



Dear readers,

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

Tax Exposures Risk Criteria

A joint order of the Minister of Finance and the Minister of the National Economy approved new criteria¹ for the assessment of tax exposure risks to identify taxpayers that should be audited within a particular year. The new criteria exclude an exemption from scheduled tax audits for small-size enterprises during three years after the registration. Any individual or an entity paying taxes or other obligatory payments to the state is subject to the risk assessment review (the previous document exempted from the review noncommercial organizations and taxpayers operating under a special tax regime).

The number of the risk assessment criteria reduced from seven to four. Only two criteria out of the seven previous criteria are included in the new document (operations with fictitious entities and comparison of the tax burden coefficient with the industry-average tax burden coefficient). Two of the four criteria are new:

- The ratio of the total deductions to the aggregate annual income before adjustments is more than 98 percent. This criterion applies to taxpayers with the total annual income before adjustments of more than 30,000 times monthly index factor;
- A period not covered by a comprehensive and (or) a targeted tax audit is equal to or more than four years. This criterion applies to subsoil users operating under the production sharing agreements.

The previous risk assessment system defined the degree of risk for an entity on the basis on the number of points assigned to each triggered criterion. The new document does not provide a detailed procedure for the assessment of the degree of risk (a distinctive factor) for each criterion. The state revenue authorities will assign a distinctive factor (from 10 to 100) to each triggered criterion. The value of the assigned distinctive factor will depend on the degree of the risk and the magnitude of the problem, recurrence of the breach and analysis of the available information. In addition, the revenue authorities will assign each criterion a priority (from 1 to 5) to calculate a coefficient of importance for the triggered criterion.

The overall risk index of the taxpayer (SP) is the sum of the products of the distinctive factors (K) and coefficients of importance (KB) of all triggered criteria under the following formula:

$$SP = KB_1 * K_1 + \dots + KB_n * K_n, n - \text{the number of the triggered criteria}$$

To determine the overall risk index for a taxpayer the state revenue authorities will use the criteria listed above and criteria regarded as confidential.

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¹Joint order No. 687 of the Minister of Finance of the Republic of Kazakhstan, dated 25 December 2015, and No. 840 of the Acting Minister of the National Economy of the Republic of Kazakhstan, dated 31 December 2015, On approval of criteria for the estimation of risks in the area of the state control on taxes and other obligatory payments to the state and on completeness and timeliness of obligatory pension contributions to the Single Cumulative Pension Fund and social contributions to the State Social Insurance Fund

The overall risk degree is regarded as high, if it falls in the range of 25 to 100, inclusively. Risk index from zero to 25 is regarded as not high. Taxpayers with the high degree of risk can be selected for a tax audit. Other taxpayers are not subject to a tax audit. Previously, 20 percent of the total number of tax audits were allocated to taxpayers with the medium and low degree of risk.

The order entered into effect on 18 February 2016. As the order came into force, the previous criteria ceased to be valid.

Tax Treaty with the Czech Republic

On 18 February 2016, the President signed a law² ratifying the protocol on changes and additions to the Convention on the Avoidance of Double Taxation and the Prevention of Evasion from Taxes on Income between Kazakhstan and the Czech Republic (hereinafter – the Convention).

Below we outline the most important changes that the law introduced to the Convention:

- The amendments clarify that any place of exploration of natural resources (not only extraction) is regarded as a permanent establishment of an entity conducting these activities. In addition, the amendments supplemented “Permanent Establishment” Article with terms under which activities of an associated entity or an independent agent is considered as a nonresident’s activities and could lead to a permanent establishment of the nonresident if these activities last for more than 12 months.
- “Business Profits” Article now contains a list of payments from the head office or any subdivisions of an entity to the entity’s permanent establishment which are tax-exempt for the permanent establishment. The list is similar to the list of payments from a permanent establishment to the head office or any subdivision of the entity (for example, royalties, fees or other similar payments) which are nondeductible for the permanent establishment.
- The amendments eliminated a tax exemption for capital gains on shares traded on a stock exchange.
- “Other Income” Article now contains a clause stating that income not mentioned in other articles of the Convention can be taxed in the country of origin.
- In “Exchange of Information” Article, the amendments extended the competent authorities obligations to provide information necessary to implement the provisions of the Convention or national legislation.

