

Dear readers,

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

Taxation

Tax Burden Coefficient

The Ministry of Finance approved a procedure¹ for the calculation of the tax burden coefficient for taxpayers (tax agents). The coefficient is calculated as a ratio of the assessed tax liabilities and other obligatory payments to the state to the aggregate annual revenue of a taxpayer without adjustments provided by Article 99 of the Tax Code. The following taxes are not included in the taxes and other obligatory payments for the calculation of the coefficient:

- Income tax withheld at the source of the payment;
- Indirect taxes paid for an importation of goods;
- VAT if the total annual VAT due to the state is less than an excess input VAT resulted for the year.

Statistical data on average tax burden coefficients for various industries are provided in an attachment to the Tax Risk Management Criteria².

Realization on a Permanent Basis for VAT Purposes

A governmental resolution³ introduced changes to the definition of realization on a permanent basis for VAT purposes. The new wording of the definition states that realization of goods, works and services subject to zero-rate VAT are regarded as realization on a permanent basis if it takes place at least once per quarter for three consequent quarters. The definition also establishes that the realization in each such quarter will be regarded as realization on a permanent basis.

The resolution entered into force on 24 February 2015.

Changes to Legislation on Precious Metals and Precious Stones

The President signed a law⁴ on changes to legislation on precious metals and precious stones.

The amendments introduced to the definition of investment gold in the Tax Code:

- Eliminated a requirement to have a certificate or other document confirming the compliance of the gold to the national or international quality standards;

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¹Order No. 691 of the Minister of Finance, dated 28 December 2015, On Approval of Rules for the Calculation of the Tax Burden Coefficient for Taxpayers (Tax Agents)

²Joint Order No. 468 of the Minister of Finance and No. 302 of the Acting Minister of the Economy Development and Trade, dated 16 September 2011, On Approval of Criteria for Risk Management in Private Entrepreneurial Sphere in Connection with Compliance with Tax and Other Legislation Requirements Monitored by the Tax Authorities

³Governmental Resolution No. 29, dated 27 January 2016, On Amendments to Governmental Resolution No. 373, dated 20 March 2009, On Approval of Rules for the Calculation of Excess Input VAT Refundable from the State and Criteria for Treatment of Realization of Goods, Works and Services Subject to Zero-Rate VAT as Realization on a Permanent Basis

⁴Law No. 445, dated 14 January 2016, On Amendments and Additions to Certain Legislative Acts of Kazakhstan on Precious Metals and Precious Stones

- Eliminated a clause under which the coins of the national currency were not recognized as investment gold for taxation purposes;
- Stated that gold in the form of ingots and plates must conform to national and international standards and established certain labeling requirements for them.

The law changes the conditions under which a realization of investment gold is exempt from VAT as follows:

- It excluded restrictions on the weight and value of the realized gold;
- The VAT exemption applies only to a realization of gold in the form of ingots and plates (exemption will not more apply to golden coins of the National Bank of Kazakhstan);
- A transaction is exempt from VAT if a second-tier bank or a professional participant of the securities market is a party to the transaction or the transaction is concluded on the stock exchange.

The amendments eliminated a clause in the Law on the National Bank of the Republic of Kazakhstan establishing the priority right of the state for the purchase of refined gold for replenishment of the state's precious metals assets.

The amendments supplemented the Code on Administrative Violations with articles establishing administrative penalties for a violation of legislation requirements on import and export of jewelry and other goods made from precious metals or precious stones to/from Kazakhstan.

The law entered into force on 7 February 2016, except for some provisions. Amendments to the Tax Code entered into force on 1 January 2016. Provisions on administrative penalties for a violation of law requirements on realization of jewelry and items made of precious metals and precious stones will come into effect on 16 July 2016 (six months after the official publication of the law).



Social insurance

Obligatory Social Medical Insurance

Under a newly adopted Law on Obligatory Social Medical Insurance⁵, the state established the Social Medical Insurance Fund (the "Fund"). Kazakh citizens and foreigners with a permit for permanent residence in Kazakhstan will receive the Fund's medical insurance package, provided that the obligatory medical insurance contributions were remitted for them.

