



NewsFlash

Tax&Legal

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Dear readers,

During 2015, a number of laws were adopted that introduced changes in the Kazakhstan tax legislation. In this NewsFlash we outline the most important amendments to the Tax Code.

The majority of the amendments entered into force on 1 January 2016. Some amendments entered into effect before 1 January 2016: either retroactively or due to the amendments introduced to the tax law in 2015. We indicated the effective date next to each retroactive change. For easier analysis, we separately outlined the amendments that will come into effect in future.

This issue will not cover the amendments related to the introduction of personal income tax filing obligations for individuals. We will discuss this topic in a separate special issue of the NewsFlash.

Corporate Income Tax

The cost of a quota for emission of greenhouse gases that a taxpayer receives free of charge under the National Plan for the Allocation of Quotas for the Emission of Greenhouse Gases will be regarded as nil.¹

Deductible expenses on the scientific research and development will include expenses related to acquisitions of exclusive rights to intellectual property from higher educational organizations, scientific institutions or startup companies under a licensing agreement or a contract on assignment of exclusive rights. The corresponding licensing agreement or assignment agreement properly registered with the state authorities will serve as a basis for the deductions.² *This amendment entered into force on 24 November 2015.*

An employer's expenses related to employees' income included in cost of inventory are deductible through cost of such inventory determined under IFRS.³

The amendments increase the maximum limit for a reduction of a taxpayer's taxable income for charity expenses from three to four percent of the taxable income (except for large taxpayers subject to the state monitoring).⁴ *This norm entered into force on 29 November 2015.*

¹ Article 96 (4) of the Tax Code
² Article 108 of the Tax Code
³ Article 110 of the Tax Code
⁴ Article 133 (1) of the Tax Code

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The tax authorities has the right to assess additional amount of advance corporate income tax payments, if they detect an understatement of advance tax payments for the period before the submission of the corporate income tax declaration.⁵

VAT

The amendments specify that an agent's turnover for VAT purposes is the agent's compensation under its agency agreements for a sale or a purchase of goods, works or services on behalf and at the expense of the principal. Similar clarifications were introduced to the Tax Code articles governing commission agreements and freight forwarding agreements.⁶ The amendments also define in a separate Tax Code article a procedure for issuing VAT invoices under commission agreements.⁷

VAT on import of goods is creditable in the tax period in which the importer fulfils its obligations on the payment of the import VAT to the state.⁸

The amendments introduce a procedure for a downward adjustment of input VAT accrued with respect to a taxpayer's purchase of a land plot, if the taxpayer realizes part of the land plot in a VAT-exempt transaction. The adjustment is calculated proportionally to a share of the realized land plot under a specified formula.⁹

Indirect taxes are not applicable to:¹⁰

- Importation of goods into Kazakhstan by individuals for non-entrepreneurial activities.¹¹
- Importation of goods into Kazakhstan from the Customs Union member-states in connection with a transfer of the goods between divisions of a legal entity.

In addition, export of goods from Kazakhstan to the Customs Union member-states in connection with a transfer of the goods within a single legal entity is not subject to VAT.¹² Taxpayers are required to notify the tax authorities about such import (export) of goods in the form and within the deadlines established by the state revenue authorities.

Excise Taxes

According to the amendments, an individual importing excisable goods from the Customs Union member states will be regarded as a payer of excise taxes if the goods are imported for entrepreneurial activities.¹³

The state revenue authorities will establish criteria for regarding goods as goods imported for entrepreneurial activities.¹⁴

Nonresidents Taxation

The Tax Code rules on taxation of income paid to residents of tax haven jurisdictions are no longer applicable to nonresidents' income from certain airport activities specified by Kazakh legislation.¹⁵

The amendments altered the deadline for the provision of a tax residency certificate by a nonresident from treaty country to a Kazakh tax agent. The deadline was shifted from 31 December of the reporting year to 31 March of the year following the year in which the tax agent paid the income to the nonresident or deducted it for corporate income tax purposes.¹⁶ *This norm entered into force retroactively from 1 January 2015.*

The amendments also changed the deadline for the submission of a copy of the foreign tax residency certificate to the tax authorities. The document is due within five calendar days after the filing date the for the fourth quarter tax reports.¹⁷

Taxation of Subsoil Users

The amendments clarify that 50 percent of the subscription bonus that a taxpayer pays after it wins a subsoil use tender or signs a protocol on direct negotiations with the state on the acquisition of the subsoil use rights constitutes the subsoil user's expenses on geological exploration and preliminary works and is subject to capitalisation.¹⁸

