

Doing Business in Kazakhstan: Tax and Legal Highlights

The tax and legal environment in Kazakhstan continues to change rapidly. The changing environment creates challenges, uncertainty and complexity with respect to doing business in Kazakhstan. Our goal is to facilitate tax compliance and improve business performance by providing guidelines to cope with changes in tax and legal issues.

Below we outline some of the key tax and legal issues that are important for those who are planning to do business in Kazakhstan. We hope the information in this publication will be beneficial to your company. For more detailed information specific to your particular tax situation, please contact a KPMG tax advisor.



Certain Legal Considerations

Business Structures

The Civil Code and related laws in Kazakhstan permit both local and foreign entities a high degree of flexibility in structuring their business activity in Kazakhstan. Available business structures include a representative office, a branch office, a legal entity, and a simple partnership of companies (or consortium). As a general rule, the law does not discriminate between domestically-owned legal entities and Kazakhstan subsidiaries of foreign legal entities. The most common forms of organization of a legal entity are a limited liability company (LLC) and a joint stock company (JSC).

Currency Regulations

The national currency, the tenge, is freely exchangeable within Kazakhstan, and few restrictions are placed on the import and export of foreign currency to and from Kazakhstan. Foreign currency transactions between residents are prohibited, with certain exceptions.

Transactions between residents and nonresidents may be conducted in any currency.

Taxation

Corporate Income Tax

Registered Taxpayers

The corporate income tax rate payable by most legal entities is 20 percent of taxable income. Various small companies may qualify for special tax regimes specifying lower tax rates. The taxable income is measured as gross income less expenses connected with the generation of income. Interest expense, entertainment expenses, and certain other expenses are deductible only within established limits. Besides deducting expenses, legal entities may carry operating losses forward for up to ten years for offset against income of future periods.

In addition to corporate income tax, a permanent establishment of a foreign legal entity is subject to branch profits tax equal to 15 percent of its net after-tax income. This results in

an effective tax rate of 32 percent for permanent establishments of foreign companies.

The following are exempt from income tax in Kazakhstan:

- certain qualifying dividends;
- income from operations involving state securities;
- income from securities listed on a Kazakh stock exchange;
- gains on sales of stakes or shares in Kazakh legal entities other than subsoil users, subject to certain conditions.

Income Tax at Source

If a foreign entity does not have a registered permanent establishment in Kazakhstan, it is subject to income tax at the source of payment on its gross income from sources in Kazakhstan. The payer of the income is responsible for withholding and remitting the tax to the state by acting as a tax agent.

Tax applies to:

- capital gains, dividends, interest and royalties: **15 percent**
- income from international transportation services: **5 percent**
- insurance premiums: **15 percent**
- reinsurance premiums: **5 percent**
- service fees and other income not indicated above: **20 percent**
- income paid to residents of jurisdictions that Kazakhstan recognizes as tax havens: **20 percent**

These taxes may be reduced or eliminated under Kazakhstan tax treaties. There are currently over 40 tax treaties in force. Many of these tax treaties also provide for a reduced rate of branch profit tax.

Transfer Pricing

Kazakhstan's Transfer Pricing Law applies to any cross-border transactions for the sale or purchase of goods and services if the transaction price deviates from an arm's length price. As a rule, the Transfer Pricing Law does not stipulate any safe harbor for any price deviation. Companies engaged in cross-border transactions, subsoil users, and companies enjoying tax preferences or reporting tax losses must comply with the provisions of transfer pricing legislation in Kazakhstan.

Value-Added Tax

Registration as a VAT payer is required for all individuals and companies that conduct business activities in Kazakhstan and have cumulative taxable revenues in excess of 3,234 monthly index factors¹ during a calendar year.

The standard VAT rate is 12 percent and applies to revenues derived from the sale of goods or services within Kazakhstan and to the importation of goods into Kazakhstan. Zero-percent VAT applies to exports of goods from Kazakhstan and to international transport services. Certain activities are specifically exempt from VAT. The list of exempt activities includes, among others, sale and lease of land and land use rights (except for land used for parking passenger vehicles), financial services, insurance services, and medical services.

Payroll-Related Taxes and Contributions

Personal Income Tax

As a rule, all types of compensation and benefits that an employee receives for employment services in Kazakhstan constitute taxable income. The standard personal income tax rate is a flat ten percent for both resident and nonresident employees. Employers in Kazakhstan, including Kazakh legal entities as well as branch and representative offices of foreign legal entities, are regarded as tax agents and are required to withhold personal income tax and remit it to the state from payments they make to individuals in cash or in kind.

