

An aerial night photograph of the Bayterek Tower in Astana, Kazakhstan. The tower's illuminated golden sphere and white lattice structure stand out against the dark sky. Below the tower is a large, circular plaza with intricate, glowing patterns. The surrounding city is visible in the background, with numerous lit-up buildings and streets. A yellow text box is positioned in the upper left corner of the image.

# Doing business in Kazakhstan

An introductory guide  
to tax and legal issues









# Preface

This publication is intended to provide a useful practical summary of some of the legal and tax issues that investors may face when starting and building a business in Kazakhstan. We hope that it will help investors to avoid common pitfalls and clarify areas where problems can be avoided with some forethought and planning. Kazakhstan offers many opportunities and encouraging foreign investment in the main sectors of the economy is a key priority for the country.

This guide has five sections:

1. Welcome to Kazakhstan
2. Our top 10 tax and legal tips for success in Kazakhstan
3. Getting started
4. An overview of tax rules in Kazakhstan
5. An overview of other laws affecting business administration

This guide is a high-level summary of the rules in force as of 1 January 2023. It is not a substitute for comprehensive professional advice, which should be sought before engaging in any significant transaction. It should also be noted that this guide does not cover all of the more than 30 taxes in Kazakhstan. Here we cover only the most important taxes, so advice should be sought as to the actual taxes applicable to any particular business.

We wish you every success in this exciting and dynamic environment.

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# 1 Welcome to Kazakhstan





## Highlights

- ▶ Kazakhstan's GDP grew by 5.6% in January 2023. The real sector grew by 2.3%, while the service sector grew by 7.6%. All major sectors showed positive dynamics, with the best indicators in trade (+19.4%), information and communication (+18.1%), as well as construction (+12.5%, over 1 million square meters of housing was commissioned). The growth of investment in fixed assets amounted to 18.3%. In particular, the volume of investments in industry grew by 9.2%, in agriculture by 33.7%, in real estate by 33.7% and in transport and storage by 31.8%. According to preliminary results for 2022, the foreign trade turnover grew by 32.1% to USD 134.4 billion. Exports grew by 39.9% to USD 84.4 billion, imports reached USD 50 billion. Overall, the positive trade balance is USD 34.4 billion.<sup>1</sup>
- ▶ Kazakhstan's economy has been recovering from the impact of the COVID-19 pandemic, aided by strong recovery buffers and a quick vaccination uptake. Its real GDP grew by 4% in 2021, after contracting by 2.5% in 2020. Kazakhstan's economic growth slowed down in 2022, mainly due to the negative spillovers from Russia's invasion of Ukraine. It reached 3.4% year-on-year in the first six months, from 4.1% in 2021. In 2023-2024, GDP growth is expected to accelerate to 3.5% and 4.0%.<sup>2</sup>
- ▶ In Kazakhstan, there has been an increase in the inflow of foreign direct investment. At the end of the first half of 2021, the volume of FDI in the economy of Kazakhstan increased by 30.4% to USD 11.1 billion. In terms of sectors, the highest growth in foreign investments was observed in the manufacturing industry (57.2%), trade (45.8%), mining (27.1%) and transport (20.4%).
- ▶ Over the past decade, Kazakhstan has made strong policy strides and responsibly absorbed large natural resource-based earnings by implementing a rules-driven fiscal framework. However, diversification remains a challenge for a country with the ninth largest oil reserves in the world, as hydrocarbon output constituted 21% of GDP and about 70% of exports in 2020.
- ▶ Inflation in the Republic of Kazakhstan in December 2022 for the year amounted to 20.3% and accelerated by 0.7% (in November 2022 – 19.6%). Prices for food products over the year increased by 25.3% (in November – 24.1%), for non-food products – by 19.4% (in November – 18.6%), and for paid services – by 14.1% (in November – 14.1%).
- ▶ Higher food and energy prices have accelerated inflation. The poverty rate is expected to fall in 2022 but remain above the pre-pandemic levels. Inflation will also remain elevated due to supply disruptions caused by the war in Ukraine.
- ▶ Despite the conflict and sanctions against Russia, Kazakhstan's trade is booming. Russia and Belarus are crucial trade and investment partners for Kazakhstan, being the three forming parts of the Eurasian Economic Union (EAEU) trade bloc. Russia supplies 40% of Kazakhstan's imports (worth USD 14 billion), while its exports to Russia amount to USD 6 billion per annum. While the spillover from sanctions imposed on Russia and Belarus due to the conflict in Ukraine will hurt Kazakhstan's trade, the country will benefit from higher prices for oil, metals, wheat and other raw materials. This has already helped the current account deficit to fall to -3.0% of GDP in 2021, from -3.9% in 2020. Thus far, data from Kazakhstan's Bureau of National Statistics shows that foreign trade grew by 41% to USD 51 billion in the first five months of 2022, despite the disruption of the Caspian Pipeline Consortium (CPC) pipeline and the conflict in Ukraine.
- ▶ Following protests in January 2022, the largest since independence, the government announced its intention to tackle the existing constraints through wide-reaching reforms.

With heightened uncertainty

<sup>1</sup> Official information source of the Prime Minister of the Republic of Kazakhstan

<sup>2</sup> The Astana Times <https://astanatimes.com/2023/02/kazakhstans-gdp-grows-5-6-percent-in-january-2023/>

<sup>3</sup> Agency of Statistics of the Republic of Kazakhstan

<sup>4</sup> "New Kazakhstan Action Plan," Eurasia Briefing: Kazakhstan, Macro-Advisory Eurasia Strategic Consulting, May 2022, © 2022 Macro-Advisory Ltd.

<sup>5</sup> Kazakhstan's Foreign Trade Demonstrates Steady Growth, Reaches \$51 Billion in Five Months, The Astana Times, <https://astanatimes.com/2022/07/kazakhstans-foreign-trade-demonstrates-steady-growth-reaches-51-billion-in-five-months/>, accessed 27 June 2022



- following the January events and the ruble's recent plunge, the tenge has depreciated by about 17% against the US dollar. To reduce the tenge's volatility, the National Bank scaled up foreign exchange interventions and increased its base rate by 2.25 percentage points to 13.5% in March 2022.<sup>6</sup> Foreign exchange reserves, however, remain comfortable at USD 33.5 billion.
- ▶ As a result of rising inflationary pressures and currency depreciation, the National Bank of Kazakhstan has adopted a hawkish monetary policy. In February 2022, it hiked interest rate by 325 basis points (bps) from 10.25% to 13.5%<sup>7</sup> after the conflict commenced, to limit fallout from Russia's ruble depreciation. By March, the tenge had already depreciated by 15% to the US dollar. The National bank also launched the Tenge Deposit Protection Program to support household tenge savings by offering a premium rate, funded through national finances.<sup>8</sup> These measures helped maintain tenge assets attractiveness, aided confidence and helped the currency to rebound to pre-conflict levels. In response to continued rising inflation, the National Bank further tightened monetary policy, raising the benchmark interest rate by additional 50 bps each in April 2022<sup>9</sup> and July 2022 to reach 14.5%.<sup>10</sup>
  - ▶ Kazakhstan continues to actively implement the Nurly Zhol State Infrastructure Development Program. Following the completion of the first five-year plan of the state program, the share of national roads in good and satisfactory condition has been brought to 88% and local roads – to 71%.
  - ▶ The implementation of the second stage of the Nurly Zhol State Program for 2020-2025 began in 2020. In total, 9.8 thousand km of public roads were covered by construction, reconstruction and repair work (including 4 thousand km of construction and reconstruction as well as repairs of 1.8 thousand km of the national network and 4 thousand km of the local network).
  - ▶ Under the Nurly Zhol State Program, the share of self-supporting national toll roads should make up 45% of the total length, or 11 thousand km, by the end of 2025. At the first stage, it is planned to introduce a toll collection system on road sections with a length of 5.8 thousand km. Toll fees will first be introduced on sections of first-category roads covering a total of 1.8 thousand km. Rates of payment on these sections will remain at the same level: 5 to 25 tenge per kilometre.
  - ▶ In July 2018 Kazakhstan officially launched the Astana International Financial Centre (AIFC) on the site of the EXPO-2017 exhibition. It is set to serve as a financial hub for Central Asia, the Caucasus, the Eurasian Economic Union and Mongolia. Participants enjoy special tax, currency and visa regimes, as well as a favourable framework for attracting foreign labour. The tax regime offers nearly 50-year CIT, VAT and PIT exemptions for foreign employees. In total, more than 1,500 AIFC participants were registered. The top five international jurisdictions with the biggest presence in the AIFC are China (9%), the European Union (6%), Russia (6%), the United Kingdom (3%) and the United States (3%).
  - ▶ Kazakhstan will implement nearly 700 investment projects aimed at import substitution and export of

6 World Bank Data

7 Kazakhstan orders unscheduled 325bp hike, Central Banking, <https://www.centralbanking.com/central-banks/monetary-policy/7933616/kazakhstan-orders-unscheduled-325bp-hike>, accessed 24 June 2022

8 Kazakh Government, National Bank Prepare Anti-Crisis Plan to Address Negative Impact on Economy, The Astana Times, <https://astanatimes.com/2022/02/kazakh-government-national-bank-prepare-anti-crisis-plan-to-address-negative-impact-on-economy/#:~:text=To%20ensure%20financial%20market%20stability,the%20expense%20of%20the%20budget>, accessed 27 June 2022

9 Kazakhstan central bank hikes main rate, sees room for more tightening, Reuters, <https://www.reuters.com/world/middle-east/kazakhstans-central-bank-says-raises-policy-rate-140-2022-04-25/>, accessed 27 June 2022

10 Central bank maintains policy," Focus-Economics, <https://www.focus-economics.com/country-indicator/kazakhstan/interest-rate#:~:text=September%205%2C%202022%20at%20its%20latest%20meeting%20on,to%2018-month%20low%20in%20July%20August%2015%2C%202022>, accessed 27 June 2022

11 Astana Times, <https://astanatimes.com/2022/04/kazakhstan-to-implement-nearly-700-investment-projects-to-boost-import-substitution/>  
12 [https://www.inform.kz/en/gas-processing-plant-to-be-launched-at-kashagan-by-2024\\_a3929355](https://www.inform.kz/en/gas-processing-plant-to-be-launched-at-kashagan-by-2024_a3929355)

finished products as part of the program to promote import substitution. The list includes about 700 projects, and 286 of them are key import-substituting projects. In terms of industries, the processing industry accounts for 633 projects with investments of KZT 20.5 trillion (USD 45.9 billion), resulting in the creation of 108,000 jobs.<sup>11</sup>

- ▶ A gas processing plant with a capacity of 1 billion m3 of gas per year will be built at the Kashagan oilfield by 2024. Construction of a gas processing plant with a capacity of 1 billion m3 per year in the Atyrau region began in May last year. The initiator of the project (estimated at USD 860 million by the Ministry of Energy, and by other sources at USD 1.2 billion) was the private LLP GPC Investment. The company will be able to produce 815 million m3 per year of commercial gas, 119 thousand tons of liquefied gas, 212 thousand tons of sulfur and 35 thousand tons of gas condensate. Commissioning is scheduled for the fourth quarter of 2023.<sup>12</sup>

## System of government

The Republic of Kazakhstan gained independence on 16 December 1991. Under the constitution adopted on 30 August 1995, Kazakhstan is a democratic, secular, legal and social state. State power is divided between legislative, executive and judicial branches. Kazakhstan is a unitary state with presidential rule. Legislative functions are performed by the

Parliament of Kazakhstan, which is the supreme representative body and consists of two chambers, the Senate and the Majilis. The Government of Kazakhstan acts as the supreme executive body, headed by the Prime Minister. Judicial authority is vested in the Supreme Court.