The contributions consist of two components: employer's contributions borne by the employer and individual's contributions withheld by legal entities from income payable to individuals. Employers in Kazakhstan will bear responsibility to assess and withhold the obligatory medical insurance contributions from salaries and payments to individuals under service contracts. Employers are required to remit the total amount of the contributions to the Social Medical Insurance Fund on a monthly basis. Self-employed individuals must make contributions for themselves. The state will make contributions for certain categories of socially vulnerable citizens (e.g. children, retired individuals, and women on maternity).

The taxable base for the state's contributions will be the average monthly salary determined by the competent state statistical agency for the year preceding two financial years of the current year. The taxable base for the employer's and employee's contributions include gross salaries and other benefits that individuals earn under labor contracts or service agreements. The gross monthly income subject to the obligatory medical insurance contributions is capped at 15-times minimum monthly salary.

The obligation to remit the social medical insurance contributions to the Social Medical Insurance Fund will start from 1 January 2017. Rates for the obligatory medical insurance contributions will gradually increase from 2017 to 2024 as follows:

Period	Employer's contributions, %	Employee's contributions, %	Self-employed contributions, %	State contributions, %
01.01.2017	2	-	2	-
01.07.2017	2	-	2	4
01.01.2018	3	-	3	5
01.01.2019	4	1	5	5
01.01.2020	5	2	7	5
01.01.2023	5	2	7	6
01.01.2024 onward	5	2	7	7

⁵Law No.405-V of the Republic of Kazakhstan, dated 16 November 2015, On Compulsory Social Medical Insurance

Finance

Procedure for the Calculation of Exchange Rates

The National Bank introduced amendments to a procedure⁶ for the calculation of the market exchange rate. Now the market exchange rate is calculated as follows:

1. For US dollar – as the average exchange rate of tenge to US dollar formed at 15-30 of Astana time according to the results of the morning (main) and day (optional) sessions of the Kazakhstan Stock Exchange;
2. For other foreign currencies - as the cross-rate calculated at the market exchange rate of US dollar to tenge and other foreign currency rates to US dollar established at 16-00 of Astana time according to news agencies information.

Earlier, the market exchange rate for US dollar was determined per the results of the morning (main) session at 11-00 of Astana time. The National Bank introduced similar changes to the procedure for the calculation of the official exchange rates.

The amended rules for the calculation of the official exchange rates entered into effect on 4 January 2016. The amendments to the procedure⁷ for calculation of the market exchange rates came into effect on 1 February 2016.

Astana International Financial Center

On 7 December 2015, the President signed a Constitutional Law⁸ on Astana International Financial Center (hereinafter - the "Constitutional Law").

Astana International Financial Center (hereinafter – the "Center") – a territory in Astana city with the defined borders determined by the President and with a special legislation regime. The purpose of the Center is to create a leading international financial services center.

Law of the Center

Law of the Center will be based on the Constitution of Kazakhstan and will consist of:

- The Constitutional Law;
- The Center Acts not contradicting the Constitutional Law;
- Effective legislation of Kazakhstan applicable to the extent not regulated by the Constitutional Law and the Center Acts.

International agreements ratified by Kazakhstan will prevail over legislation of the Center.

Governing Organizations of the Center

Management Board of the Center - permanently acting collegial organization headed by the President of Kazakhstan. The Board will establish the development strategy of the Center and will adopt acts of the Center on issues that the

Constitutional Law would refer to the Board's competence. The Board will establish requirements for participants of the Center, procedures for their accreditation and licensing, permitted activities, procedures for the establishment and registration of legal entities in the Center.

Administration of the Center – a joint stock company established by the National Bank of Kazakhstan. The Administration will organize and manage the Center environment for organizations and participants of the Center and their employees and represent their interests within its competence. The Administration will adopt acts in the form of regulatory norms on issues not related to financial services of the Centre.

