

New Tax Code: overview of the main changes

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General overview

General overview

Code of the Republic of Kazakhstan dated 25 December 2017 No.120-VI
“**On Taxes and Other Obligatory Payments to the State Budget**”
 (“**Tax Code**”) came into effect on 1 January 2018

- Majority of changes are of editorial and improvement character
- Most of novelties will become effective after few years
- Shift of accent in the sphere of control to:
 - ✓ electronic systems (e-invoices, standard audit file, virtual warehouse)
 - ✓ voluntary cooperation of the taxpayers (horizontal monitoring, tax rulings)
 - ✓ outsourcing of certain functions to professional organizations (e.g. external tax auditors)

Administrative provisions

Administrative provisions

■ New principle of taxation “Taxpayers’ good faith”

- ✓ It is presumed that taxpayers act in good faith
- ✓ Taxpayers should not benefit from their unlawful acts
- ✓ In the course of consideration of appeals against tax audit results all uncertainties in tax legislation and unregulated issues should be interpreted in favour of taxpayers

■ Tax rulings

- ✓ Effective from 1 January 2019 the tax authorities will be able to provide preliminary clarification of tax liabilities under contemplated transactions based on request of certain taxpayers: (i) subject to horizontal monitoring; and (ii) implementing priority investment project
- ✓ If the preliminary tax ruling will be found inaccurate the taxpayer that followed such tax ruling would be obliged to fulfil corresponding tax liabilities without imposition of administrative fines and interest penalty

Administrative provisions

- **Horizontal monitoring – pilot project since 1 January 2019**
 - ✓ A new form of extended cooperation between taxpayers and the tax authorities
 - ✓ Implies exchange of information, provision the tax authority with the access to accounting software
 - ✓ Taxpayer subject to horizontal monitoring would not be subject to administrative proceedings in respect of tax offences under certain conditions:
 - (i) taxpayer's agreement with the notification of results of horizontal monitoring;
 - (ii) absence of the facts of challenging such notification in the court;
 - (iii) tax audit for the period when the taxpayer was subject to horizontal monitoring

Administrative provisions

■ Amendments to the Tax Code

- ✓ Current version provides that changes in the Tax Code may be adopted not later than 1 December of the current year and may become effective not earlier than 1 January of the next year
- ✓ From 1 January 2020 the Tax Code will provide that amendments to tax legislation may be adopted no more than once per year before 1 July, and such changes should not enter in force earlier than 1 January of the next year.
 - The aforesaid provision refers to the changes that introduce new taxes, increase tax rates, change taxable objects or tax base, increase the categories of taxpayers, abolish or decrease tax deductions or tax preferences
 - changes relevant to the administrative procedures or improving situation of taxpayers may be adopted once a year not later than 1 December

Administrative provisions

▪ Statute of limitations for tax purposes

- ✓ Currently 5 years (begins after the end of the respective tax period)
- ✓ From 1 January 2020:
 - general term 3 years;
 - special term of 5 years applies to (i) taxpayers subject to monitoring; and (ii) subsoil users;
 - Special terms of statute of limitations may apply taxpayers operating under priority investment contracts, specific subsoil use contracts; etc.

▪ Adjustment of the formula for the calculation of interest penalty

- ✓ interest penalty for late payment of taxes is calculated at the 1.25 times the refinancing rate set by the National Bank (since 16 January 2018 – 9.75%). This factor was reduced from 2.5 due to significant increase of the refinancing rate in 2017 (from 5.5% to 11%).

Tax audits

Tax audits

- **The new Tax Code preserves certain novelties introduced since 1 July 2017:**
 - ✓ **Preliminary Act of Tax Audit** – to be provided before completion of a tax audit to taxpayers subject to monitoring and taxpayers that concluded investment contracts
 - ✓ **Appellate Commission** under the Ministry of Finance – consideration of the taxpayers' appeals and making decisions on them
- **Major procedures and terms relevant to tax audit and appeal process remained unchanged**

Tax audits

- **Exemption from tax audits may be provided to:**
 - ✓ taxpayers subject to horizontal monitoring (since 1 January 2019)
 - ✓ tax periods covered by external tax audit (since 1 January 2020)
- **New issues included in the scope of thematic tax audits:**
 - ✓ consignment note on goods (since 1 January 2020)
 - ✓ documents relevant to certain goods exported to other states of the Eurasian Economic Union (i.e. goods imported to Kazakhstan under the WTO rates of import customs duties) and documents confirming remaining balances of such goods
 - ✓ electronic VAT invoices

Tax audits

- **Standard audit file (SAT-F) – since 1 January 2019**
 - ✓ SAT-F is the recommended by OECD international standard for provision of accounting data to the tax authorities
 - ✓ allows automatic analysis of data by information system of the tax authorities
 - ✓ may be provided by taxpayers on the voluntary basis

Tax benefits

Tax benefits: e-commerce

- Taxpayers engaged in e-trading of goods are exempt from corporate income tax or personal income tax until 2025
 - ✓ applies to the sale of goods to individuals
 - ✓ transaction to be performed electronically
 - ✓ payment via bank transfer
 - ✓ own delivery service or agreement with courier organization
 - ✓ 90% of taxpayer's revenues to be received from e-trading