## Time

Kazakhstan's time zones range from five hours ahead of Greenwich Mean Time (GMT) in the western part of the country to six hours ahead of GMT in other regions. Astana and Almaty are six hours ahead of GMT.

## Business hours

Kazakh offices are generally open from 9:00 a.m. to 6:00 p.m. Monday through Friday and closed Saturdays and Sundays. Public holidays and days off The following table presents Kazakhstan's official public holidays and days off.

## Public holidays and days off

The following table presents Kazakhstan's official public holidays and days off.

Holiday	Dates
New Year holidays	1-2 January
Orthodox Christmas	7 January
International Women's Day	8 March
Nauryz Meyrami	21-23 March
Kazakhstan People's Unity Day	1 May
Defender of the Fatherland Day	7 May
Victory Day	9 May
Capital Day	6 July
The first day of Kurban Ait	28 June in 2023 (observed in accordance with the Islamic Calendar
Constitution Day	30 August
Republic Day	1 December
Independence Day	16 December





# Kazakhstan fact sheet

Capital	Astana
Administration	The country is divided into 14 provinces and has 3 cities of national significance
Bordering countries	Russia, China, Uzbekistan, Kyrgyzstan and Turkmenistan
Land area	2,724,900 km <sup>2</sup>
Population (2022)	19.7 million
Urban population, % (2022)	61,2% of the total population
Age structure (2022)	0-15 years (21.6%); 16-64 years (71%); 65 and above (7.4%)
Languages	Kazakh (official language), Russian (interethnic communication)
President	Kassym-Jomart Tokayev (since 20 March 2019)
Prime Minister	Alikhan Smailov (since 11 January 2022)
Nominal GDP (2022)	USD 192.4 billion
GDP growth (2022)	4.0%
GDP per capita (2022)	USD 10,801
GDP composition by sector (2021)	Agriculture (5%); industry (35%); services (54%); other (6%)
External debt as a percentage of GDP (Q4 2022)	78%
Labour force (2021)	9.2 million
Unemployment rate (2022)	4.9%
CPI inflation (2022)	13.5%
Stock exchange	Kazakhstan Stock Exchange (KASE)
Central Bank	National Bank of Kazakhstan
Corporate income tax rate	20%
Individual income tax rate	10%
State value-added tax	12%
Major cities	Astana, Almaty, Shymkent, Karaganda, Atyrau, Aktau
Currency unit	Kazakhstan tenge (KZT)
Annual average exchange rate (2023)	USD 1 = KZT 444.23; EUR 1 = KZT 472.48; RUR 1 = KZT 5.96; CNY 1 = KZT 64.54

# 2 Our top 10 tax and legal tips





In this section we offer our top tax and legal tips for prospective investors. Should you need more information on any of these issues, EY will be happy to assist you in the following areas:

- ▶ Tax planning and compliance, both in Kazakhstan and internationally
- ▶ Business accounting and payroll
- ▶ A full range of legal consulting services in Kazakhstan, as well as tax litigation services
- ▶ Transaction advisory services and legal and tax due diligence
- ▶ Immigration support and performance and reward planning
- ▶ Assurance services

## Tax tips

# 1

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Kazakh law has been subject to frequent changes. This makes it important to have robust tax planning to enable businesses to cope with changes in the law and implement structural changes as required without significant tax costs.

# 2

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2. Corporate and personal income tax rates in Kazakhstan are low by international standards, but penalties for non-payment and non-reporting, whether intentional or not, are high. The first focus of tax planning in Kazakhstan should be to confirm that all tax that ought to be paid in Kazakhstan is paid and reported. In addition, Kazakhstan is a documentation-driven country, and keeping documentation in order (including support documentation) is of paramount importance.

# 3

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3. The scope of withholding taxes (WHTs) on cross-border payments is wide, and rates are high (sometimes even when the recipient has never entered Kazakhstan). However, Kazakhstan has double tax treaties with many countries which allow for withholding taxes to be reduced or avoided if all the necessary documentation is in place (though the provisions of the MLI, which entered into force in Kazakhstan from 1 October 2020 should be considered and properly applied). Otherwise, tax will be withheld, and obtaining a refund may be a complex and time-consuming process with an uncertain outcome. Moreover, Kazakhstan has a unique position on transfer pricing whereby all cross-border transactions may potentially be inspected for transfer pricing compliance, regardless of whether the parties are in any way related.

# 4

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4. There are many downsides to dealing with tax havens when structuring cross-border investments or transactions in Kazakhstan. Thus, tax havens should not usually form part of tax planning in Kazakhstan.

# 5

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5. The rules for determining whether a business dealing with Kazakhstan has a taxable presence for corporate income tax (CIT) purposes in Kazakhstan (a permanent establishment) are very broad and can apply collectively to whole groups of companies if they have been in the country for over six months. Some, but not all, of Kazakhstan's tax treaties (with MLI limitations) protect against this. Therefore, if more than one group entity is used to do business in Kazakhstan, the position of all entities involved should be reviewed collectively.

# 6

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6. The deductibility of interest on investor loans is subject to a debt-to-equity ratio of 4:1 (7:1 for financial organizations). At best, an investor will pay 10% WHT on cross-border interest (under a double tax treaty) and be able to claim a CIT deduction of 20%, while for certain borrowings accrued interest expense may be deducted only when paid. Furthermore, exchange gains and losses on loans are recognized for tax purposes.

# 7

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7. There is a safe harbour allowing an entity that second staff to Kazakhstan to avoid a taxable presence. Provided the arrangements are properly structured, this is likely to be more tax-efficient than using the same staff to provide consulting or other services.

# 8

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8. Branch profit tax applies to all permanent establishments of foreign legal entities at a standard rate of 15%. It is usually reduced by tax treaties. There is an equivalent tax on dividends at the same standard rate, which may also be reduced by treaties (with MLI limitations). In the case of dividends, the rate is zero after an investment has been held for three years, except for investments in oil and gas or mining operations (unless a certain portion of minerals is refined), dividends paid to entities registered in tax havens and investments in certain CIT-exempt entities.

# 9

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9. In many cases, an exemption from capital gains tax may be obtained upon withdrawal from an investment in Kazakhstan, provided that the correct structuring was used when the investment was first made. The complexity of the structuring depends on the nature of the asset.

# 10

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10. According to currently enacted tax law, income received by foreign individuals (cash and in-kind) for work performed in Kazakhstan (regardless of where the income is paid) is treated as Kazakh-source income and is subject to Kazakh personal income tax (PIT). Generally, Kazakh-source income is reported and taxed in Kazakhstan using one of the following methods: (i) self-assessment via an annual PIT return or (ii) at source via a local company acting as a so-called "tax agent". In most cases, the law places tax and reporting obligations for Kazakh-source income of foreign individuals on the local tax agent, e.g. a foreign legal entity with a registered presence in Kazakhstan (a branch or representative office) or a local entity that uses the services of a non-resident employer delivered through foreign employees.



# Legal tips

## 1

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1. Most investors use a Kazakh limited liability partnership (LLP) as their investment vehicle.

## 2

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2. Settlements between residents of Kazakhstan (e.g. Kazakh legal entities, branches/representative offices of foreign non-financial entities, Kazakh citizens and, recently, branches/representative offices of foreign entities found to constitute a PE in Kazakhstan) must be made in KZT (with a few exceptions: e.g. branches of non-financial entities may transact with each other in foreign currency ). Settlements between non-residents (e.g. foreign legal entities and citizens and branches/representative offices of foreign entities that do not have a PE in Kazakhstan) and Kazakh residents may generally be made in any currency, but may have to be reported to the National Bank if they reach certain thresholds.

## 3

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3. An extensive range of business and professional activities are subject to licensing requirements, and it is important for investors to determine in advance whether they need a licence. The penalties for failure to obtain a licence can be significant, including potential criminal liability.

## 4

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4. Kazakhstan often takes a formalistic approach to procedural matters. In most cases, a company's representatives must have a detailed power of attorney and will regularly be required to refer to it - e.g., when signing contracts and filing applications with various government authorities.

## 5

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5. Compliance with local content requirements is very important for mining and oil and gas companies and their subcontractors and is constantly monitored by government authorities.

## 6

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6. The process of hiring foreign employees is complex and strictly regulated in Kazakhstan. Immigration and labour laws have undergone numerous changes resulting in frequent inspections of companies that employ foreign workers and increased penalties for violations of labour and migration rules (including discriminatory terms of remuneration and payment of salaries in foreign currency).

## 7

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7. Kazakhstan generally permits foreign law to be the governing law for commercial contracts, except for subsurface use contracts with the state, foundation agreements of a Kazakh legal entity, agreements on the transfer of participating interests in a legal entity and transactions involving immovable property.

# 8

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8. There is a special legal regime for companies registered as AIFC participants. Regulatory acts of the AIFC governing relations between AIFC participants may be based on the “principles, norms and cases” of the law of England and Wales and standards of international financial centres.

# 9

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9. In certain cases, Kazakh law requires the approval of government authorities for the acquisition of shares/participating interests in legal entities operating in fields covered by competition and natural monopoly regulations and by legislation relating to subsurface use. It is therefore important to analyze the requirements of Kazakh laws on a case-by-case basis before entering into such transactions.