The Committee on the Regulation of Financial Services – a legal entity regulating financial services and related activities in the Center. The Committee will adopt acts in the form of regulatory norms on financial services in the Center. The Committee will perform registration, accreditation and licensing of participants of the Center and will monitor their activities.

The Court of the Center will be outside of the judicial system of Kazakhstan and will not carry criminal or administrative cases. The Court of the Center will have an exclusive right to hear and resolve disputes:

- Between participants of the Center, organizations of the Center and/or their expatriate employees;
- Related to any transaction executed in the Center and governed by the Center law.

International Arbitration Centre will deal with disputes where parties concluded an arbitration agreement.

Governing Organizations of the Centre will be independent in their activities within their authorities.

Foreign Currency Regime

Foreign currency regulations of Kazakhstan will not apply to transactions that participants of the Center execute in the Center. Acts of the Center can establish requirements to the Center participants to provide the Committee on the Regulation of Financial Services with certain information on the executed foreign currency transactions.

Taxation

Tax regime in the Center will be regulated by the effective Tax Code except for the following tax preferences:

- Organizations of the Center will be exempt from corporate income tax until 1 January 2066, subject to certain requirements established by the Management Board of the Center;
- Participants of the Center will be exempt from corporate income tax until 1 January 2066 on income received from the provision of certain financial services in the Center;

⁶Resolution No.193 of the Board of the National Bank of the Republic of Kazakhstan, dated 20 October 2015, and Order No.626 of the Minister of Finance of the Republic of Kazakhstan, dated 8 December 2015, On Amendments to Resolution No.15 of the Board of the National Bank of the Republic of Kazakhstan, dated 25 January 2013, and Order No. 99 of the Minister of Finance of the Republic of Kazakhstan, dated 22 February 2013, On the Procedure for the Determination and Application of Market Exchange Rates

⁷Resolution No.192 of the Board of the National Bank of the Republic of Kazakhstan, dated 20 October 2015, On Amendments to Resolution No. 242 of the Board of the National Bank of the Republic of Kazakhstan, dated 24 August 2012, On Approval of Rules for Calculation the Official Exchange Rates of the National Currency of the Republic of Kazakhstan to Foreign Currencies

⁸Constitutional Law № 438-V, dated 7 December 2015, On Astana International Financial Center

- Participants of the Center will be exempt from corporate income tax until 1 January 2066 on income received from the provision of legal, audit, accounting, consulting services to organizations of the Center and participants of the Center qualifying for income tax exemption;
- A separate act will establish the procedure for the separate accounting of revenues and expenses related to the tax-exempt activities;
- Expatriate employees of participants or organizations of the Center will be exempt from personal income tax until 1 January 2066 on employment income received from the organizations or participants of the Center qualified for income tax exemption;
- Legal entities and individuals will be exempt from income tax on income received in connection with:
 - Gains on sales of securities listed on the Kazakh stock exchange on the date of the realization;
 - Gains on sales of stakes or shares in legal entities registered under the law of the Center;
 - Dividends and interests on securities listed on the Kazakh stock exchange on the date of accrual of the dividends or interests;
 - Dividends on stakes or shares in legal entities registered under the law of the Center.

Organizations and participants of the Center qualifying for income tax exemption will be exempt from property and land tax on objects located in the Center.

Tax administration and relationships with the state revenue authorities on taxation of organizations and participants of the Center will be regulated by joint acts of the Center and the state revenue authorities.

Visa Requirements

Foreign nationals arriving in Kazakhstan to carry out activities in the Center will receive entry visas in Kazakhstan embassies or consulates or upon arrival in the international airports of Kazakhstan. Expatriate employees of organizations and participants of the Centre and their family members will receive entry visas valid for up to five years. Extension of the above-mentioned visas upon a request of the Administration of the Center can be performed without exiting Kazakhstan in accordance with legislation of Kazakhstan.