The protocol will come into effect after Kazakhstan and the Czech Republic receive the final diplomatic notes to inform each other about the completion of necessary internal procedures.



Government for Citizens

On 1 March 2016, the following state enterprises were merged³ in a non-profit joint stock company the State Corporation “Government for Citizens” (hereinafter - the “Corporation”):

- Public Service Center,
- Immovable Property Center,
- Scientific-Production Center of Land Registry,
- The State Pension Payments Center.

The state is the sole shareholder of the Corporation. The Corporation provides public services previously provided by the reorganized enterprises in “one stop shop” format and arranges the provision of public services in electronic form.

Customs Duty on Export of Crude Oil

An order⁴ of the Ministry of the National Economy introduced progressive export customs duty rates depending on the average market prices for crude oil for a preceding period. The preceding period is a period from the 20th day of the month two months before the month of application of the export duty rate to the 20th day of the month preceding the month of application of the export duty rate. The maximum export duty rate of USD 236 per ton corresponds to the average crude oil price of USD 185 per barrel. Export duty will not apply (zero rate) to the exportation of crude oil if the average crude oil price is below USD 25 per barrel.

The authorized state authorities calculate the average crude oil price for a preceding period on a monthly basis and publish the calculated price on its official website by the 25th day of the month preceding the month of application of the corresponding export duty rate. Exporters apply the established export duty rate for one month.

The order also decreased an export duty rate for fuel oil (from USD 60 to USD 30 per ton) and approved a procedure for the calculation of export duty rates for certain oil products. According to the procedure, an exportation of certain oil products is not subject to export customs duty if the average price of crude oil is below USD 187.5 per ton.

²Law No. 453-V of the Republic of Kazakhstan on the Ratification of the Protocol on Changes and Additions to 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 Czech Republic, dated 18 February 2016

³Governmental Resolution No.39, dated 29 January 2016, On Establishment of Nonprofit Joint Stock Company the State Corporation “Government for Citizens”

⁴Order No. 81 of the Minister of the National Economy of the Republic of Kazakhstan, dated 17 February 2016, On Approval of the List of Goods Subject to Export Custom Duties, Duties Rates and Terms, and Rules for the Calculation of Export Duties on Crude Oil and Oil Products

Attraction of Expatriate Employees to Special Economic Zones (SEZ)

The state introduced rules⁵ for the determination of the list of professions and the number of employees exempt from work permits for companies operating in SEZ. Participants of SEZ apply to the SEZ management to include their qualifying expatriate employees on the list of individuals exempt from quotas and work permits requirements under Article 11 of the Law “On Population Employment.” An applicant attach to the application a table containing information on the qualifying expatriate employees and implemented projects.

Within three business days after the submission of an application, the SEZ management provides the application for the consideration of the interdepartmental commission. The interdepartmental commission considers the application within five business days after the receipt of the documents from the SEZ management. For each applicant the commission makes a separate decision and documents it on the minutes signed by the participating members of the commission. The commission can refuse to include expatriate employees on the list if the employees’ education level (technical knowledge) and experience do not meet qualification criteria specified in labour legislation of Kazakhstan.

The SEZ management provides the decision of the interdepartmental commission to an applicant (SEZ participant) within five calendar days after the SEZ management receive it.

The rules came into effect on 21 March 2016.



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⁵Joint Order No. 5 of the Acting Minister of Health and Social Development of the Republic of Kazakhstan, dated 6 January 2016, and No. 46 of the Minister of Investment and Development of the Republic of Kazakhstan, dated 22 January 2016, On Approval of Rules for Determination by Interdepartmental Commission of the List of Professions and the Number of Expatriate Individuals Employed by Companies-Members of SEZ working on Projects with the Total Project Value of Over One Million Times Monthly Index Factor and by their Contractors During One Year after the Commissioning of the Constructed Facilities

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