Tax benefits: exemptions for subsoil users

- **dividends payable by subsoil users to their foreign shareholders as well as capital gains realized by foreign shareholders from sale of shares (participating interest) of Kazakhstan subsoil users may be exempt from WHT if several conditions are met:**
 - ✓ certain portion of minerals extracted within 12 months should be subsequently processed (after primary processing): currently 30%, will be gradually increased to 70% by 2022
 - ✓ production facilities should be owned by the subsoil users or its affiliated entity
 - ✓ shares (participating interest) should be owned more than three years
 - ✓ recipient of income should not be resident in a jurisdiction with preferential taxation
- **this exemption was introduced for the first time in respect of subsoil users from 1 January 2016, however, conditions were slightly revised**

Cross-border taxation

Cross-border taxation

- **Amendments into the CFC rules aimed at prevention of tax base erosion**
- **New definition of CFC includes:**
 - ✓ foreign legal entities and other legal forms
 - ✓ more than 25% of CFC belongs to a Kazakhstan resident: directly, indirectly or constructively or an entity is controlled by the resident
 - ✓ CFC is registered in a jurisdiction with preferential taxation (i.e. income tax is less than 10%, confidentiality of financial information)
- **Financial net income of CFC is taxable in Kazakhstan**
- **Double taxation should be eliminated through (i) foreign tax offset; (ii) exclusion of dividends payable by one CFC to another CFC; (iii) exclusion of Kazakhstan sourced income (fully or partially) from CFC income**

Changes in the transfer pricing legislation

Transfer pricing

- A number of changes were made into the **Law of the Republic of Kazakhstan dated 5 July 2008 No.67-IV “On Transfer Pricing”**
- **International group** – refers to a group of companies, including parent company, interconnected by means of control and ownership (participation) and preparing a consolidated financial reports
- It is expected that three-tiered approach recommended by OECD for international groups will be gradually introduced:
 - ✓ 2016 – introduction of cross-country reporting (retroactively)
 - ✓ 2018 – disclosure of participation in an international group (first-time application to be submitted before 1 September 2018 by participants of an international group, including Kazakhstan companies and branches of foreign legal entities operating in Kazakhstan)
 - ✓ 2019 – introduction of local and main reports / penalties

Transfer pricing

- **Participants** of an international group are:
 - ✓ Parent company
 - ✓ Authorized participant
 - ✓ Kazakhstan legal entities and structural subdivisions of foreign legal entities operating in Kazakhstan
- Since 2019 participants of an international group will be obliged to submit the following **reports** for transfer pricing purposes (within 12 month following the reporting year):
 - ✓ Local reporting – if individual revenue exceeds 5 mln. MCIs (circa EUR 30 mln)
 - ✓ Main reporting – if total revenue of the group exceeds EUR 750 mln.
 - ✓ Cross-country reporting (retroactively effective since 1 January 2016) – if total revenue of the group exceeds EUR 750 mln.

Nationwide tax reporting

Nationwide tax reporting

- Since 1 January 2020 different categories of individuals residing in Kazakhstan will be obliged to file a non-recurrent **Declaration on assets and liabilities**
 - ✓ should contain information on various kinds of property, valuables, money, receivables, etc.
- **Declaration on income and property** – to be submitted on the annual basis in one of the forms (i) detailed declaration – with attachments; (ii) short form – without attachments
 - ✓ Declaration on income and property should contain information on incomes of individuals not subject to taxation at source of payment, including income received from foreign sources (such as CFCs, etc.)
 - ✓ Income tax paid in foreign states as well as withholding tax on income received by a CFC from sources in Kazakhstan may be offset (deducted) from personal income tax payable in Kazakhstan

Taxation of subsoil users

Taxation of subsoil users

- **Certain specific taxes and payments have been abolished:**
 - ✓ Excess Profits Tax in respect of several categories of subsoil use contracts (e.g. solid minerals, subsoil water, etc.)
 - ✓ Commercial Discovery Bonus
 - ✓ Reimbursement of historic cost on licenses issued after 31 December 2017 for extraction of solid minerals

- **Definitions of the specific terms for taxation purposes have been expressly provided in the Tax Code**
 - ✓ Primary processing
 - ✓ Petroleum operations
 - ✓ Production
 - ✓ Minerals, etc.

Taxation of subsoil users

- **Payment for the use of the land (“Rental Payments”)**
 - ✓ expressly provided in respect of subsoil use blocks provided by the Government of Kazakhstan in accordance with the legislation on subsoil use under a license for **exploration or production of solid minerals**
 - ✓ **progressive rates** at the exploration stage (from 15 to 60 MCI per 1 block)
 - ✓ **Flat rate** at the production stage (215 MCI per 1 block)
- **Alternative subsoil use tax**
 - ✓ voluntary option
 - ✓ applies to offshore or superdeep oil and gas deposits
 - ✓ replaces reimbursements of historic costs, Minerals Extraction Tax and Excess Profits Tax
 - ✓ Tax rates vary depending on oil price: 6% at US\$ 60 per barrel, to 30% if oil prices exceed US\$ 90 per barrel.

VAT refunds

VAT refunds

- **VAT control account since 1 January 2019**
 - ✓ account opened by a taxpayer in a second tier bank for VAT operations only (i.e. payment of VAT to suppliers and to the state budget, collection of VAT from clients, VAT refund)
 - ✓ may be used only by participants of e-invoice information system
- **VAT refund may be granted to certain categories of taxpayers:**
 - ✓ using purchased goods in production of other goods
 - ✓ exporting goods
 - ✓ selling fuel and lubricants to foreign air carriers
 - ✓ selling goods to the territories of special economic zones

Thank you

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