Terms and procedures for entry and exit to / from Kazakhstan of foreign nationals arriving to Kazakhstan to carry out activities in the Centre will be agreed between the organizations of the Centre and the relevant state authorities of Kazakhstan.

Starting from 1 January 2017 citizens of OECD member countries, the UAE, Malaysia, Singapore, Monaco, and other countries defined by the Government of Kazakhstan will be exempt from Kazakh visa requirements, provided that their stay in Kazakhstan would not exceed 30 calendar days.



Attraction of Expatriate Employees

Expatriate employees of organizations and participants of the Center are exempt from Kazakh work permit requirements. Participants and organizations of the Center must obtain and keep documents confirming high qualification of each attracted expatriate employee. The Committee on the Regulation of Financial Services will establish a list of documents confirming high qualification of an expatriate employee.

The Administration of the Center will keep records on expatriate employees attracted by organizations and participants of the Center. The Administration of the Center will provide information on the attracted expatriate employees to the relevant state migration authorities.

Language of the Center

English will be the official language of the Center. It will be used in all spheres of public relationships in the Center. Judicial proceedings, preparation of statistical, financial, technical and other documents will be carried out in English.

Effective Dates

The Constitutional Law entered into effect on 20 December 2015, except for provisions entitling citizens of certain countries on visa-free entry into Kazakhstan. These provisions will enter into force on 1 January 2017. The Constitutional Law annulled the Law on regional financial center of Almaty.

The organizations of the Centre will develop and adopt acts necessary for the start of Centre activities within two years after the Constitutional Law came into force.

Amendments to the Decree on Astana International Financial Center

Amendments⁹ to the Decree on Astana International Financial Center cancelled a movement of the National Bank to Astana.

The amendments also introduced the following changes in connection with the adoption of the Constitutional Law:

- A creation of a special economic zone Astana International Financial Center was cancelled;
- The National Bank is required to manage the creation of the Center Committee (a legal entity regulating financial services and related activities in the Center);
- Upon the state registration of a joint stock company aimed to organize the environment of the Center (the Administration of the Center), the National Bank is required to manage a transfer of the company's shares to the Ministry of Finance of Kazakhstan.

The amendments entered into force on 25 December 2015.

Environmental legislation

Extended obligations of producers (importers)

The law¹⁰ on industrial innovation policy introduced extended obligations of producers (importers) (hereinafter – the “EOP”). The EOP are the obligations of individuals and legal entities to dispose of waste (including the packing) generated when the goods produced or imported by the individuals or legal entities lose its utility properties.

The Ministry of Energy approves the list of products subject to the EOP¹¹. The effective list includes motor vehicles, tires, batteries, motor oils and brake fluids.

The Government appointed an entity to act as the EOP Operator¹² to manage collection, shipment, processing, decontamination, usage and/or recycling of waste resulting from goods subject to the EOP and the packing of these goods. The Government also approved¹³ rules for the realization of the EOP.

Individuals and legal entities subject to the EOP can use one of the following two methods to dispose of waste:

- By using an own system of the waste collection, processing and recycling requirements to which are approved by the Ministry of Energy¹⁴. This option is not applicable to producers and importers of vehicles;
- By concluding a contract on the waste disposal with the EOP Operator and paying the waste disposal charges to a bank account of the EOP Operator. The Ministry of Energy establishes a procedure for the calculation to the waste disposal charges¹⁵.

Taxpayers (except for producers and importers of vehicles) having contracts with the EOP Operator remit the charges to the EOP Operator by the following deadlines:

- Producers – by the 25th day of the month following the reporting quarter, if the production occurs in the reporting quarter;
- Importers of goods from the countries outside of the Eurasian Economic Union – before a release for the domestic use;
- Importers of goods from the Eurasian Economic Union - before realization of the goods.

Producers and importers of vehicles are required to remit the charge prior to an initial registration of a vehicle. If a taxpayer sells a vehicle prior to its initial registration, the taxpayer must pay the charge before the sale.