A taxpayer's expenses on the construction and liquidation of nonproducing wells are deductible together with the input VAT accrued in connection with these expenses.¹⁹ *This norm entered into force retroactively from 1 January 2009.*

The amendments introduce a procedure for a refund of excess input VAT accumulated during the exploration and development of a deposit before the commencement of the minerals export transactions. A taxpayer claiming the VAT refund must specify the claim on its regular VAT declarations for tax periods following the tax period in which it commences export of the minerals under the corresponding subsoil use contract (except for the common mineral resources, underground waters and therapeutic muds) within the statute of limitation period.²⁰

⁵ Article 141 (3) of the Tax Code

⁶ Articles 233-1 and 233-2 of the Tax Code

⁷ Article 264-1 of the Tax Code

⁸ Article 256 (3) of the Tax Code

⁹ Article 258 (4-3) of the Tax Code

¹⁰ Articles 276-4 (4 and 5) of the Tax Code

¹¹ Criteria of categorization of the goods as goods imported for entrepreneurial activities shall be established by the state revenue authorities

¹² Article 231 (3) of the Tax Code

¹³ Article 278 (1-1) of the Tax Code

¹⁴ Article 279 (4-1) of the Tax Code

¹⁵ Article 192 (1) of the Tax Code

¹⁶ Article 212 of the Tax Code

¹⁷ Articles 212-1 (3) and 212-2 (2) of the Tax Code

¹⁸ Article 111 (1) of the Tax Code

¹⁹ Article 111 (1-2) of the Tax Code

²⁰ Article 273-1 (2) of the Tax Code

The statute of limitation period begins upon the expiry of the tax period in which the export transactions commence. If the export transactions commenced before 1 January 2016, the statute of limitation period begins on 1 January 2016. For the purpose of VAT assessments or adjustments, the statute of limitation period begins upon the expiry of the tax period in which a taxpayer submits the VAT declaration with the VAT refund claim.²¹

The amendments clarify that the object of taxation for the rental tax on export of oil and oil products is crude oil and oil products with codes under sub-position 2709 00 of the Classifier of International Trade Activities.²²

To establish a single method for the calculation of the market crude oil price per metric ton used for the estimation of the tax base for rental tax, the amendments introduce a formula for conversion of barrels to metric tons (the weighted average barrelisation coefficient).²³

For the purpose of ring-fencing of subsoil use contracts, a subsoil user should not include interest expenses to the cost of production and primary processing.²⁴ *This norm entered into force retroactively from 1 January 2009.*

The amendments introduce a formula for the estimation of the production costs of natural gas extracted with crude oil to apply for the separate tax accounting purposes.²⁵

For subsoil use contracts on the extraction of minerals, common mineral resources, underground waters and therapeutic muds the amendments introduce a separate procedure for the calculation of subscription bonus for an extension of the contract area, when mineral reserves on the additional area not approved. The additional subscription bonus is equal to the minimum amount of the initial subscription bonus.²⁶

To support the industrial-innovative operations the amendments establish that for the purpose of mineral extraction tax calculations a subsoil user consuming natural gas in its industrial-innovative activities determines the value of the natural gas as the production cost of the gas determined under IFRS and increased by 20 percent.²⁷

Zero percent mineral extraction tax rate is not applicable to the minerals extracted from the off-balance reserves if a subsoil user sells the minerals (including realization after the primary processing) of. A subsoil user selling such minerals is obliged to pay the mineral extraction tax under the generally established procedure except for the minerals extracted from low-margin deposits. The mineral extraction tax for low-margin deposits would be equal to the royalty calculated under the terms of the corresponding subsoil use contract effective on 31 December 2008.²⁸



²¹ Article 46 (3-2) of the Tax Code

²² Article 300 (1) of the Tax Code

²³ Article 302 (1) of the Tax Code

²⁴ Article 310 (2) of the Tax Code

²⁵ Article 310 (10) of the Tax Code

²⁶ Article 314(5) of the Tax Code

²⁷ Article 334(5) of the Tax Code

²⁸ Article 339 of the Tax Code

The tax base for mineral extraction tax base for underground waters is now the volume of the underground waters that a subsoil user extracted during the tax period. The mineral extraction tax rate for underground waters is the amount of the Monthly Index Factor (hereinafter, the MIF) effective on 1 January of the reporting year per one cubic meter of the extracted underground water.²⁹

The amendments establish the following reduced mineral extraction tax rates for underground waters:³⁰

- extracted for operations of natural monopolies providing water management services (0.1 percent of the established rate)
- extracted for technological and production needs for the extraction and processing of other types of mineral resources (0.3 percent of the established rate);
- extracted for the production and (or) processing of agricultural raw materials (0.3 percent of the established rate);
- considered as technical underground waters (0.3 percent of the established rate);
- considered as drinking underground waters consumed only for daily living needs (0.3 percent of the established rate);
- consumed in the production of beverages and food products (25 percent of the established rate).

