
Overview of key provisions of the new Tax code

Part 1

February 2018

In brief

In this issue, we update you about key amendments of the 2018 tax legislation in relation to corporate income tax (CIT), value added tax (VAT), excise tax and tax administration. The changes are wide-ranging and, consequently, most businesses will be impacted. Implementation of some changes will be a challenge.

This alert is not an exhaustive analysis of all provisions of the new Tax Code i.e. those different from the prior version of the Tax Code, in effect until 31 December 2017.

If not stated otherwise, changes are effective from 1 January 2018.

In detail

I. General principles

The principle of good faith

The new Tax Code¹ assumes the principle of good faith in relation to actions (inactions) of taxpayers (tax agents) in performance of tax liabilities.

However, taxpayers (tax agents) are not allowed to benefit from illegal actions aimed at obtaining tax benefits (tax savings) and reduction of tax payments.

Requirements for justification of additional tax assessments have been strengthened. The burden of proof is on the tax authorities. “Grey areas” of the tax legislation should be interpreted in favour of taxpayers (tax agents) during tax appeals.

The new Tax Code does not hold taxpayers liable for their action/inaction based on incorrect clarifications of the tax legislation issued by the tax authorities. There should be no fines and penalties if the tax authorities’ written clarifications, based on which taxpayers and tax agents fulfilled their tax liabilities, is subsequently recalled, recognised to be incorrect or replaced.

Introduction of amendments to the tax legislation

Amendments and additions to the tax legislation can be introduced no more than once a year (and, not later than 1 July of the current year) and brought into effect not earlier than 1 January of the year following the year of the acceptance of the changes.

This provision relates to changes relating to introduction of new taxes and (or) payment to the state, increase of rates, change of taxation objects and (or) the tax base, extension of categories of taxpayers (tax agents), repeal or decrease of deductions or tax exemptions.

¹ The Code No. 120-VI “On taxes and other obligatory payments to the state budget” dated 25 December 2017 (the “new Tax Code”)

II. Corporate income tax (“CIT”)

Aggregate annual income (“AAI”)

The following should not be regarded as income:

- value of goods received free of charge for advertising purposes (including gifts), if the unit price of such goods does not exceed 5 MCI effective as of the date of receipt (approx. USD 38 in 2018);
- insurance payments received related to fixed assets (with certain limits).

Property received free of charge

Income from property received free of charge should not be less than the cost of such property, including VAT indicated in a transfer act (if any) issued by a transferring party.

Deductions

Recognition of expenses, including the date of recognition, should be performed in accordance with International Financial Reporting Standards (“IFRS”) and requirements of the legislation of the RK on accounting and financial reporting. If recognition of expenses as per IFRS differs from the new Tax Code, the new Tax Code prevails.

Deduction of certain types of expenses

The new Tax Code extends the list of deductible expenses:

- expenses to enable appropriate working conditions for employees meeting safety, health and hygiene requirements, including sanitary and epidemiological norms, providing employees with rest and meals in specially equipped places in accordance with the labor legislation;
- expenses related to catering for employees, pre-school education and training, social protection and social security for children, elderly and disabled people;
- expenses to maintain / increase sales levels goods incurred by taxpayers who manufacture and (or) sell the goods based on license or sub-license agreements (contracts) registered in accordance with the Kazakhstan legislation, regardless of who has title to the goods;
- inventory losses within the limits of natural loss established by the Kazakhstan legislation;

- book value of damaged or lost goods (excluding natural loss), limited to compensation received, in the period the compensation is received.

Fixed assets

Fixed assets include subsequent expenses (e.g. repair) capitalised for accounting purposes, incurred in respect of leased property.

Deadline for submission of additional CIT advance payments calculations

The deadline for submission of additional CIT advance payments calculations (Form 101.02) is extended from 20 December to 31 December.

Administrative fine for understatement of CIT advance payments

The administrative fine for excess of actual CIT liabilities over assessed CIT advance payments is reduced from 40% to 20% of such excess.