Social Tax

Employers in Kazakhstan, including foreign employers operating in Kazakhstan through a branch or representative office, must pay social tax for their local and expatriate employees and secondees. Social tax is levied at a flat rate of 11 percent on the gross income of employees, including all fringe benefits, whether received in cash or in kind. There is no maximum threshold for the social tax base. The tax is borne entirely by the employer, and no part is withheld from employee salaries.

Social Security Contributions

Employers in Kazakhstan must make contributions to the State Social Security Fund. Contributions are required for local employees as well as for expatriate personnel who have a permit for permanent residence in Kazakhstan. A foreign national without a permanent residence permit is not subject to this contribution requirement.

Contributions are computed at the rate of five percent of monthly gross salary up to a maximum monthly income of 10-times minimum monthly salary². Social security contributions are fully creditable against social tax and therefore do not represent an additional tax burden for an employer.

Obligatory Pension Contributions

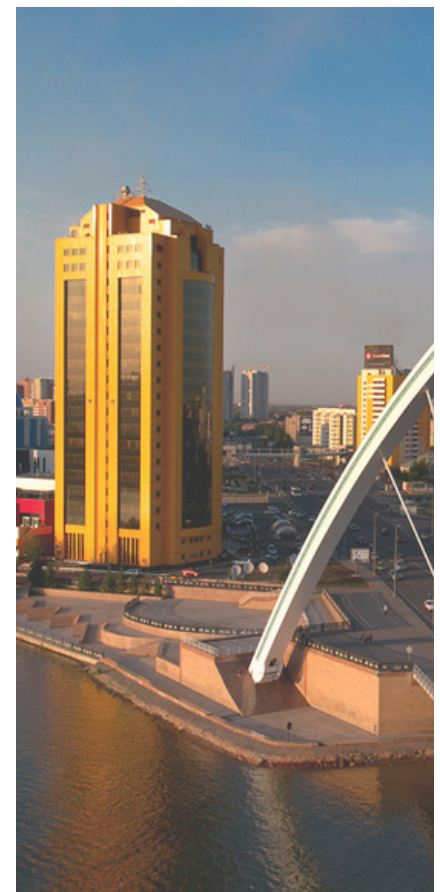
Kazakh nationals must pay ten percent of their gross income as obligatory contributions to the Unified Accumulative Pension Fund in Kazakhstan. The gross monthly income amount subject to obligatory pension contributions is capped at 75-times minimum monthly salary. Employers

of Kazakh nationals must withhold the pension contributions from the amounts due to the individuals and remit these amounts to the pension fund.

In addition to obligatory pension contributions, employers in Kazakhstan must pay obligatory professional pension fund contributions for certain local employees working in health-hazardous working conditions. The professional pension contributions is borne entirely by the employer at a flat rate of five percent on the gross income of the qualifying employees.

Starting from 1 January 2018, employers in Kazakhstan must pay a new component of the accumulative pension system – employer's obligatory pension contributions (EOPC) – to the Unified Accumulative Pension Fund. The EOPC rate is five percent of gross employment income. The EOPC will be borne entirely by Kazakhstan-based employers. The Unified Accumulative Pension Fund will record EOPC on nominal pension accounts opened for each employee.

Foreign nationals who do not have a permanent residence permit in Kazakhstan are not required to join Kazakh pension plans.



¹Monthly index factor for 2016 is 2,121 tenge

²Minimum monthly salary for 2016 is 22,859 tenge

Obligatory Medical Insurance Contributions

Starting from 1 January 2017, the state introduces new statutory payments - obligatory medical insurance contributions to the Social Medical Insurance Fund. The contributions are required for local individuals and for foreigners who have a permit for permanent residence in Kazakhstan.

The taxable base includes gross salaries and other benefits that individuals earn under a labor contract or a service agreement. The gross monthly income subject to obligatory medical insurance contributions is capped at 15-times minimum monthly salary.

The contributions consist of two components: employer's contributions borne by the employer and individual's contributions withheld by legal entities from the amounts payable to the individual. Legal entities 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, women on maternity).

Rates for obligatory medical insurance contributions will gradually increase from 2017 to 2020 as follows:

Years	Employer's contributions	Individual's contributions	Self-employed contributions
2017	2 percent	-	2 percent
2018	3 percent	-	3 percent
2019	4 percent	1 percent	5 percent
2020 onward	5 percent	2 percent	7 percent

Other Taxes

Excise Tax

Certain items imported into or produced in Kazakhstan are subject to excise tax. These goods include all kinds of alcohol spirits and beverages, tobacco products, petrol (except for aviation fuel), diesel fuel, certain motor vehicles, crude oil, gas condensate, and medical products containing spirits. Tax rates are measured as a fixed amount per unit or volume, depending on the type of excisable good.