A valuation of liquidation obligations that a taxpayer makes under IFRS in connection with the requirements of the Law on the Trunk Pipeline to liquidate the trunk pipelines is not included in the book value of the related assets for the property tax purposes if the taxpayer separately accounts for these obligations.³¹

The amendments exempt from income tax in Kazakhstan dividends paid by a Kazakh subsoil user (except for dividends paid to entities residing in tax havens) if the following conditions are met simultaneously:³²

- the owner of the dividends has held its stake in the Kazakh legal entity for a period exceeding three years as of the date of the declaration of dividends;
- the subsoil user performs a subsequent processing (after the primary processing) of at least 35 percent of the mineral raw materials extracted during 12 months preceding the date of the declaration of dividends on the own production facilities.

The tax exemption relates to dividends paid by a resident legal entity in the form of:

- income on shares, including shares representing the underlying assets of depositary notes, up to 30 percent of the retained earnings reported on

the audited financial statements on the most recent reporting date;

- net income that the entity distributes to its shareholders (participants);
- income from the distribution of the entity's property upon its liquidation or a decrease of the entity's charter capital (via proportional reduction, complete or partial repayment or withdrawal of the participants' stakes) excluding the property that the participants contributed to the charter capital.

The following will be regarded as raw materials sent for a subsequent processing:

- the mineral raw materials consumed in the production of products resulted from any manufacturing process after the primary processing of the raw materials;
- the mineral raw materials consumed in the production of products of the primary processing to be used in the subsequent manufacturing processes.

The abovementioned provisions on the tax exemption of dividends are effective from 1 January 2016 to 31 December 2017.

Monitoring of Large Taxpayers

To perform the monitoring of large taxpayers the state authorities will establish forms of tax registers for:³³

- corporate income tax;
- excess profit tax;
- VAT;
- mineral extraction tax;
- expected results of the financial and operational activities of a large taxpayer for the current and next calendar years.

The state authorities approved the tax registers for 2016 in the form of previous monitoring reports with an extra tax register for the expected financial and operational results.

Large taxpayers subject to the state monitoring are required to submit the monitoring reports in the form of the tax registers by the following deadlines:³⁴

- tax registers for corporate income tax and excess profit tax – annually by 31 March of the year following the reporting year;
- tax register for expected results of the financial and operational activities for the next calendar year – by 1 December of the current calendar year;
- tax registers for VAT and mineral extraction tax - quarterly by 15th day of the second month following the reporting quarter;

²⁹ Articles 341 и 342 of the Tax Code

³⁰ Article 342 of the Tax Code

³¹ Article 397 (2) of the Tax Code

³² Article 71 of the Law on Introduction of the Tax Code

³³ Article 77 (4-2) of the Tax Code

³⁴ Article 624 of the Tax Code

- tax registers for changes in the expected results of financial and operational activities for the current year – by 15 April, 15 July and 15 October of the current year.

A taxpayer newly registered on the list of the large taxpayers subject to the state monitoring is required to submit an initial monitoring report for the expected results of the financial and operational activities for the current year within 30 calendar days after the date of the registration.

The amendments introduce a new Tax Code article regulating the procedure for the monitoring of the large taxpayers.³⁵

Tax Preferences for Certain Organisations

The amendments introduce the following preferential tax regime for organisations implementing strategic investment projects:³⁶

- Exemption from corporate income tax up to 10 years;
- Exemption from land tax up to 7 years;
- Exemption from property tax up to 7 years;
- Stabilisation of rates (if they increase) on taxes, payments and fees to the date of the agreement on investment preferences;
- Application of depreciation rates equal or exceeding 50 percent of the limits established by the Tax Code for the period of the corporate income tax preferences.