# 10

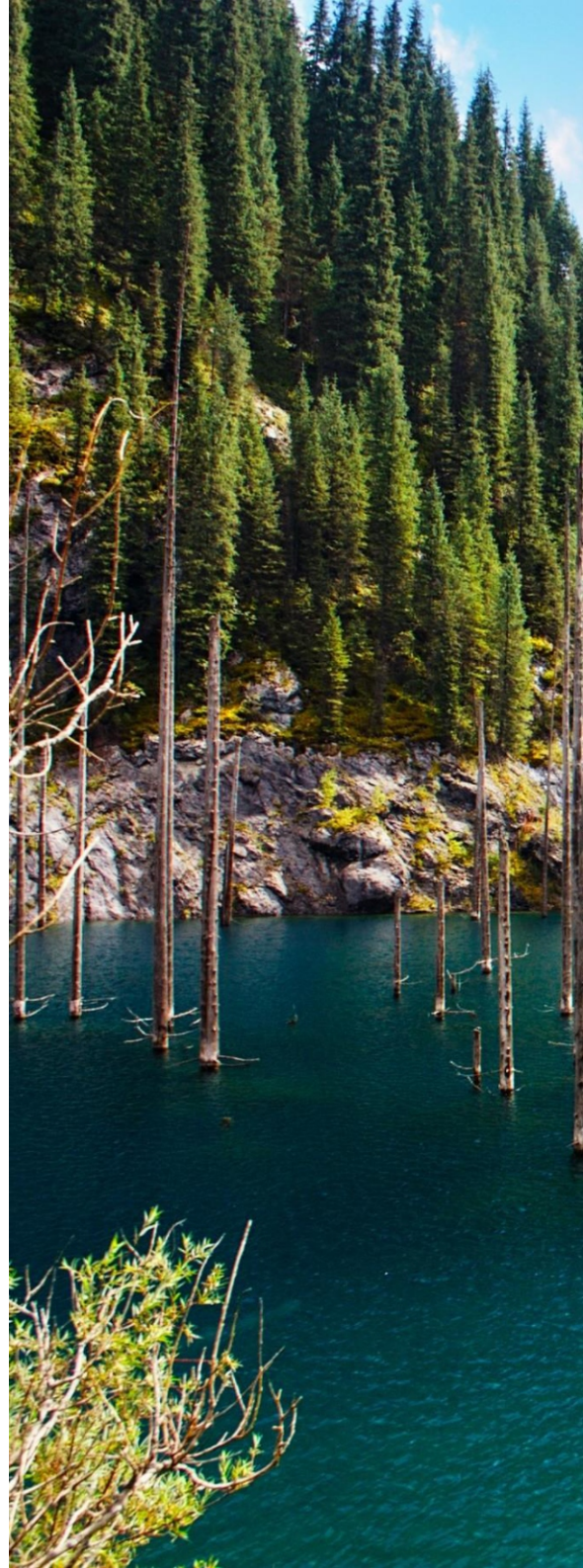
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10. Disputes between Kazakh legal entities are resolved either through amicable procedures (mediation, amicable settlement and participatory procedure) or by courts and local arbitration, as well as by international arbitration and foreign courts (with certain exceptions) if a provision allowing such dispute resolution is contained in the relevant agreement between the parties. Public disputes with Kazakh government authorities can be resolved either in court or through a pre-litigation procedure.

# 11

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11. At the same time, Kazakh legal entities have access to the AIFC’s court and international arbitration centre, whose decisions are recognized and enforced in Kazakhstan similarly to international arbitration awards.









# 3 Getting started





## Arriving in Kazakhstan

The Kazakh authorities issue the following categories of visas:

- ▶ **Category A:** diplomatic, official and investor visa
- ▶ **Category B** (long-term stay and short-term stay): business visa, visa for international road haulage, visa for crew members of aircraft, marine and river vessels and trains, visa for religious events, visa for practical training or internships, visa for permanent residence in Kazakhstan, private visa, visa for adoption of Kazakh citizens, tourist visa, transit visa and exit visa for leaving Kazakhstan
- ▶ **Category C** (long-term stay): visa for permanent residence in Kazakhstan (for ethnic Kazakhs), family reunion visa, work visa, visa for missionary activities, humanitarian visa, study visa, private visa (for ethnic Kazakhs), visa for minors and medical treatment visa

Visas of the these categories may be issued for single or multiple entry, depending on the category and type of visa. Exit visas are issued only for single use.

Business visas (Category B) are issued to foreign individuals arriving in Kazakhstan for business purposes (e.g., negotiations, conclusion of contracts, provision of consulting or audit services, provision of installation, repair or maintenance services and attendance at conferences, symposiums, forums, exhibitions and concerts). Work visas (Category C) are issued to foreign individuals entering or staying in Kazakhstan for employment and members of their families. In general, a work visa is issued based on a work permit. See the “Work permits” section for details.

In Kazakhstan, visas are issued by the Ministry of Internal Affairs (MIA) of Kazakhstan. Elsewhere, they are issued by Kazakh consulates (e.g., the Consular Section of the Embassy of Kazakhstan). Business and work visas are issued based on a letter of invitation issued by a local Kazakh company or a branch or representative office of a foreign company. The state duty for processing invitations is 0.5 times the monthly calculation index (MCI). The fee for issuing a visa ranges from USD 20 to USD 1,000 depending on the country of residence of the invited party and the type of visa requested. A visa should be issued within five business days, however, in practice it may take longer.

An individual may obtain certain types of official business and private visas without a letter of invitation by submitting a written application to the Kazakh consular establishment in the respective country if he or she is a citizen of one of the following countries:

- |                  |                        |
|------------------|------------------------|
| ▶ Australia      | ▶ Lithuania            |
| ▶ Austria        | ▶ Luxembourg           |
| ▶ Belgium        | ▶ Malaysia             |
| ▶ Brazil         | ▶ Malta                |
| ▶ Bulgaria       | ▶ Monaco               |
| ▶ Canada         | ▶ Netherlands          |
| ▶ Croatia        | ▶ New Zealand          |
| ▶ Cyprus         | ▶ Norway               |
| ▶ Czech Republic | ▶ Oman                 |
| ▶ Denmark        | ▶ Poland               |
| ▶ Estonia        | ▶ Portugal             |
| ▶ Finland        | ▶ Qatar                |
| ▶ France         | ▶ Romania              |
| ▶ Germany        | ▶ Saudi Arabia         |
| ▶ Greece         | ▶ Singapore            |
| ▶ Hungary        | ▶ Slovak Republic      |
| ▶ Iceland        | ▶ Slovenia             |
| ▶ Ireland        | ▶ Spain                |
| ▶ Israel         | ▶ Sweden               |
| ▶ Italy          | ▶ Switzerland          |
| ▶ Japan          | ▶ United Arab Emirates |
| ▶ Jordan         | ▶ United Kingdom       |
| ▶ Korea (South)  | ▶ United States        |
| ▶ Latvia         |                        |
| ▶ Liechtenstein  |                        |

Kazakh migration law allows citizens of the following countries to enter and exit Kazakhstan without visas based on bilateral agreements: Georgia, Armenia, Belarus, Kyrgyzstan, Moldova, Russia, Mongolia, Ukraine, Azerbaijan, Turkey, South Korea, the United Arab Emirates, Argentina, Brazil, Ecuador, Tajikistan, Uzbekistan, Serbia, Hong Kong, Cuba, Andorra and Maldives.

In addition, there is the visa-free regime for entering, staying in and exiting Kazakhstan for citizens of 57 countries:

- ▶ Commonwealth of Australia
- ▶ United States of America
- ▶ Republic of Austria
- ▶ Kingdom of Bahrain
- ▶ Kingdom of Belgium
- ▶ Republic of Bulgaria
- ▶ United Arab Emirates
- ▶ Holy See, Vatican
- ▶ Socialist Republic of Vietnam
- ▶ Federal Republic of Germany
- ▶ Hellenic Republic
- ▶ Kingdom of Denmark
- ▶ New Zealand
- ▶ Japan
- ▶ State of Israel
- ▶ Republic of Ireland
- ▶ Republic of Iceland
- ▶ Kingdom of Spain
- ▶ Republic of Indonesia
- ▶ Italian Republic
- ▶ Canada

- ▶ State of Qatar
- ▶ Republic of Cyprus
- ▶ Republic of Colombia
- ▶ Republic of Korea
- ▶ State of Kuwait
- ▶ Republic of Latvia
- ▶ Republic of Lithuania
- ▶ Principality of Liechtenstein
- ▶ Grand Duchy of Luxembourg
- ▶ Hungary
- ▶ Malaysia
- ▶ Republic of Malta
- ▶ United States of Mexico
- ▶ Principality of Monaco
- ▶ Kingdom of the Netherlands
- ▶ Kingdom of Norway
- ▶ Sultanate of Oman
- ▶ Republic of Poland
- ▶ Portuguese Republic
- ▶ Romania
- ▶ Kingdom of Saudi Arabia
- ▶ Republic of Singapore
- ▶ Slovak Republic
- ▶ Republic of Slovenia
- ▶ Kingdom of Thailand
- ▶ Republic of Turkey
- ▶ United Kingdom of Great Britain and Northern Ireland
- ▶ Republic of the Philippines
- ▶ Republic of Finland
- ▶ French Republic
- ▶ Republic of Croatia
- ▶ Czech Republic
- ▶ Republic of Chile
- ▶ Swiss Confederation
- ▶ Kingdom of Sweden
- ▶ Republic of Estonia

Under this visa-free regime, citizens of the above countries may enter Kazakhstan without a visa for a period not exceeding 30 calendar days after crossing the border and may spend a total of no more than 90 calendar days in the country in each 180-calendar day period. This rule does not apply to foreign individuals who have obtained a temporary residence permit as described below. If a foreign individual wishes to stay in Kazakhstan for a longer period, he or she may apply for a single-entry business or investor visa while in Kazakhstan. Investor visas are issued to certain categories of business immigration applicants (managers of companies that carry out investment activities in Kazakhstan and members of their families) and provide certain privileges.



## Post-arrival procedures

Notification of the migration authorities upon arrival of a foreign individual in Kazakhstan

As a general rule, regardless of the citizenship of a foreign individual, the host entity should notify the migration authorities of the arrival of foreign individuals in Kazakhstan within 3 business days after the date of arrival. Also, notification should be submitted to the migration authorities if a foreign individual changes his or her temporary residence address in Kazakhstan (e.g., change of hotel/apartment, change of address due to a business trip, move to another region for work).

Immigration records are kept by the MIA based on information from inviting parties and by the National Security Committee of Kazakhstan based on information from Kazakh border control authorities.

### Temporary residence permit

Foreign individuals exempt from a visa arriving in Kazakhstan for more than 30 calendar days (after the date of arrival) are required to obtain a temporary residence permit (TRP) from the MIA.

A TRP allows a foreign individual to stay for a specific period (e.g. the duration of an employment agreement) and must be obtained by the inviting party. A TRP is issued based on applications from:

1. Individuals inviting foreign

individuals to reunite families

2. Individuals or legal entities that have concluded an employment agreement with a foreign individual

3. Educational organizations

4. Medical organizations

5. Religious organizations

6. Local authorities inviting individuals to engage in entrepreneurial activities (business immigrants)

The period of stay in Kazakhstan ends upon the expiry of the visa or, for visa-free visitors, after 30 calendar days or the period indicated in the TRP.

There are various sanctions for non compliance with immigration requirements. Please refer to the relevant section for details.

*Should you require assistance in planning and managing your human capital needs, EY can assist with business and work visas, work permit applications for foreign employees, tax registration, tax and legal compliance for expatriate individuals and structuring secondment arrangements.*

## Types of legal entities

Under the Civil Code, foreign and local investors may use a number of vehicles to do business in Kazakhstan, including simple partnerships, limited liability partnerships, additional liability partnerships, production cooperatives and joint stock companies.

In this section we provide more

details on the types of business vehicles that are most widely used in practice.

### Joint stock companies (JSCs)

A JSC is a legal entity that issues shares in order to attract investments to finance its activities. A JSC is separate and distinct from its shareholders – i.e., as a general rule, shareholders are not liable for a JSC's liabilities. It may have one or more shareholders. The minimum capital required for a JSC is 50,000 MCI (KZT 172,500,000; approximately USD 374,000).

