



# New Tax Code Draft

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Recently a draft of a new Tax Code was shared for public discussions. Below we present some of the interesting amendments included in the draft.

## General provisions:

- Definition of 'royalty' now includes payments for services for software updates and hosting services;
- The term 'constructive dividends' refers to the Transfer Pricing law only with regards to determination of 'related parties' in cross border transactions;
- A provision added stating that violation of other legislative acts of Kazakhstan and other formal reasons cannot be used as grounds for recognition of the tax authorities' administrative actions as unlawful, if they are correct in substance and comply with taxation principles.

## Tax Administration:

- The tax statute of limitation will be suspended from the day when the tax audit begins until the day of the notification on the tax audit results is fulfilled.
- The grounds for appointing tax audits have been extended:
  - non-fulfillment of a motivated decision based on the results of monitoring of large taxpayers;
  - to confirm violations identified during desktop control;
  - If the tax statute of limitation is to expire soon.

## CIT:

### Income:

- CIT exemption of income of real estate investment funds (including AIFC participants) is excluded

### Deductions:

- Loss from sale of a going concern will be subject to deduction (previously it was treated as a loss that may be carried forward to the subsequent tax periods);
- The approach towards deductions of contributions to the State Social Security Fund and contributions to the Social Medical Insurance Fund has changed. Now deductions are made based on accrued **and paid** basis.
- An article on deducting compensations for trips of board of directors' members has been added (before 2022, similar provisions were contained in Article 244 of the Tax Code, but they were subsequently excluded);
- Expenses on "intangible" services acquired from related non-residents will be subject to CIT deduction (previously, they could have been utilized via reduction of taxable income);
- An article regulating deductions of written-off claims has been added;
- Financial organizations have no right to deduct reserves for unsecured consumer loans.



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- Taxpayers now have the right to deduct subsequent expenses (i.e. repair) at their discretion either through deduction in a current period or by capitalizing such expenses and their deduction via depreciation;
- Clarifications have been made regarding the end date of a long-term contract, as well as provisions regulating the effective date of changes introduced to the terms of the long-term contract;
- Now the right of financial lessors to exclude lease interest from CIT base is limited to 50 percent of their taxable income;
- From 2030, changes will be introduced that exclude the right to reduce taxable income by income from government securities.
- The positive difference between the “internal” WHT and CIT amounts is carried forward to subsequent tax periods within the tax statute of limitation (previously, 10 years).

#### *The following CIT rates are introduced:*

- For legal entities engaged in production of agricultural products, aquaculture (fish farming) - 3 percent;
- For entities operating in a social sphere - 10 percent;
- For manufacturers whose activities relate to manufacturing industry – 10 percent;
- For banks (excluding income from lending to the real sector of economy) and entities providing services of casinos, slot machine halls, totalizators and bookmakers - 25 percent;
- In other cases: 20 percent.

#### **Subsoil Use:**

- A definition of the for start date of extraction after commercial discovery has been added;
- A methodology for calculating the world oil price has been changed;
- The list of expenditures to be included in the G&G pool has been expanded.

#### **Payroll taxes:**

- New social tax rate is fixed at 6%.
- Most personal income tax deductions are excluded.

#### **Personal taxation:**

- Deadline for submission of declaration on income and property (form 270.0) has been changed to 1 July of the year following the reporting year;
- A possibility of taking into account negative results from sale of securities has been added;
- Desktop control in relation to individuals in the event of acquiring property, which cost is more than 10,000 MCI was introduced;
- An amount over 5,000 MCI is recognized as taxable income of an individual in the absence of confirmation of sources of funds used for the acquisition.



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## VAT:

- Obligation to issue e-invoices for works/services purchased from non-residents where the place of supply is deemed to be in Kazakhstan is introduced;
- There is no minimum threshold for obligatory VAT registration.

## International taxation:

- The concept of "place of effective management" is being amended for determining the tax residency of a legal entity;
- Additional "triggers" are introduced for creation of a "permanent establishment" of a non-resident in Kazakhstan;
- There is a direct prohibition on application of double tax treaty provisions in case of payment of WHT by a tax agent at its own expense;
- A general 5% WHT rate is introduced when distributing dividends to a non-resident holding at least 25% of the capital of a resident paying dividends; at the same time, the 10% WHT on dividends under the "three-year" incentive is eliminated;
- The domestic tax exemption for dividends and interest on securities traded on Kazakhstan stock exchanges is eliminated;
- The "three-year" incentive related to capital gains from sale of Kazakhstan shares / stock is eliminated;
- A 10% tax rate is established in relation to interest on loans (borrowings) and debt securities paid to a non-resident;
- Changes are made to taxation procedure of non-residents' capital gains derived from sources in Kazakhstan; for example, the current procedure for calculating the share of assets as a percentage of value of shares / stakes being sold is eliminated, and this procedure will be determined separately by the authorized body;
- The procedure for the application of an international treaty by a tax agent is amended; in particular, (i) the condition for mandatory taxation of income in the related non-resident's country at minimum 15% is eliminated; and (ii) a "local" principal purpose test is added.

## Tax incentives, investment projects:

- Astana Hub members must receive at least 90% of annual aggregate income from priority types of activities, as well as types of income specified by the Tax Code;
- Tax incentives related to accelerated CIT depreciation can also be applied to software;
- Members of Astana Hub and Astana International Financial Center ("AIFC") cannot apply the incentive on CIT accelerated depreciation;
- Investment priority project and its incentives are abolished;



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- Investment agreement:
  - the list of restricted activities has been excluded;
  - the incentive related to reduction of CIT, land tax and immovable property tax by 20% of actual expenses has been canceled;
  - tax benefits (including exemption from CIT) can be provided for up to 3 or 10 years depending on the type of activity and sizes of investment.

## Special tax regimes ("STR"):

- New special tax regimes are introduced depending on the types of activities
  - STR "Platform Employment" for self-employed individuals and STR for small businesses;
- Fragmentation of activities (application of STRs for minimization of tax liabilities) is expressly prohibited.

In case of such fragmentation, income received under separate STRs would be treated as income under one STR. Income in excess of the cap allowed under STR conditions would be subject to taxation according to the general regime without deductions.

## Other taxes:

- Individual entrepreneurs and legal entities are no longer obliged to file a form with current tax assessments and perform such current payments with regards to land, vehicles and property taxes.

## What does it mean?

The provided list of the proposed changes is not exhaustive. The new draft Tax Code should be further analyzed in more detail thoroughly. However, it is already clear that the scale of the proposed changes is dramatical and the impact of these changes on taxpayers would be significant. We recommend continuing monitoring the situation, since the draft is not final and is likely to be subject to further amendments.

We will be glad to discuss with you these amendments and their potential impact on your business.