In the event of an early termination of an investment contract, the tax preferences will be annulled from the execution date of the agreement on investment preferences. Within 30 calendar days from the termination date of the investment contract, the investor would be required to submit amended tax reports to increase the amount of taxes payable to the state for the tax periods from the date of the execution to the date of the termination of the investment contract.

The amendments introduce a special tax regime for marine vessels registered in the international ship register of Kazakhstan and involved in the international freight transportation. Taxpayers' income from transportation of freight by a marine vessel registered in the international ship register of Kazakhstan is exempt from corporate income tax. These taxpayers are required to separately account for revenues and expenses related to the tax exempt activities.³⁷

Special Economic Zones

The amendments provide for the stability of the tax preferences applicable to the SEZ participants under the current Tax Code. If tax law changes after an entity registers as a participant of the SEZ, the entity will assess and remit land, property and corporate income tax, as well as rental payments for the use of land at the reduced rates applicable to the entity on the date of the entity's registration in the SEZ. The stability of the rates are valid until the expiration of the entity's contract with the state on conducting activities as the SEZ participant, but no longer than the statute of limitation period.³⁸

Allocation of the SEZ participant revenues to the SEZ activities is no longer subject to a review of the local executive authorities or an autonomous cluster fund.³⁹ *This norm entered into force on 9 November 2015.*

The amendments introduced new extended definitions of the qualifying economic activities for all SEZ, except for the Burabay SEZ.⁴⁰

A Kazakh entity's realization of own-produced goods to a subsoil user operating under a product sharing agreement is subject to VAT at a zero-percent rate, if under the product sharing agreement import of these goods is exempt from VAT. Similar provisions of the Tax Code applied to a realization of Kazakhstan-made goods to subsoil users working under subsoil use contracts.⁴¹

The period of an exemption from rental payments for the use of land for the SEZ participants is extended until the expiration of the SEZ operations. Previously, the exemption was valid up to ten years.⁴²

The activities of a company working under a priority investment contract or a strategic investment contract under investment legislation of Kazakhstan cannot be regarded as the SEZ activities.⁴³ *This norm entered into force on 9 November 2015.*

Autonomous Educational Organizations

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.⁴⁴ 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.⁴⁵ Autonomous educational organizations must record input VAT related to VAT-exempt turnovers separately from turnovers subject to VAT.⁴⁶ *These norms entered into force on 1 January 2011.*

³⁵ Article 624-1 of the Tax Code

³⁶ Article 17-2 of the Tax Code

³⁷ Article 135-4 of the Tax Code

³⁸ Article 150 (6) of the Tax Code

³⁹ Article 150 (4) of the Tax Code excluded

⁴⁰ Articles 151-1 (1) – 151-10 (1) of the Tax Code

⁴¹ Article 245 (1) of the Tax Code

⁴² Articles 151-1 (2) – 151-10 (2) of the Tax Code

⁴³ Article 150 (3) of the Tax Code

⁴⁴ Article 253-1 of the Tax Code

⁴⁵ Articles 237 (7-1) and 238 (18-1) of the Tax Code

⁴⁶ Article 260 (3-1) of the Tax Code

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.⁴⁷

The Tax Code amendments exempt from taxation the following types of personal income: *(This norm entered into force retroactively from 1 January 2015.)*:⁴⁸

- 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.

Other Taxes and Payments to the State

According to the amendments, only registered vehicles are subject to vehicle tax.⁴⁹

The amendments stipulate that a legal entity (an individual entrepreneur) actually possessing and exploiting buildings and constructions with no registered property rights is subject to the property tax on these assets on the basis of:⁵⁰

- the act of the state acceptance commission and/or act of acceptance (commissioning) of the completed project – for newly constructed objects;
- civil agreements or other documents provided by Kazakh legislation – in all other cases.

The amendments reduce to 0.1 percent property tax rate for infrastructure facilities of the regional airports (airport buildings and take-off runways, except for Almaty and Astana cities).⁵¹

The amendments increase annual rates of the charge for the use of radio-frequency spectrum for mobile communication (from 1,100 to 2,850 times the MIF) and for 4-G mobile communication (from 2,200 to 2,650 times the MIF).⁵²

Individuals Taxation

To enforce the payment of personal income tax, the amendments permits the tax authorities to apply indirect methods of assessment of an individual's income.⁵³

An individual realizing a vehicle is required to pay the vehicle tax for the actual period of possession of the vehicle before the state registration of the ownership change on the vehicle. Thus, each taxpayer is required to pay the vehicle tax for his (her) period of possession of the vehicle.⁵⁴

Individuals are required to pay vehicle tax to the tax authorities at the place of residence.⁵⁵

Other

The amendments introduce changes to wording of the Tax Code in connection with the merger of the tax authorities and the customs authorities into the state revenue authorities.