### Limited liability partnerships (LLPs)

The main difference between a JSC and an LLP is that an LLP does not issue shares; instead, participants hold interests in the partnership's charter capital. An LLP may be formed by one or more participants. Generally, the participants in an LLP are not liable for the LLP's debts beyond the value of their contributions to the charter capital. The minimum charter capital requirement for an LLP is 100 MCI (KZT 345,000; approximately USD 750), with the exception of small business enterprises, whose minimum is set at zero. Participants' interests are proportional to their contributions to the charter capital, unless the foundation documents provide otherwise. Participants have pre-emptive rights to each other's participatory interests when those are being sold. Importantly, LLPs in Kazakhstan are separate legal entities that are



distinct from their participants. As a legal entity, an LLP is subject to state registration and taxation in its own right, i.e., it is not tax transparent. In addition, Kazakhstan law allows a foreign company to establish branches and representative offices. Under the Civil Code, branches and representative offices are not separate legal entities, but structural subdivisions of the company.

### **Representative office**

A representative office is established to represent a foreign entity's interests in Kazakhstan. A representative office protects and represents the interests of a foreign legal entity and carries out preparatory and auxiliary activities, such as marketing and advertising. Generally, a representative office may not engage in commercial activities.

### **Branch**

A branch is a subdivision of a foreign legal entity that performs all or part of a foreign entity's functions. In particular, it may engage in commercial activities.

*Should you require more information on the nature and uses of the various types of business entities in Kazakhstan, EY offers tax and legal advice on how to structure a business, as well as a full range of company formation and registration services.*

## **Establishing a legal presence**

As a rule, all legal entities, branches and representative offices in Kazakhstan must be registered in Kazakhstan. It is important to determine whether any specific approvals and/or consents must be obtained from government authorities before proceeding to state registration.

### **State registration**

State registration in Kazakhstan follows a “one-stop shop” principle: all registration documents must be submitted to a single government authority, the Government for Citizens. Under the law on state registration, the procedure should take from 1 to 3 business days. In practice, general registration can take up to one month.

The law prescribes a standard set of documents that should be submitted for the state registration of a company. Having all the right documents is key to a successful registration process. It is essential to ensure that the documents have been duly signed, sealed, notarized and legalized, or apostilled if they were executed abroad; otherwise, the registration process may be considerably delayed.

The state registration fee is currently 6.5 MCI (KZT 22,425; approximately USD 50).

A micro, small or medium-sized legal entity can be registered by submitting an electronic application filled in by the founder(s) of the legal entity on the e-government web portal ([www.egov.kz](http://www.egov.kz)). However, this option requires that the founders have properly issued digital signatures in Kazakhstan.

### **Location (legal address)**

A legal entity's location is the address indicated in its foundation documents (e.g., its charter and foundation agreement, if applicable). Under Kazakh law, a legal entity is located in the same place as its permanent governing body (i.e., its director or board of directors). Location plays an important part in a legal entity's registration and other legal events, such as the determination of the court of competent jurisdiction in case of a lawsuit against such entity (usually a court in the defendant's location) and the state revenue authority to which tax and other payments must be made. Under Kazakh law, government authorities, including state revenue authorities, require legal entities, branches and representative offices (“entities”) to be present at the legal addresses indicated in their foundation documents and registration records. The state revenue authorities may visit them at their legal address under an “observation procedure”. If entities are not actually present at

their legal address, i.e., the state revenue authorities cannot find anyone representing an entity at the time of observation, the entity may face adverse consequences, such as deregistration for VAT purposes, or freezing of its bank accounts. It is therefore important for entities to be actually present at the legal address stated in their foundation documents and registration records, or at least to ensure that, if the authorities visit (or if they send correspondence or call the contact telephone number), there is someone who can confirm the presence of the entity at that address.

Kazakh law stipulates that entities not present at their registered address for one year or more may be liquidated/deregistered based on a court decision.

### **Opening a bank account (legal entities and individuals)**

Bank accounts may be opened with a local bank in Kazakhstan in the national currency and/or a foreign currency. As a general rule, branches and representative offices of foreign legal entities may opt to use foreign bank accounts along with local bank accounts. Kazakh legal entities are permitted to hold bank accounts outside Kazakhstan without restrictions.

Under currency law, the rules for notifying the National Bank of Kazakhstan of the opening of a bank account with foreign banks are as follows:

- Kazakh legal entities and their branches and representative offices are required to notify the National Bank of Kazakhstan of the opening of a bank account abroad by applying for a registration number to be assigned to the bank account by the

National Bank of Kazakhstan

- Kazakh legal entities and their branches and representative offices are required to provide the National Bank of Kazakhstan with information on any transactions on bank accounts held with foreign banks

- Kazakh legal entities and their branches and representative offices are required to notify the National Bank of Kazakhstan of the closure of or changes in details of bank accounts held abroad

Individual residents of Kazakhstan are not required to notify the National Bank of Kazakhstan of bank accounts opened with foreign banks. Second-tier banks notify the National Bank of Kazakhstan of money transfers made from resident individuals' local bank accounts to their foreign bank accounts.

See the “Banking regulations” and “Currency regulations” sections for more details.



## Categories of work immigrants, work permits and secondment

The Law of the Republic of Kazakhstan on Migration of the Population of 22 July 2011

establishes the following categories of immigrants entering the country for employment purposes:

- ▶ Foreign immigrant workers, i.e., persons who come to Kazakhstan to engage in independently arranged employment in high-demand occupations in priority economic sectors (business areas) and persons who are engaged by employers to work in Kazakhstan, including by intra-corporate transfer
- ▶ Business immigrants, i.e., persons who come to engage in entrepreneurial activities in accordance with Kazakh law
- ▶ Seasonal foreign workers, i.e., immigrants hired to perform seasonal work during specific periods (seasons) determined by climatic or other natural conditions, but not for more than one year
- ▶ Labour immigrants who come to Kazakhstan as domestic workers to perform household-based work (services) for individuals (employers) under a labour immigrant permit

### Work permits

There are two types of permits allowing foreign individuals to work in Kazakhstan:

- ▶ A permit to engage foreign labour
- ▶ A permit issued to a foreign individual who independently came to Kazakhstan to work in a particular occupation. The Kazakh government

approves the list of such occupations. As in many other countries, employers in Kazakhstan must obtain a permit to employ foreign citizens.

There is a reasonable amount of flexibility in the process of hiring foreigners in Kazakhstan. Unlike many countries, where employers are required to sign employment contracts with foreign nationals to hire them as local employees, Kazakhstan offers different options, including (i) employing a foreigner directly as a local employee, (ii) engaging foreign specialists under a service contract with a foreign contractor not present in Kazakhstan (including secondment agreements, which are commonly used around the world), and (iii) transfer of a foreigner to a local branch/representative office/subsidiary from a parent company based in a WTO country (intra-corporate transfer). A work permit is obtained by submitting documents to the local authorities under one of the two procedures: the standard procedure or intra-corporate transfer procedure. The latter option is available because Kazakhstan is a member of the World Trade Organization (WTO).

### Standard procedure

Work permits are issued by local authorities within the quota allocated by the Ministry of Labour and Social Protection on an annual basis. This quota is the maximum number of foreign individuals who can be hired to work in Kazakhstan in particular

regions. Quotas are determined mainly on the basis of annual applications that employers must submit by 1 October.

For the purposes of work permits issued under the standard procedure, foreign individuals are divided into the following categories:

- ▶ Category 1: CEOs and Deputy CEOs of companies
- ▶ Category 2: Leaders of business divisions/departments
- ▶ Category 3: Professionals
- ▶ Category 4: Skilled workers

There is, however, a restriction on the number of foreign employees who may be hired by a specific employer/local host entity – the so-called “ratio requirement”. Currently, the total number of foreign employees of a Kazakh employer/local host entity must not exceed:

- ▶ 30% of the total number of Category 1 and 2 employees
- ▶ 10% of the total number of Category 3 and 4 employees

This ratio requirement does not apply to small businesses, state enterprises and agencies, self-employed foreign individuals, permits issued within the quotas for particular countries of origin and branches and representative offices of foreign legal entities with no more than 30 employees.

To obtain a work permit, each foreign individual must meet the set qualification requirements.

A work permit under the standard



procedure is issued for the following durations:

- Category 1: 1, 2 and 3 years with annual extensions of 1, 2 or 3 years
- Category 2: 12 months with annual extension of 12 months, but no more than 3 times
- Category 3: 12 months with annual extension of 12 months, but no more than 3 times
- Category 4: 12 months with no option to extend

An employer is charged a state duty for issuing or extending a work permit. The amount of the duty is established by the Kazakh government and ranges from approximately USD 970 to USD 3,300, depending on the industry of the employer and the category of an employee.

#### Intra-corporate transfer

An intra-corporate transfer (ICT) is a temporary transfer of a foreign individual from a legal entity established in a WTO state other than Kazakhstan to a branch, subsidiary or representative office in Kazakhstan. For the purpose of obtaining a work permit under ICT, foreign individuals are classified as:

- Specialists
- Managers
- Executives

Under the ratio requirement for ICT, the number of foreign employees must not exceed 50% of the total number of managers and specialists of a branch/representative office/subsidiary in Kazakhstan. No ratio requirement applies to executives. A foreign individual

engaged under ICT remains employed by the home company but must comply with the requirements of the host employer in terms of work schedule and health and safety requirements. The foreign individual must meet the qualification requirements and have at least one year of work experience with an entity based in a WTO member state. Local authorities issue a work permit under ICT for the transfer period, but not more than 3 years (36 months), with the option to extend it once by 1 year (12 months).

ICT-based work permits are issued free of state duties and are not subject to the foreign labour quota. However, before hiring a foreign specialist to work in Kazakhstan under the ICT option, the local host entity must carry out a search for suitable candidates on the Kazakh labour market and obtain a work permit only if no suitable candidates are found. For each manager or specialist work permit received under ICT, the employer must meet one of a number of special conditions (e.g., creation of new jobs for Kazakh citizens, training of Kazakh citizens, etc.). No special conditions are imposed on the host company when executives are hired.

#### Work permit exemptions

To encourage foreign investment, Kazakhstan offers various exemptions from the requirement to obtain work permits for foreign workers.

Exemptions apply, for instance, to:

- Business immigrants who come to

Kazakhstan to engage in entrepreneurial activities (special conditions apply)

- Heads of local branches or representative offices of foreign companies and their deputies of local wholly foreign-owned companies
- Heads of companies that have entered into agreements with the Government of Kazakhstan to invest more than USD 50 million in the country and heads of local companies running investment projects in key industries under agreements with local competent authorities
- Nationals of member countries of the Eurasian Economic Union, regardless of their position or the duration of their employment in Kazakhstan
- Foreign nationals engaged by participants or bodies of the Astana International Finance Centre (AIFC)
- Individuals working in the Astana Hub international technology park or hired by park participants as managers and professionals with higher education
- Managers and professionals with higher education working either with local companies that have entered into contracts to implement investment projects in priority areas or with companies in the architectural, urban planning and construction industries that have been contracted by such an investor, for the period until the end of the first year after the commissioning date of the project facility, or as skilled workers in accordance with the list of occupations and employee

numbers approved as part of investment contracts

- Employees of companies registered in one of Kazakhstan's 10 free economic zones (FEZs) to implement projects worth more than 1 million MCI or companies contracted by an FEZ resident, for the period of construction and installation work in the FEZ and during the first year after the commissioning date of the project facility, in accordance with the list of employee categories and numbers approved by a special committee of competent authorities
  - Individuals working in a national management holding company in positions not lower than heads of departments who have higher education and possess the required supporting documents
  - Employees sent on business trips for a period of 120 calendar days during the course of a calendar year
- Individuals engaged to work as members of the board of directors of a national management holding company

#### **Liability for non-compliance with immigration law**

Kazakh law imposes severe sanctions on Kazakhstan entities for non-compliance with immigration law. Administrative sanctions imposed on a company may be as high as USD 7,100 (per foreign individual, per violation). In the worst-case scenario, the individual may be subjected to administrative detention for up to 15 days or administrative deportation from the country, and the company

may be banned from hiring foreigners for up to 1 year, i.e., no work permits will be issued and invitations from the company will not be accepted for visa applications in the said period. In addition, a foreign individual must personally appear in administrative court in connection with an immigration offence. Such foreign individuals are not allowed to enter Kazakhstan for 5 years after administrative deportation from Kazakhstan.

