer's obligatory pension contributions (EOPC). Starting from 1 January 2018, employers in Kazakhstan must remit EOPC to the Single Accumulative Pension Fund at the rate of five percent of the gross employment income. The EOPC will be borne entirely by employers. The Single Accumulative Pension Fund will record EOPC on nominal pension accounts opened for each employee. EOPC will not represent the property of individuals for which they are paid, so they will not be inherited.

Pension payments from EOPC will be assigned to retired individuals and persons with a continuing disability of the first or second categories, provided that the EOPC for them were remitted for at least 60 months in total. Pension payments from EOPC will be paid for lifetime. Maximum monthly pension payment from the EOPC will be capped by the two times the subsistence level established for the respective financial year.

Effective from 1 January 2016 the state will pay pension benefits to all employees of the state security authorities. An individual's pension benefit will depend on his/her employment period with the state security authorities and his/her salary at the retirement. Therefore, starting from 2016 the state is not required to remit to the Single Accumulative Pension Fund 20-percent mandatory pension contributions for employees of the state security authorities. Fifty percent of the mandatory pension contributions that the state remitted to the Single Accumulative Pension Fund for employees of the state security authorities before 1 January 2016 will be returned to the state budget.

Protection of Ownership Rights

The President signed a law⁸ introducing changes and additions to a number of legislative acts to improve the protection of ownership rights:

- Article 317 of the Civil Code now specifies the terms upon which a violation of a pledged obligation is regarded as minor and the pledge holder's claim is regarded as incommensurate with the value of the pledged property;
- A checklist for a borrower is now a mandatory part of any bank loan agreement with an individual (except for loans issued for a period of a month or less as credit card loans or overdrafts). The checklist must contain the following basic information on the loan:
 - the amount and the currency of the loan,
 - the period of the loan,

⁶Law No.342-V of the Republic of Kazakhstan, dated 2 August 2015, On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Related to Pension Benefits

⁷The value of the subsistence level for 2015 is 21,364 tenge

⁸Law No. 333-V of the Republic of Kazakhstan, dated 17 July 2015, On Changes and Additions to Certain Legislative Acts of the Republic of Kazakhstan to Improve the Protection of Ownership Rights, Assure the Protection of Contractual Obligations and Strengthen the Responsibility for their Violations"

- the number of payments under the loan agreement,
- the type of interest rate (fixed or floating),
- the annual interest rate of the loan in nominal and real effective comparable terms;
- the total amount due under the loan,
- the total amount of interest,
- the amount of a forfeit (fine, interest penalty) for the late payment of the principal and interest,
- the insurance contract extension terms,
- other types of fines and penalties under the loan agreement.

The checklist must be signed by each party to a bank loan agreement and sealed by the bank's corporate stamp.

According to the law, the organisation executing the mandatory deposit insurance by 21 August 2015 must publish in local periodicals information on the commencement of the guaranteed compensation payments specifying the payer of the compensations (an agent bank or the National Post Operator), time and place of the payments or on delay of the payments.

Within six months after the announcement of the guaranteed compensation payments, a depositor of a liquidated bank (participator of the mandatory deposit guaranteeing system) should submit an application for the compensation to the organization executing the guaranteed payments. The payer of the compensations should make the payment within five working days after the application, provided that the depositor's rights to claim the compensation are confirmed.

The law came into effect on 1 August 2015.

Changes in Sales Receipt and Cashbook Forms

The Ministry of Finance introduced⁹ new sales receipt and cashbook forms. The new form of a cash receipt specifies the payment method (cash or payment card) and the total amount of proceeds. The new form of a cashbook contains separate columns for the cash and for the wireless payments. As a result, the new form of the cashbook comprises 35 columns versus 25 columns in the previous version.

The new forms are effective from 12 September 2015.

⁹Order No. 425 of the Minister of Finance of the Republic of Kazakhstan, dated 28 July 2015, On Introduction of Amendments to Order No. 637 of the Minister of Finance of the Republic of Kazakhstan, dated 30 December 2008, On Certain Tax Administration Issues

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