If an entity changes the head of the company or the head of a business unit of the company, the head of the company is required to personally submit to the tax authorities the corresponding tax application on the changes in the company's registration data. An obligation to personally submit a tax application is not applicable to entities that are not payers of value added tax and to participants of e-invoicing information system.⁵⁶

Upcoming Changes

Changes to be effective from 1 April 2016

The head of an entity subject to VAT registration will be required to personally submit the tax application for VAT registration to the tax authorities at the location of the entity.⁵⁷

The tax authorities will issue VAT certificates in electronic format. The document will be certified by an electronic digital signature of a tax official of the registering tax authorities.⁵⁸

Changes to be effective from 1 January 2017

The amendments introduce a definition of an accompanying consignment note for goods. It will be an electronic document designed to control movements of imported goods from date of importation to Kazakhstan until its realization to the final customers. The rules for the preparation and use of the accompanying consignment notes, as well as the form of the document will be approved by the revenue state authorities.⁵⁹

⁴⁷ Articles 192 (2) and 193 (5) of the Tax Code

⁴⁸ Article 156 (1) of the Tax Code

⁴⁹ Article 366 (1) of the Tax Code

⁵⁰ Article 395 (7) of the Tax Code

⁵¹ Article 398 (3) of the Tax Code

⁵² Article 514 (2) of the Tax Code

⁵³ Article 643 (4) of the Tax Code

⁵⁴ Article 369 (3) of the Tax Code

⁵⁵ Article 369 (3-1) of the Tax Code

⁵⁶ Article 563 (2-1) of the Tax Code

⁵⁷ Article 568 (6) of the Tax Code

⁵⁸ Article 570 (1) of the Tax Code

⁵⁹ Article 12 (46-1) of the Tax Code

The minimum turnover requiring the VAT registration will be 3 234 times the MIF established on 1 January of the corresponding year.⁶⁰ A voluntary VAT registration will be cancelled.⁶¹

In connection with the obligatory transition to e-invoicing, hard-copy VAT invoices will be cancelled. A taxpayer would be permitted to issue a hard-copy VAT invoice only if it cannot issue an electronic VAT invoice because of technical problems with VAT software confirmed by the state tax authorities.⁶²

The amendments increase the maximum amount of annual income exempt from taxation for certain socially vulnerable categories of individuals from 55 to 75 times minimum salary established on the beginning of the year.⁶³

The tax authorities will estimate the value of the property for individuals' property tax purposes on the basis of data provided by the authorised state authorities appointed by the Government.⁶⁴ The taxable base for individuals' property tax purposes will not include construction in progress.⁶⁵

The deadline for the payment of land tax and property tax for individuals will be shifted from 1 October of the current year to 1 September of the year following the reporting period.⁶⁶

If a legal entity or an individual entrepreneur performs an appraisal of immovable property in accordance with legislation on appraisal activities, the tax base of the appraised property for the property tax purposes will be the market value of the property determined in the appraisal report. The tax base should be not less than the average annual book value of the property determined under IFRS and requirements of Kazakh accounting and financial reporting legislation.⁶⁷

The base rates of the charges for emissions resulted from flaring of associated and/or natural gas will be increased by 20 times. The amendments cancel the tenfold increase coefficient applicable to base rates in case of excess emissions and twentyfold increase coefficient applied by the local representative authorities (Maslikhats).⁶⁸

The amendments obligate a lessor of trade facilities or trade places in trade facilities to file a register of the lease agreements with the tax authorities at the lessor's location by 31 March of the year following the reporting year. The register will reflect information on the lessees, lease charges, and the rented facilities.⁶⁹



⁶⁰ Article 568 (5) of the Tax Code

⁶¹ Article 569 of the Tax Code excluded

⁶² Articles 256 and 263 of the Tax Code

⁶³ Article 156 (13 and 13-2) of the Tax Code

⁶⁴ Article 406 (1) of the Tax Code

⁶⁵ Article 405 of the Tax Code

⁶⁶ Articles 391 (3) and 409 (7) of the Tax Code

⁶⁷ Article 397 (1-2) of the Tax Code

⁶⁸ Article 495 (3) of the Tax Code

⁶⁹ Article 67-1 of the Tax Code



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