#### **Residence permits**

Kazakhstan issues residence permits. There is no quota system for immigration into Kazakhstan under residence permits. Work permit requirements do not apply to holders of residence permits.

#### **Family members**

The spouse of a holder of a Kazakh work permit does not automatically receive the same type of work permit. If he or she wishes to find employment, a work permit application must be filed independently.

#### **Secondment**

The Tax Code provides a safe harbour provision pursuant to which a foreign entity providing secondees from outside Kazakhstan may be exempt from WHT in Kazakhstan. Certain conditions must be met for this to apply.

Under secondment, the local host company acts as a tax agent in relation to the seconded personnel's

income and is responsible for shadow payroll tax calculation and reporting, including personal income tax and social tax liabilities. However, it is important to note that, in addition to tax law, secondment must also comply with relevant Kazakhstan labour law requirements.

*EY can assist with (i) structuring a secondment arrangement that meets the applicable legislative requirements, (ii) drafting secondment agreements and other mandatory documents, and (iii) applying for required permits, registration, etc., in Kazakhstan.*



# Incentives for investors

To create a favourable investment climate, Kazakhstan provides various benefits for investors depending on their area of activity.

## Investment contract

In order to enjoy certain investment incentives, an investor must enter into an investment contract with the Investment Committee of the Ministry of Foreign Affairs of the Republic of Kazakhstan (the "Committee"). The form of the investment contract is approved by a government resolution.

It is important to note that the investment contract must be concluded with a Kazakh legal entity, which may be a subsidiary of a foreign company. The term of the investment contract is determined by the effective period of the investment incentives to be provided.

The Entrepreneurial Code of Kazakhstan<sup>17</sup> specifies three types of projects that may be implemented under investment contracts:

1. Regular investment projects involving the creation of new production facilities or the expansion and upgrading of existing ones, including facilities created, expanded and/or upgraded during the implementation of public-private partnership projects, including concession projects
2. Priority investment projects involving the creation of new

production facilities with investments of no less than USD 14,954,162 or the expansion and upgrading of existing production facilities with investments of no less than USD 37,385,405

3. Special investment projects implemented by legal entities registered as participants of special economic zones, or by owners of a free warehouse, or by legal entities that have entered into an agreement on the industrial assembly of motor vehicles

All such investment projects must fall within the list of priority areas of activity approved by the Kazakh government. Below we outline types of incentives provided to investors, depending on the type of investment project:

1. Regular investment projects
  - Exemption from customs duties
  - Exemption from import VAT
  - In-kind grants (free land lease, title to land plots and equipment) up to a value not exceeding 30% of total investment
2. Priority investment projects
  - Exemption from customs duties
  - In-kind grants (free land lease, title to land plots and equipment) up to a value not exceeding 30% of total investment
  - Tax incentives, specifically:
    - 100% CIT relief for up to 10 years for new production facilities and 3 years for the modernization of production facilities

- zero rate of land tax for up to 10 years
  - zero rate of property tax for up to 8 years
3. Special investment projects
- Exemption from customs duties
  - Exemption from import VAT

## Investment agreements

The Tax Code provides investment incentives under investment agreements if an entity meets all the following criteria:

- It enters into an investment agreement with the authorized state body
  - It implements an investment project in the areas specified in the list of priority activities approved by the government
  - It is not a subsurface user and/or a producer of excisable goods
  - It does not apply special tax regimes
- Entities that conclude investment agreements may enjoy the following tax benefits (subject to certain criteria being met):
- 100% CIT relief for up to 10 years
  - Zero rate of land tax for up to 10 years
  - Zero rate of property tax for up to 8 years
  - VAT exemption for supplies of goods, work and services in an SEZ
  - Reduction of CIT, land tax and property tax liabilities in a total amount not exceeding 20% of a taxpayer's actual expenses (if envisaged by the investment agreement) for investment projects with investments of not less than



USD 112,156,216 applicable after 10 years of usage of tax benefits within the term of the investment agreement (not exceeding 25 years)

#### **Investment commitment agreement**

The Tax Code currently provides investment incentives under an investment commitment agreement if an entity meets all the following criteria:

- ▶ It enters into an investment commitment agreement with the Investment Committee of the Republic of Kazakhstan
- ▶ It is an export-oriented commodity producer, except for exporters of hydrocarbons and oil products
- ▶ It is a large enterprise under horizontal monitoring, including participants in the horizontal monitoring pilot project
- ▶ It does not engage in the production of excisable goods
- ▶ It does not apply special tax regimes

Investment preferences granted under an investment commitment agreement include:

- ▶ Stability of the tax regime, which in general terms means that the investor is immune from changes in tax laws and enjoys the benefits of the legislation in effect as of the date of the investment commitment agreement for a period of 10 years (except for the following taxes and payments to the budget: VAT, excise tax, payments for environmental emissions, PIT and WHT, which should be calculated in accordance with the tax regime effective as of

the date when such tax liabilities arise)

#### **Agreement on the processing of solid minerals**

The Subsurface Use Code currently provides investment incentives for subsurface users that implement a priority investment project involving the processing of solid minerals in Kazakhstan and have concluded the relevant agreements with the Committee.

To enjoy the investment incentives, subsurface users must invest no less than USD 52,339,567 and apply to the Committee to conclude an agreement on the processing of solid minerals through a negotiation and appraisal process. It should be noted that only one processing agreement may be concluded for one and the same mineral processing project or production facility.

Furthermore, the state grants investment incentives based on the principle of reciprocity, i.e., the

subsurface user may be required to fulfil a number of social and investment obligations, such as:

- ▶ The creation and preservation of jobs for citizens of the Republic of Kazakhstan in the extractive and/or processing industries
- ▶ The creation, expansion and/or modernization of processing facilities
- ▶ Obligations relating to the volume and level of processing of solid minerals
- ▶ Obligations relating to the volume of products sold as raw materials to entities operating on the domestic market
- ▶ The financing of programs of Kazakh educational institutions to train specialists in environmental protection and applied sciences
- ▶ The financing of the construction and/or reconstruction of social and/or cultural facilities

The termination of an agreement on the processing of solid minerals also entails the termination of investment incentives granted.



## Special economic zones

Special economic zones (SEZ) are specialized territories of Kazakhstan with defined boundaries and a special regulatory regime designed to support certain priority activities. The list of priority activities is established by Order of the Minister for Investment and Development. The order specifies priority activities for 13 (thirteen) different SEZs in Kazakhstan:

1. Astana - New City (Astana): construction of industrial facilities and infrastructure
2. National Industrial Petrochemical Technopark (Atyrau region): manufacture of petrochemical products and construction of industrial facilities
3. Seaport Aktau (Mangystau region): metallurgy and construction of industrial facilities
4. Park of Innovative Technologies (Almaty): IT services
5. Ontustik (Turkistan region): production of textiles and other materials
6. Saryarka (Karaganda region): metallurgy, construction of industrial facilities
7. Khorgos - Eastern Gates (Almaty region): production of food, textiles, non-metallic mineral products and

other materials

8. Pavlodar (Pavlodar): manufacture of chemical and petrochemical products and construction of industrial facilities

9. Taraz Chemical Park (Taraz): manufacture of chemicals and non-metallic mineral products

10. Astana - Technopolis (Astana): production of food, pharmaceuticals, machinery and other products, and construction and commissioning of infrastructure facilities

11. Turkistan (Turkistan): construction of infrastructure and industrial and social facilities

12. ICBC "Khorgos" (Almaty region): development of cross-border trade and economic cooperation, development of export-oriented manufacturing

13. Qyzyljar (Petropavlovsk): production of food, electronics, mechanical engineering and medical services

Companies registered as participants of an SEZ enjoy the following benefits:

- ▶ An SEZ qualifies as a free customs zone
- ▶ Free land lease
- ▶ Tax incentives (subject to certain criteria), specifically:
  - ▶ 100% relief on land tax/land use fees

- ▶ 100% property tax relief
- ▶ 100% CIT relief
- ▶ 0% VAT on supplies of goods to the SEZ
- ▶ VAT exemption for supplies of goods within the SEZ
- ▶ 100% social tax relief (only for the Park of Innovative Technologies)
- ▶ Simplified procedures for engaging foreign labour

## Astana Hub International Technology Park

The Astana Hub International Technology Park was conceived as part of the Digital Kazakhstan national program. The Astana Hub is a designated and equipped area that provides a favourable environment for start-ups, including co-working, exchange of experience, assistance in attracting investors and expert advice. In order to be registered as an Astana Hub participant, Kazakh or foreign legal entities must submit an electronic application together with supporting documents, including a business plan. The applicant must be involved in information and communication technology activities. It should be noted that, until 1 January 2024, Astana Hub participants are not required to be located in the territory of the Astana Hub.

In order to be registered as an Astana Hub participant, an applicant must meet the following requirements:

- ▶ It is a legal entity



- ▶ It does not have branches or separate corporate units (other than representative offices)
- ▶ It does not implement priority or strategic investment projects under an investment contract
- ▶ 50% or more of its shares are not directly or indirectly owned by the government, a national company or subsidiaries of such a company
- ▶ It is not a subsurface user or SEZ

Astana Hub participants may enjoy the following benefits:

- ▶ Tax incentives (subject to certain criteria), specifically:
  - ▶ 100% CIT relief until 1 January 2029
  - ▶ PIT exemption for both local and foreign employees (Kazakhstan tax residents) working under local employment agreement – Astana Hub participants
  - ▶ Exemption from contributions at employer's and employee's expense for mandatory social health insurance fund for both local and foreign employees (Kazakhstan tax residents) working under local employment agreement – Astana Hub participants
  - ▶ Exemption from social tax – apply only to income of foreign employees working under local employment agreement – Astana Hub participants
  - ▶ Withholding tax exemption for non-residents on royalties and other income paid by Astana Hub participants for consulting,

marketing, engineering and data security services and work related to the creation of data processing centres (unless payable to non-residents registered in tax haven jurisdictions)

- ▶ 5% (instead of 15%) withholding tax on capital gains and dividends on shares and interests in Astana Hub participants
- ▶ VAT exemption for imports of certain goods and exemption from reverse charge VAT for services acquired by Astana Hub participants
- ▶ VAT exemption until 1 January 2029 for goods and services produced and supplied by Astana Hub participants
- ▶ Work permit exemption for foreign workers attracted for the positions of managers and professionals with higher education for Astana Hub international technology park or hired by park participants

- ▶ Opportunity to obtain a work visa for foreign employees with a right to extend it up to 5 years (instead of standard 3 years)

In return, Astana Hub participants must make quarterly contributions/ payments in the amount of 1% of revenue generated in the previous quarter.