The EOP are regarded as fulfilled:

- For taxpayers having contracts with the EOP Operator – upon the payment of the charges to the EOP Operator;
- For taxpayers using their own waste collection system – upon the date of submission to the EOP Operator of documents confirming the waste disposal in accordance with the state-established¹⁶ procedures. The proper fulfillment of the waste disposal obligations is subject to an approval of the EOP Operator.

The Code on Administrative Violations was supplemented by provisions establishing administrative penalties for a violation legislation requirements related to the EOP.

The EOP provisions came into effect on 1 January 2016.



⁹Presidential Decree No. 144, dated 25 December 2015, On Amendments and Additions to Presidential Decree No. 24, dated 19 May 2015, On Astana International Financial Center and a Relocation of the National Bank of Kazakhstan to Astana City

¹⁰Law No. 407-V of the Republic of Kazakhstan, dated 17 November 2015, On Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Industrial Innovation Policy

¹¹Order No. 695 of the Acting Minister of Energy of the Republic of Kazakhstan, dated 4 December 2015, On Approval of the List of Goods subject to the EOP

¹²Governmental resolution No. 1137, dated 30 December 2015, On Appointment of the EOP Operator Company

¹³Governmental resolution No. 28, dated 27 January 2015, On Approval of the Rules for Realization of the EOP

¹⁴Order No. 761 of the Minister of Energy of the Republic of Kazakhstan, dated 25 December 2015, On Approval of Requirements for an Own System for Waste Collection, Processing and Recycling

¹⁵Order No. 762 of the Minister of Energy of the Republic of Kazakhstan, dated 25 December 2015, On Approval of a Procedure for the Calculation of Charges for Waste Collection, Shipment, Processing, Decontamination, Usage and/or Recycling

¹⁶Order No.708 of the Minister of Energy of the Republic of Kazakhstan, dated 10 December 2015, On Approval of Rules for the Submission of Documents by Companies Having an Own System of Waste Collection, Processing and Recycling to the EOP Operator to Confirm the Collection, Processing and/or Recycling of the Waste Resulted from Goods Subject to the EOP

Subsoil use

Natural Gas Pricing Methodology

In accordance with the provisions¹⁷ of the Transfer Pricing Law, the Government approved¹⁸ natural gas pricing rules. The rules set a formula for the calculation of the natural gas sales price under sale-purchase transactions subject to transfer pricing regulations, except for natural gas swaps. The resolution came into effect on 7 December 2015.

Decrease of the Customs Duty on Export of Crude Oil

On 22 January mass media officially published an order of the Minister of the National Economy of Kazakhstan reducing the customs duties on export of crude oil (code 2709 00 900 9 in the Classifier of International Trade Activities) from USD 60 to USD 40 per ton. The order states that this rate will be effective until 31 December 2016 inclusively. The order came into effect after the publication day and applies to transactions executed from 1 January 2016.

News sources report that the state plans to introduce progressive export duty rates that will depend on the market prices for crude oil starting from 1 March 2016.

¹⁷Sub-clause 3), Clause 10, Article 10 of the Law of the Republic of Kazakhstan, dated 5 July 2008, On Transfer Pricing
¹⁸Governmental Resolution No. 892, dated 12 November 2015, On Approval of Rules (Methodology) for Natural Gas Pricing



Contact us

Rustem Sadykov
Partner,
Head of Tax&Legal
E: rsadykov@kpmg.kz

Inna Alkhimova
Partner
Tax&Legal
E: ialkhimova@kpmg.kz

KPMG in Kazakhstan

Almaty office
180 Dostyk Avenue
Almaty 050051
T: +7 727 298 08 98
F: +7 727 298 07 08
E: company@kpmg.kz

Astana office
Samal 12
Astana 010000
T: +7 7172 55 28 88
F: +7 7172 55 28 00
E: company@kpmg.kz

Atyrau office
34A Satpayev Street
Atyrau 060011
T: +7 7122 55 62 00
F: +7 7122 55 62 02
E: company@kpmg.kz

www.kpmg.kz

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