Land Tax

Entities that own or use a land parcel are required to pay a land tax. The tax rate depends on the quality score assigned to the land by the governmental authorities and is established in the form of annual fixed payments per unit of land area.

Property Tax

Entities owning or using buildings, structures, dwellings, premises and other structures firmly fixed on the ground must pay property tax on such assets. The property tax rate payable by most legal entities in Kazakhstan is 1.5 percent of the average annual book value of the taxable assets. Property tax applies regardless of whether profit is derived from the use of the assets.

Vehicle Tax

Entities that own or use vehicles registered in Kazakhstan are subject to an annual vehicle tax. The tax rate depends on the vehicle's engine volume and the type of vehicle.

Subsoil Use Taxes and Payments

The subsoil use taxes and payments apply in addition to the above-mentioned taxes and obligatory payments stipulated by Kazakhstan tax legislation.

Subsoil Use Payments

Subsoil use payments include subscription and commercial discovery bonuses and reimbursement of historical expenses. The payment procedures, tax amounts and other terms pertaining to the special subsoil use payments are stipulated within the subsoil user's contract with the State for use of the subsoil.

Mineral Extraction Tax

Mineral extraction tax applies to the value of extracted hydrocarbons, metals, coal and other extracted minerals, separately for each type of extracted resource. The rate of mineral extraction tax depends on the type and/or annual volume of the extracted resources.

Excess Profit Tax

Excess profits tax ranges from zero to 60 percent and is payable annually on the net profits earned under each subsoil use contract, if in any

reporting year the ratio of a subsoil user's gross annual income to tax deductions is more than 1,25.

Rental Tax

Individuals and legal entities exporting crude oil, coal and gas condensate, other than certain qualifying subsoil users operating under a production sharing agreement, are subject to a special tax on exports of crude oil and gas condensate. The tax rate ranges from 0 to 32 percent of the government-determined market value of the exported crude oil or gas condensate. The tax rate for the export of coal is a flat 2.1 percent.

Tax Incentives

Special Economic Zones (SEZ)

Kazakhstan has established 10 SEZs to facilitate the development and support of the economy sectors other than resources-oriented sectors. Companies operating in SEZ are exempt from corporate income tax, property tax and land tax. Sales of certain qualifying goods within SEZ are subject to VAT at a rate of zero percent. Legal entities operating within the Information Technology Park special economic zone are entitled to a 100 percent exemption from social tax for their employees for five years if they met certain conditions.

Investments in Priority Sectors

The following incentives are granted for investments in priority sectors of the economy on the basis of an investment contract concluded between the investor and the state.

- Exemption from corporate income tax (up to 10 years), land tax (up to 10 years) and property tax (up to 8 years);
- Reimbursement of up to 30 percent of the actual investments in fixed assets;
- Stability of tax legislation.

The list of priority sectors of the economy currently includes industrial infrastructure, processing industries, housing construction, the social sphere (education, medical, sports and entertainment facilities), tourism, communication, production of nuclear materials and agriculture.

Customs

Kazakhstan is a member state of the Eurasian Economic Union (hereinafter, the "EEU") with Russia, Belarus, Armenia and Kyrgyzstan. Import customs duty rates are established by the decision of the Eurasian Economic Commission on the Unified Customs Tariff of the EEU, while export customs duty rates are set by the Government of the Republic of Kazakhstan.

Most customs duties vary between 0 percent and 30 percent and are

imposed on the transaction value of the imported goods (the price of the goods plus all associated costs, such as transportation).

In 2015, Kazakhstan successfully completed its membership negotiations with the World Trade Organization and became the 162nd member of the WTO. As a result, the weighted average customs tariff will be decreased from 10.4 percent (effective in the frame of the Customs Union) to 6.5 percent. The average

customs tariff for agricultural products will be 10.2 percent (comparing to 17 percent under the Unified Customs Tariff) and for industrial goods – 5.6 percent (comparing to 8.7 percent under the Unified Customs Tariff). Kazakhstan will also gradually eliminate existing customs benefits for special economic zones and for free warehouses.

Why KPMG?

The KPMG tax and legal practice in Kazakhstan employs highly qualified local and expatriate experts who form a dynamic, passionate team able to provide business-oriented tax and legal strategies for improving operations in Kazakhstan and aimed at adding value to your business.

We have experience with all types of taxes in Kazakhstan, including corporate income tax, payroll taxes, VAT, property tax, and taxes withheld from payments to nonresidents of Kazakhstan. We also have experience with taxation of subsoil users and with taxation under tax treaties.

Our consulting services can enhance business planning and decision-making processes. By helping our clients start operations in a tax-compliant manner and then stay informed of legislative and procedural changes, we aim to be an integral part of their successful business in Kazakhstan.

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