## AIFC

The AIFC was established to provide a favourable environment for investors. So far, the AIFC has succeeded in its main mission to become a hub for foreign and local investors and various financial, market and ancillary service providers by establishing its own set of laws and a legal framework similar to those of well-known international financial centres, such as the Dubai



International Financial Centre. There are two options for establishing a legal presence in the AIFC:

1. Registration of a new legal entity
2. Recognition of existing legal entities as AIFC participants

New AIFC legal entities may be registered in forms similar to those provided for in common law jurisdictions, such as:

- ▶ Limited Partnership
- ▶ Limited Liability Partnership
- ▶ General Partnership
- ▶ Private Company
- ▶ Public Company
- ▶ Investment Company
- ▶ Special-Purpose Company
- ▶ Non-Profit Incorporated Organization
- ▶ Protected Cell Company
- ▶ Restricted Scope Company
- ▶ Foundation

Foreign partnerships and companies may be registered with the AIFC in the following legal forms:

- ▶ Recognized Company
- ▶ Recognized General Partnership
- ▶ Recognized Limited Partnership
- ▶ Recognized Limited Liability Partnership

Certain activities, such as financial services, market activities and ancillary services (legal, audit, accounting, consulting, credit rating) must be licensed by the financial regulator of the AIFC – the Astana Financial Services Authority (“AFSA”).

AIFC participants may enjoy the following benefits (subject to certain

criteria being met):

- ▶ CIT exemption until 1 January 2066 for certain financial services that are specified in the AIFC law and provided within the AIFC
- ▶ PIT exemption until 1 January 2066 for foreign employees of AIFC participants working under local employment agreement who provide the abovementioned financial services
- ▶ CIT and PIT exemption until 1 January 2066 on dividends and capital gains from publicly listed securities and shares of licensed AIFC participants
- ▶ VAT exemption for certain financial services that are specified in the AIFC law and provided within the AIFC
- ▶ Exemption from property tax
- ▶ Exemption from land tax
- ▶ Simplified visa regime for foreign citizens coming to Kazakhstan to work for AIFC participants, such as the option of receiving an entry visa at the Embassy of Kazakhstan in a foreign country or upon arrival to Kazakhstan at the international airports in Kazakhstan, possibility to obtain an investor visa for the period of 5 years and visa-free regime for citizens of certain countries up to 30 calendar days
- ▶ Work permit exemption for foreign employees attracted by AIFC participants

The AIFC also provides:

- ▶ Commercial and civil dispute resolution through the AIFC Court or the International Arbitration Centre
- ▶ An exchange platform – Astana

International Exchange (“AIX”) – for corporations (listing), state bodies (bond issue) and retail and large investors interested in various financial instruments

AIX has immediately drawn the attention of foreign corporations due to the simplified procedures for providing financial services.

According to the AFSA procedures, one of the options for providing financial services on the AIX involves acting as a recognized non-AIFC Member (“RNAM”) in the AIFC (i.e., a legal entity located in a jurisdiction other than the AIFC may apply to AFSA for an order declaring it to be an RNAM). The main advantage of obtaining RNAM status is avoiding extra steps in the application procedure when a foreign business's only intention is to obtain the status of a trading member of the AIX.





# 4 Overview of tax rules in Kazakhstan



In the sections that follow, we outline the most significant taxes in Kazakhstan. There are a number of other, less significant taxes, such as assets tax, land tax, payments for the use of various resources such as radio frequencies, environmental taxes and a number of taxes on “subsurface users”, i.e., oil, gas and mining companies. It is important to do a thorough review of any proposed business activity to determine the actual taxes that apply to it.



## Personal income tax (“PIT”)

### Payers

Residents are taxed on their worldwide income. Non-residents are taxed on Kazakh-source income only, regardless of where it is paid. Income is deemed to be from a Kazakh source if it is derived from work performed in Kazakhstan. Kazakh-source income also includes interest income from residents and non-residents that have a permanent establishment in Kazakhstan as well as dividends from resident legal entities.

For tax purposes, individuals are considered residents if they are present in the country for at least 183 days in any consecutive 12-month period ending in the current tax year.

There is a separate investment residency program offered by the AIFC where individuals may qualify as AIFC investment residents if they meet the program requirements and are present in the country for not less than 90 calendar days (including the days of arrival and departure) in any consecutive 12-month period ending in the current tax period.

Kazakh citizens and holders of residence permits are always considered residents of Kazakhstan if their centre of vital interests is located in Kazakhstan. An individual is deemed to have his or her centre of vital interests in Kazakhstan if all the

following conditions are simultaneously met:

- ▶ The individual is a Kazakh citizen or has permission to live in Kazakhstan on a permanent basis
- ▶ The individual has a spouse or close relatives who reside in Kazakhstan
- ▶ The individual and/or his/her spouse and/or members of his/her family own, or otherwise have at their disposal, immovable property in Kazakhstan that is permanently available for residence

Double tax treaties may lay down different rules for determining tax residency.

### Taxable income

The tax treatment of various types of income is described below.

#### *Employment income*

Income from employment consists of all compensation, whether received by an employee in cash or in kind (including the employee's shares), subject to minor exceptions, regardless of the place of payment of such income.

Under Kazakh law, any income paid for work performed in Kazakhstan (regardless of whether it is paid from inside or outside Kazakhstan) is deemed Kazakh-source income subject to statutory payroll taxation in Kazakhstan by the tax agent (i.e., a Kazakh entity or a branch or representative office of a foreign entity

responsible for calculating, withholding and remitting payroll-related taxes/social payments to the budget).

To comply with local requirements, host companies must maintain a “shadow” payroll for the taxation of income paid abroad for work done in Kazakhstan. “Shadow” payroll implies that foreign income is processed for Kazakhstan tax purposes only, while net payment is made by home-country employer.

Companies that engage freelancers (not registered as individual entrepreneurs) are obliged to act as tax agents (as defined above) and withhold PIT from their income as well as pension and social health insurance contributions.

#### *Self-employment and business income*

Income of self-employed Kazakh citizens (individual entrepreneurs) is subject to income tax. Tax is levied on an individual's annual business income, which consists of gross income less expenses incurred in earning that income. To deduct expenses, individual entrepreneurs must be registered with the tax authorities and provide supporting documentation for the expenses. The tax rates for self-employment income are the same as those for employment income as shown in the “Rates” section, except for individual entrepreneurs who apply a special tax regime.

#### *Investment income*

Investment income is normally included in taxable income. The tax rates are shown in the “Rates”

section.

Some types of investment income are tax-exempt (see the “Exempt income” section).

#### *Exempt income*

Certain items are exempt from tax, including the following:

- ▶ Business-trip per diems within set limits and reimbursement of certain business-trip expenses
- ▶ Accommodation and meal expenses within set limits for shift workers while they are at work
- ▶ Alimony
- ▶ Medical expenses within set limits
- ▶ Dividends on securities that are at the date of accrual of such dividends officially listed on stock exchanges operating in Kazakhstan, provided that such securities were traded during the calendar year on the stock exchange in accordance with certain criteria
- ▶ Interest on securities if, when such interest is accrued, the securities are officially listed on stock exchanges operating in Kazakhstan
- ▶ Dividends received from a resident legal entity for a calendar year within 30,000 MCI
- ▶ Dividends and capital gains on shares held for over three years if certain other conditions are met
- ▶ Capital gains derived from securities that are listed on a stock exchange operating in Kazakhstan at the date of sale
- ▶ Interest income from deposits that is paid to tax resident individuals by licensed organizations in Kazakhstan
- ▶ Income from Kazakh state securities
- ▶ 90% of an employee's taxable income

if that income is less than 25 MCI (KZT 86 250/approximately USD 178) per month

#### *Capital gains*

The Kazakh Tax Code defines a capital gain as the difference between the sale price (disposal value) and the acquisition price (base cost), as supported by documents.

Income from the disposal of shares acquired through the exercise of a stock option equals the positive difference between the sale price and the acquisition price. The acquisition price includes the exercise price of the option and the option premium.

In the case of sales of property located in blacklisted low-tax jurisdictions, the taxable amount is the full sale price (i.e., the cost of acquisition is non-deductible).

Capital gains are subject to tax at the rates shown in the “Rates” section of this guide.

Since capital transactions of individuals are not sufficiently addressed in current Kazakh tax legislation, it is not possible for capital losses to be deducted from capital gains for tax purposes or for capital losses to be carried backward or forward to other tax periods.

Consequently, income recognized for tax purposes may significantly exceed income recognized in financial statements prepared by a financial institution.

#### *Controlled Foreign Company (CFC)*

Tax resident individuals who directly, indirectly or constructively control non-resident legal entities and/or other



types of organizations, subject to certain conditions, are liable to pay 10% PIT on the CFC's retained earnings and have separate tax reporting obligations. See the "Controlled Foreign Company (CFC) rules" section for more details.

**Deductions**

The taxable amount of a tax resident individual may be reduced by 14 minimum calculation indexes (MCI)<sup>1</sup>, which is equal to KZT 48,300 (approximately USD 105) for 2023. If an employee's taxable income for a particular month is below 14 MCI, the unused part of the deduction may be carried over to later months in the year. This does not apply when an individual changes workplace during a tax period, i.e., the individual may not offset an excess arising at the previous workplace against income earned at the new workplace.

Other deductions include the following:

- ▶ Compulsory pension fund contributions
- ▶ Compulsory employee social medical insurance contributions
- ▶ Voluntary pension fund contributions made by the individual for his or her own benefit or by a tax agent under Kazakh pension law
- ▶ Documented medical expenses within set limits
- ▶ Payments on mortgages with specific banks

**Rates**

The following tax rates apply to resident and non-resident individuals depending on the type of income:

Type of income	Tax rate
Employment income of residents and non-residents taxed by the local employer/host company	10%
Income of residents who receive income under a service agreement	10%
Income of lawyers and private notaries	10%
Capital gains, interest and winnings of residents	10%
Dividends received by residents from Kazakh companies	10%
Capital gains, dividends, interest and royalties paid to non-residents by Kazakh legal entities	15%
Any other Kazakh-source income paid to non-residents that is not received from a tax agent (local legal entity)	20%

Income received in foreign currency is converted into tenge at the exchange rate current on the last business day preceding the date of payment.



1 Starting 1 January 2023, 1 MCI has been set at KZT 3,450 (approximately USD 7)



## Social tax

Social tax is payable by employers. It is an additional direct tax imposed on employers that is not reserved for the payment of social benefits to employees.

The tax base for social tax is the amount of compensation paid by the employer to its employees. There are several exemptions:

- ▶ Payments made by way of grants
- ▶ Compulsory pension fund contributions
- ▶ Compulsory employee social health insurance contributions

Employers must calculate social tax at a flat rate of 9.5% of gross earnings, less exempt amounts. The minimum tax base for social tax per employee is 14 MCI.