III. Value added tax (“VAT”)

General provisions

Turnover under freight forwarding agreement

When a freight forwarder purchases works and services from a non-resident for the benefit of its customer under a freight forwarding agreement, it is regarded as the freight forwarder’s VAT-able turnover if the place of supply is deemed to be Kazakhstan.

Issuance of tax invoices by freight forwarders

A freight forwarder no longer has to show interest earned under freight-forwarding agreements as a separate line in tax invoices.

However, it is necessary to prepare tax registers which disclose information on carriers, service providers and their service fees.

Place of supply

To unify general place of supply rules with the EEU place of supply rules, technical maintenance and upgrade of software are deemed provided where the buyer of such services conducts its business.

Works (services) performed by a non-resident operating in Kazakhstan through a permanent establishment without opening a branch or representative office are deemed provided in Kazakhstan.

It is clarified that the specific place of supply rules for international transport (carriage) services apply when service providers are present in Kazakhstan on the basis of state registration with the justice authorities.

Date of VAT-able turnover

The date of VAT-able turnover on sale of goods depends on the obligations of the seller to deliver the goods.

The date of VAT-able turnover on purchase of work (services) from a non-resident is:

- the signing date of an act of acceptance, or
- in the absence of an act of acceptance, the date the expenses are recognized in taxpayers' accounting books, if another supporting document on works / services performed is available.

Amount of VAT-able turnover

The VAT-able turnover on free-of-charge transfer of goods is determined based on the book value of transferred goods on the transfer date.

VAT offset

VAT payers may claim offset of input VAT on services received by individuals where the expenses are recognized in accordance with IFRS and CIT deductible as business trip expenses.

Input VAT adjustment

Offset of input VAT on goods purchased, constructed or created should be adjusted (if required by the Tax Code) by applying VAT rate to the book value as of the adjustment date *net of any revaluation and impairment*.

Issuance of tax invoices

Tax invoices do not need to be issued for sale of goods, work and services to individuals, who pay by e-money or electronic payment.

Date of issuance of tax invoices

Regardless of the form of issuance (paper or electronic):

- tax invoices and additional tax invoices should be issued within 15 calendar days of the date of VAT-able turnover;
- for export of goods, tax invoices should be issued within 20 calendar days following the date of sale.

VAT in the Eurasian Economic Union

Sales turnover

Temporary export of goods from Kazakhstan to other EAEU member states, to be re-imported with the same features and characteristics, is not VAT-able turnover.

Confirmation of export

It is not required to provide documents showing receipt of foreign currency proceeds in an account of a second-tier Kazakhstan bank to confirm export.

Exempt turnover

International communication services rendered by Kazakhstan taxpayers to taxpayers of other EEU member states are VAT exempt.

Date of issuance of tax invoices

The following deadlines exist for issuance of tax invoices for:

- export of goods to EEU member states:
 - in paper form - within seven calendar days of the date of turnover;
 - in electronic form – within 20 calendar days following of the date of turnover.
- on-sale of goods imported from the EEU – in electronic form within 20 calendar days of the date of turnover.

VAT refund

Refund of excess VAT

Generally, taxpayers remain limited to offset of input VAT against future VAT liabilities, unless engaged in transactions specifically allowed for VAT refund.

Excess of input VAT over output VAT should be refunded, within 30 business days, to the following categories of taxpayers:

- issuing and receiving tax invoices exclusively in electronic format in tax periods for which VAT refund claim is submitted, and
- not regarded as taxpayers in the risk zone.

Excess of input VAT over output VAT of taxpayers deregistered as VAT-payers is subject to write-off within the statute of limitation period, starting from the VAT deregistration date.

Simplified VAT refund procedure*

Taxpayers subject to horizontal monitoring for not less than 12 consecutive months without outstanding tax obligations at the date of filing

the VAT return filing are eligible for the simplified VAT refund procedure.

They may claim a refund of not more than 90% of excess VAT accumulated for the reporting period.

VAT control accounts*

From 2019, taxpayers registered in the e-invoicing system may use VAT control accounts, to account for VAT payments between suppliers and customers, as well as for payment of VAT to the state.