Monthly social tax liability is reduced by the monthly amount of

compulsory social insurance contributions (see the “Social insurance contributions” section). Social tax must be remitted to the state budget on a monthly basis by the 25th of the month following the tax period.

### **Mandatory pension fund contributions**

An employer must withhold and pay pension fund contributions on a monthly basis at a rate of 10% on the gross salaries of employees (local citizens, foreigners holding a residence permit and employees who are citizens of Eurasian Economic Union member states (i.e., the Republic of Armenia, the Republic of Belarus, the Kyrgyz Republic and the Russian Federation)).

Pension fund contributions are not charged on monthly income in excess of 50 times the minimum monthly wage<sup>1</sup> (KZT 3,500,000/ approximately USD 7,300). Pension fund contributions are deductible for PIT, social tax and compulsory social insurance contributions purposes.

The Kazakh Law on Pension Provision also requires employers to pay additional professional pension fund contributions at their own expense for employees of certain occupations in 17 industry sectors, including mining, oil and gas, pharmaceuticals and consumer goods manufacturing. The contributions are payable at a rate of 5% on the gross salaries of such employees.

Tax agents who pay compensation to individuals under civil contracts must,

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<sup>1</sup> Starting 1 January 2023, 1 minimum monthly wage has been set at KZT 70,000 (approximately USD 140)

in addition to 10% PIT, withhold and pay 10% pension fund contributions on the gross amount of that compensation.

### **Social insurance contributions**

Employers must pay social insurance contributions, which form part of social tax, at a rate of 3.5% of income paid to employees (Kazakh citizens, foreigners holding a residence permit, repatriated ethnic Kazakhs and employees who are citizens of Eurasian Economic Union member states).

In 2023, social insurance contributions are not charged on monthly income in excess of 7 times the minimum monthly wage (KZT 490,000/approximately USD 1 000). Social insurance contributions are expected to be charged at a flat rate of 5% starting in 2025.

### **Mandatory social health insurance**

Employers must make employer contributions to the Social Health Insurance Fund at a monthly rate of 3% (starting 1 January 2022) of income paid to employees (applicable to Kazakh citizens, repatriated ethnic Kazakhs, citizens of the Eurasian Economic Union member states and foreign citizens holding a residence permit).

In addition to making employer contributions, employers must withhold employee contributions to the Social Health Insurance Fund from income paid to employees

(Kazakh citizens, repatriated ethnic Kazakhs, citizens of the Eurasian Economic Union member states and foreign citizens holding a Kazakhstan residence permit). These employee contributions are deductible for PIT and social tax purposes. Contributions must be withheld at a monthly rate of 2% of an employee's income.

In 2023, income subject to employer and employee contributions to the Social Health Insurance Fund is capped at 10 times the minimum monthly wage (KZT 700,000/approximately USD 1,500) per month.

### **Tax filing**

#### *Tax filing by a tax agent*

As mentioned above, any employment income, including benefits in kind, paid for work performed in Kazakhstan (irrespective of the place of payment) must be taxed and reported by the local tax agent.

A tax agent must withhold PIT, pension fund contributions and employee social health insurance contributions on a monthly basis no later than the date on which income is paid. PIT, pension fund contributions, professional pension fund contributions and employer and employee health insurance contributions must be paid no later than 25th of the month following the month in which employment income was paid. Social tax and social insurance contributions must be paid by the 25th of the month following the month in which employment income

accrued.

A tax agent must file a PIT and social tax declaration (Form No. 200.00) on a quarterly basis by the 15th of the second month following the reporting quarter. The form also includes pension fund contributions, professional pension fund contributions, mandatory health insurance contributions and social insurance contributions.

There is also a special set of rules regulating the taxation of business travellers when a foreign service provider sends its employee to a Kazakhstan customer for a short period of time. Basically, local legislation states that for up to 183 calendar days (establishment of Kazakhstan tax residency status) each foreign individual must report salary attributed to working days in Kazakhstan, even just several days. For that purpose, each individual must obtain an Individual Identification Number in Kazakhstan and file a personal income tax return (Form No. 240.00) with the possibility of tax exemption (if there is a double tax treaty with Kazakhstan). If that threshold is exceeded, i.e., a foreign individual spent 183 or more calendar days in the country, the local customer will become liable for taxing the foreign employee's salary and maintain a shadow payroll (i.e., this mechanism implies that the local company takes salary paid outside Kazakhstan and processes it via local payroll for Kazakhstan tax purposes). In this case, the local customer would need to obtain all supporting documents. Should it fail



to obtain these documents, the local customer would be required to apply PIT to 80% of the service fee charged by the foreign service provider whose employees are coming to Kazakhstan.

### **Payroll legislation update**

We would like to draw your attention that the introduction of mandatory pension contributions at the expense of employers has been postponed until 2024. Specifically, these payments are planned to be carried out at the expense of the employer's own funds to the benefit of an employee and will be calculated from the employee's monthly income at a rate of 1.5% (starting from 1 January 2024) with an annual increase to 5% in 2028.

Starting from 2023, a single payment from wages is introduced for individual entrepreneurs and legal entities that are subjects of micro and small businesses which operate under certain special tax regimes (simplified regime, tax regime for producers of agricultural goods). A single payment can be applied by a tax agent as an alternative to the standard taxation rules. That being said, a tax agent has a right to choose which calculation rule to apply. The rate for a single payment from wages in 2023 is set at 20% with an annual increase to 26.3% in 2028.

### *Tax filing by individuals*

Where there is no tax agent in Kazakhstan or special requirement of

tax law, resident and non-resident individuals are responsible for calculating PIT obligations and filing a Kazakh tax return. The filing deadline for Kazakh tax returns is 31 March of the year following the reporting year, and any income tax liability must be settled within 10 calendar days after the filing deadline.

Kazakh tax returns must be filed by the following tax resident individuals:

1. Individual entrepreneurs
2. Individuals engaged in private practice, such as notaries, lawyers and enforcement officers
3. Individuals who receive property income
4. Tax resident individuals who receive income not taxed at source in Kazakhstan, including income from outside Kazakhstan
5. Tax residents who are Kazakh citizens, repatriated Kazakhs or individuals holding a residence permit and have the following types of property as of 31 December of the reporting year:
  - real estate, if the real estate itself or rights thereto or transactions involving the real estate are subject to state or similar registration/reporting requirements under the laws of a foreign state
  - securities whose issuers are registered outside Kazakhstan
  - equity interests in legal entities registered outside Kazakhstan
  - cash on foreign bank accounts in excess of 2,000 times MCI as set in the reporting year
  - digital (crypto) assets

### **Administrative sanctions for individuals**

Failure to submit a PIT return on time:

- ▶ First time: a warning
  - ▶ Repeated violation within a year: a fine of 15 MCI (KZT 51,750/approximately USD 110)
- Concealment of taxable items:
- ▶ First time: a fine of 200% of tax payable on each concealed taxable item
  - ▶ Repeated violation within a year: a fine of 300% of tax payable on each concealed item
- Concealment of information about property outside Kazakhstan and funds in foreign bank accounts:
- ▶ First time: a fine of 100 MCI (KZT 345,000 /approximately USD 720)
  - ▶ Repeated violation within a year: a fine of 200 MCI (KZT 690,000/ approximately USD 1,440)
- Failure to pay tax and other mandatory payments owing to a failure to submit a tax return or the submission of a tax return with knowingly false information if this caused tax to be underpaid by more than 20,000 MCI (KZT 69,000,000/approximately USD 144,000):
- ▶ A fine of up to 3,000 MCI (KZT 10,350,000 /approximately USD 21,600), or
  - ▶ Correctional labour in the same amount, or
  - ▶ Community service for up to 800 hours, or
  - ▶ Restriction of liberty for up to 3 years, or
  - ▶ Imprisonment for up to 3 years

### Administrative sanctions for payroll violations

Understatement of taxes in tax returns: up to 50% of the understated amount of PIT and ST

Non-withholding or incomplete withholding of taxes: up to 50% of PIT not withheld

Failure to submit PIT returns on time:

- First time: a warning
- Repeat violation within a year: a fine of 70 MCI (KZT 241,500 /USD 505)

Failure to remit, withhold or pay mandatory pension fund contributions in full and on time:

- First time: a warning
- Repeat violation: up to 50% of the

amount of contributions not remitted, withheld or paid on time

Failure to remit or pay social insurance contributions and mandatory health insurance contributions in full and on time:

- First time: a warning
- Repeat violation: up to 50% of the amount of contributions not paid or remitted on time

Concealment of taxable items:

- First time: a fine of 200% of tax payable for each concealed taxable item
- Repeat violation within a year: a fine of 300% of tax payable for each concealed item





## Corporate income tax (CIT)

CIT is imposed on the worldwide income of resident entities and Kazakh-source income of non-resident entities. The basic principles are consistent with those applied in most developed economies. However, the required standards of supporting documentation are particularly high in Kazakhstan.

### Payers

Residents are taxed on their worldwide income, and non-residents on income from Kazakh sources. Non-residents doing business in Kazakhstan through a permanent establishment (PE) are taxed on the PE's profits, which are calculated in essentially the same way as for residents. Non-residents that derive Kazakh-source income otherwise

than through a PE are taxed by withholding (see the "Withholding tax" section below).

For certain activities (sea freight shipping, bareboat charter and time charter services, trading of goods via the Internet, screening of national films in cinemas, activities under priority investment projects or in special economic zones, etc.), CIT may be reduced by 100% (see the "Incentives for investors" section for details).

### Taxable income

Taxable income is calculated as aggregate annual income after certain adjustments, minus statutory deductions. Aggregate annual income includes practically all forms of income, including capital gains. Certain types of income are excluded from taxable income, including capital gains on shares held for over

three years if certain other conditions are met.

Deductions include all business-related and profit-oriented expenses plus a number of other minor items. In addition to normal operating expenses, examples of deductible expenses include interest (up to the thin capitalization limit or the amount actually paid for certain borrowings), foreign exchange losses, certain entertainment expenses up to a limit of 1% of taxable payroll and charitable expenses (up to 4% of taxable income). This list is not exhaustive. Losses from entrepreneurial activities and the sale of Group I fixed assets (such as buildings) may be carried forward over the following 10 calendar years inclusively and offset against taxable income for those years. Capital losses from the sale of securities and other non-depreciable assets may generally



be offset against corresponding capital gains (with certain exceptions). Starting from 2023, the deductions for CIT purposes in respect of non-tangible services purchased from related non-resident entities are capped to 3% of taxable income. The restriction applies to the acquisition costs of the following: management, consulting, auditing, design, legal, accounting, advocacy, advertising, marketing, franchising, financial (except for interest expenses), engineering, agency services, royalties, rights to use intellectual property items.

**Tax depreciation**

To qualify as a fixed asset for tax purposes, an item must be defined as such in the entity's IFRS accounts (with certain exceptions). For tax depreciation purposes, fixed assets are split into four groups. Assets may be depreciated at any rate (stated in the entity's tax

register) up to the maximum rates indicated in the table below. The following items are not classed as depreciable fixed assets:

- Land
- Intangible assets with an indefinite useful life
- Construction in progress, etc.

Expenses actually incurred for the use, repair, maintenance and liquidation of fixed assets are defined as "subsequent costs" and are generally deductible in the tax period when they are actually incurred (unless capital in nature).