Application of VAT control accounts allows taxpayers to obtain a VAT refund within 15 business days after the last date for submission of VAT returns (including the prolongation period). Note that VAT is refunded only for goods included in a special list approved by the Government, if VAT payers meet certain requirements (e.g. use of goods for production, separate accounting for goods purchased and sold, using / not using VAT control accounts etc.).

IV. Excise tax

Excise tax rates

The new Tax Code envisages a gradual increase of excise tax rates for alcohol and tobacco products.

The following excise tax rates apply in 2018:

Excisable goods	<i>Before</i>	<i>In 2018</i>
alcohol products (except for cognac, brandy, wine, wine material, beer and beer beverage)	2 000 KZT / litre of 100% spirit	2 275 KZT / litre of 100% spirit
beer / beer products	39 KZT / litre of 100% spirit	48 KZT / litre of 100% spirit
cigarettes with filter	6 200 KZT / 1000 units	7 500 KZT / 1000 units
cigarettes without filter	6 200 KZT / 1000 units	7 500 KZT / 1000 units

Devices for excise stamps identification

Alcoholic beverages cannot be stored or sold without devices for identification of excise marks i.e. devices which allow online transmission of identification data to the authorized body in real time. (Amendments to the Law No. 429-I “on state regulation of production and turnover of ethanol and alcoholic beverages”.)

V. Tax administration

Principles of tax administration

The following principles of tax administration are introduced:

- legitimacy;
- improved efficiency in dealings between taxpayers and the tax authorities;
- differentiated approach towards tax administration based on risk.

The meaning (substance) of these principles is not explained.

A differentiated approach based on risk is applied in all control measures, including desk audit, selection for tax audit, confirmation of VAT refund and coercive tax recovery measures. Coercive recovery measures (which are not explained) apply to taxpayers (tax agents) with medium and high levels of risk in specific sectors.

Risk management system*

Taxpayers (tax agents) are categorized by their activity as low, medium or high risk. The level of tax control for low risk taxpayers is minimized.

Reduction of late payment interest

Late payment interest is reduced from 2,5 to 1,25 times the refinancing rate set by the National Bank per day of delay.

Confirmation of notification

Notifications are now confirmed by e-signatures.

Appeal during thematic tax audits

Taxpayers (tax agents) are not allowed to withdraw appeals during the period of thematic tax audits until complete.

Suspension of appeals

Appeals are suspended when sending requests to the state authorities, authorities of foreign states and other authorities. The suspension runs from sending the request until a response is received.

Appeal of desk audit

During the appeal of a desk audit in court, taxpayers may demonstrate receipt of goods, works and services from an entity and / or individual entrepreneur, whose registration is regarded as invalid by the court i.e. evidence of performance will prevail over invalid registration.

Horizontal monitoring*

Horizontal monitoring is intended to minimize tax risks (for taxpayers and the authority) and reduce tax audit. This is achieved by:

- online access to IT systems of taxpayers;
- clarification for taxpayers regarding past and future transactions;
- sending so-called 'observation letters' to taxpayers outlining established practice for taxpayers to take into account the position of the tax authorities on determining tax liabilities.

Advanced tax ruling*

Advanced tax rulings for contemplated transactions will be issued for:

- taxpayers subject to horizontal monitoring;
- entities implementing priority investment projects.

Fines will not be imposed if the tax authorities subsequently change their position on the matter.

Confidentiality of criteria for assessment of risk levels*

Provisions regarding confidentiality of criteria for assessment of risk levels will be deleted.

Statute of limitation**

The statute of limitation for tax purposes is reduced to three years. The five-year statute of limitation remains for taxpayers:

- subject to horizontal monitoring;
- operating under subsurface use contracts.

The takeaway

Changes in the tax legislation are substantial and could have a significant impact on your business.

We will be pleased to discuss the changes with you.

* *Effective from 2019*

** *Effective from 2020*

Tax and Legal Alert

PwC Kazakhstan

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