Tax legislation provides incentives in the form of tax depreciation allowances for fixed assets. For example, the value of production buildings and facilities, machinery and equipment that are brought into operation for the first time in Kazakhstan and are to be used in business activities for at least three years may be depreciated before the commencement of operation when

construction expenses are incurred or in equal amounts over the first three years of operation. Capital costs for the modernization and reconstruction of such fixed assets may be deducted when they occur. These incentives do not apply to participants of special economic zones or producers of alcohol, tobacco or agricultural products or to assets used in subsurface development or priority investment projects. However, subsurface users may apply double depreciation rates to assets brought into operation for the first time, provided they will be used in business activities for at least three years.

**Tax rates and compliance**

The standard rate of CIT is currently 20% of taxable income. In addition, net income (after the deduction of CIT) of a non-resident's PE (branch) in Kazakhstan is subject to branch profit tax at a rate of 15%. This is usually reduced by tax treaties. The tax period is a calendar year. The CIT declaration deadline is 31 March of the year following the reporting period. As a rule, all taxpayers (with certain exceptions) are subject to the CIT advance payment procedure, which requires them to estimate their tax liability for the year and pay tax in monthly instalments no later than the 25th of the current month.

Group	Type of fixed asset	Maximum depreciation rate
I	Buildings and structures (except for oil and gas wells and transmission facilities)	10%
II	Machinery and equipment (except for machinery and equipment for oil and gas production, computers and data processing equipment)	25%
III	Computers, software and data processing equipment	40%
IV	Fixed assets not included in other groups, including oil and gas wells, transmission facilities, and machinery and equipment for oil and gas production	15%

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*EY offers the following services in the area of CIT:*

- ▶ *Helping companies with all aspects of tax compliance*
- ▶ *Tax accounting and risk advisory services*
- ▶ *Drafting and reviewing compulsory tax accounting policies*
- ▶ *A comprehensive tax litigation service, including, where permitted, representation of taxpayers in court*

### **Controlled Foreign Company (CFC) rules**

Kazakh tax law has controlled foreign company (CFC) rules that affect the Kazakh taxation of groups ultimately owned by Kazakh residents. Under these rules, a Kazakh resident must report any CFC (as defined below) to the Kazakh tax authorities, and an appropriate part of the CFC's profit for the reporting period must be included in the resident's aggregate annual income for Kazakh income tax purposes (CIT or PIT, accordingly). The CFC rules prescribe certain deductions, exemptions and tools for the avoidance of double taxation.

The CFC concept under the Kazakh Tax Code covers entities (legal entities and other forms of business activity, e.g., trusts) if (i) 25% or more of equity interests or shares are directly, indirectly or constructively owned by a Kazakh resident or if a Kazakh resident has direct, indirect

or constructive control over the entity; (ii) the entity's effective tax rate is less than 10% according to financial statements for the current and two previous periods, or if the entity (or a legal entity responsible for keeping accounts of its income and expenditures or managing its assets) is registered in a blacklisted jurisdiction. Under amendments to the Kazakh Tax Code of 2021, the CFC concept does not apply to entities registered in countries that have concluded a double tax treaty with Kazakhstan, provided that the nominal income tax rate in such a foreign country is more than 15%. The list of such countries is approved by the authorized body of Kazakhstan no later than 31 December of the year following the reporting period. Last time, such list was published by the Ministry of Finance in December 2021 and included 41 countries.

The CFC concept also does not apply to foreign entities whose total income is less than about USD 1 million, that are in a loss-making position or that are owned by AIFC participants. New incentives are also envisaged, such as the exemption of CFC profit which:

- ▶ Consists of active income for at least 80%, deductions of CFC profit for amounts of Kazakh-sourced income
  - ▶ Directly and/or indirectly belongs to and/or is controlled by an AIFC investment resident in a CFC
- Some of the above relief measures are available retrospectively (e.g.,

from 2018, 2021).

The requirements for documentation of CFC tax exemptions were tightened, but some incentives were also provided, such as the exclusion of certain types of "paper income" when calculating a CFC's financial profit.

## **Withholding tax (WHT) (other than PIT)**

WHT applies to most types of Kazakh-source income paid to non-residents that are not registered for tax purposes in Kazakhstan and even to some who are if due care is not taken. The list of income that is considered to be Kazakh-source income is established in the Tax Code. The rules are complex and inconsistent, and there are some cases in which WHT could apply to payments that involve no presence in Kazakhstan. It is vital to have a thorough understanding of how WHT may affect your business. There are also significant administrative requirements that must be met in order to enjoy benefits afforded by tax treaties.

### **Payers**

Tax agents withhold tax from a non-resident's gross Kazakh-source income. Any tax-registered entity that pays Kazakh-source income is potentially a tax agent.

### **Taxable income**

Taxable income includes (but is not limited to):

- Income of non-residents from the sale of goods or performance of work or services in Kazakhstan
- Income from management, financial (with some exceptions), consulting, engineering, legal (except for representation in court and notary services) and auditing services performed outside Kazakhstan
- Any income of tax-haven entities, regardless of where the underlying operations take place
- Capital gains on sales of shares or interests in Kazakh entities or foreign legal entities that derive most of their value from Kazakhstan
- Capital gains from sales of Kazakh property that is subject to registration

Certain types of income are exempt from withholding tax, including capital gains on shares held for over three years if certain other conditions are met. It is worthwhile mentioning that additional amendments are considered to be introduced from 2023 in respect of exemption from withholding tax on dividends – in particular, these provisions should abolish current exemption and replace it with a 10% reduced rate (compared to statutory 15% as mentioned below) subject to

three year holding period and certain other conditions.

### Tax rates and compliance

Most double tax treaties (DTT) concluded by Kazakhstan provide either for exemption from Kazakh WHT or for reduced WHT rates of 5% to 10% if certain conditions are met. However, these benefits are also subject to documentation rules laid down in the Tax Code. The rules are very specific as to the documentation required, and it is generally recommended that a tax agent should be in possession of the relevant documentation at the time the payment is made (or by the end of the tax year or 31 March of the following year at the latest) if treaty relief is to be applied. Otherwise, tax must be withheld in full, and the payer must subsequently claim a refund (which is a complex and time-consuming process with an uncertain outcome).

In addition, the Multilateral Instrument (MLI) entered into force in Kazakhstan on 1 October 2020. However, some countries did not include DTTs with Kazakhstan in their MLI accession documents (e.g., Germany, Switzerland), while others

did not sign/ratify the MLI at this time.

Kazakhstan has acceded to all minimum standards of the MLI. In terms of limitation of benefits, Kazakhstan adopted simplified limitation of benefits (SLoB), which may substantially limit the tax benefits for holding and financing structures using intermediary companies. However, since only a few countries (Russia, Slovakia and India) decided to apply SLoB, most of Kazakhstan's DTTs will be subject to the principal purpose test (PPT) only.

At the same time, the Kazakh Tax Code introduced additional requirements for foreign entities subject to the MLI, in terms of the WHT exemption of payment for services: (i) income from the provision of services should not be exempted or deducted from such an entity's taxable base or otherwise adjusted, and (ii) the nominal tax rate in the jurisdiction of its incorporation should be at least 15%. Similar amendments with regards to distribution of dividends, royalties and interest income are included in the draft amendments to the Tax Code considered to be implemented in 2023. However, their practical applicability is subject to further discussions. For entities in countries not subject to the MLI, an additional requirement in terms of the beneficiary of income is introduced.

Type of income	Rate of WHT
Interest, dividends, capital gains and royalties	15%
Insurance premiums under insurance risk agreements	15%
Income from international transportation services and insurance premiums under risk reinsurance agreements	5%
Income of an entity registered in a tax haven	20%
Other income, including income from the provision of services	20%





WHT is reported and remitted by tax agents. The general time limits for remittance are the following:

- For amounts accrued and paid, no later than 25 calendar days following the month in which payment was made
- For amounts accrued but not yet paid, if they are deducted for CIT purposes, no later than 10 calendar days after the filing deadline for CIT returns
- For prepayments, no later than 25 calendar days after the end of the month in which income was accrued to a non-resident

Under the Tax Code, tax agents must submit a WHT return by the following deadlines: (i) for Q1-Q3: no later than the 15th of the second month following the quarter in which a WHT obligation arose, (ii) for Q4: no later than 31 March of the following year.

## Value added tax

### Payers and registration

All taxpayers registered for VAT purposes are required to charge VAT on their taxable supplies and calculate and report their VAT obligations. Taxpayers are required to register for Kazakh VAT purposes if their total turnover in a calendar year exceeds 20,000 MCI (approximately USD 147,000).

The deadline for VAT registration is 10 business days after the end of the month in which the turnover threshold is exceeded.

Even if an entity is not required to register for VAT purposes, it may usually do so voluntarily by applying to the appropriate tax committee.

### Deregistration

A VAT payer may apply for VAT deregistration if the following

conditions are simultaneously met:

- Taxable turnover for the calendar year preceding the year in which the application is submitted did not exceed 20,000 MCI (approximately USD 147,000)
- Taxable turnover from the beginning of the current calendar year in which the application is submitted did not exceed 20,000 MCI (approximately USD 147,000)

The tax authorities will deregister a VAT payer without notification if (inter alia):

- A VAT declaration or gambling business tax return is not submitted within six months after the due date established by the Tax Code
- The VAT payer did not submit a written explanation of the reasons for being absent from the premises during a tax inspection
- The sole founder or head of a legal entity or an individual entrepreneur is

inactive, has unserved or unexpunged convictions, etc.

- ▶ The VAT payer is declared inactive
- ▶ The registration (and re-registration) of the VAT payer is declared invalid by a court

### **VATable turnover**

For a VAT payer, taxable turnover is the total value of supplies (sale, exchange or gift) of goods, work and services and purchases of work and services from non-registered non-residents. A limited range of non-taxable and exempt supplies are excluded from this rule.

#### **Definitions:**

- ▶ For Kazakh VAT, the term “goods” applies to practically any form of property or property rights
- ▶ Taxable supplies of work or services are any supplies of work or services, both chargeable and free of charge, as well as anything that is done for consideration and is not a supply of goods

A small number of transactions, such as transfers to a legal entity's charter capital, are treated as non-taxable. Goods and services are VATable if, under the place-of-supply rules, they are deemed to be supplied in Kazakhstan.

The place-of-supply rules are broadly similar to European Union rules; in particular, they treat some supplies that are made outside of Kazakhstan, such as consulting services, as made within Kazakhstan, and therefore taxable

### **VAT rates**

The standard VAT rate is 12%, but a 0% rate applies in the following cases:

- ▶ Export sales of goods
- ▶ International transportation services
- ▶ Sales of oil and lubricants by airports when fuelling aircraft and provision of ground handling services for a foreign air carrier engaged in international transportation
- ▶ Sales of certain goods into the territory of a special economic zone when the goods are to be wholly used for activities that meet the objectives of the special economic zone
- ▶ Sales of refined gold

### **Exempt supplies**

Turnover and imports exempt from VAT include:

- ▶ Turnover relating to residential buildings
- ▶ Certain financial services
- ▶ Transfers of assets under finance leases (insofar as interest is concerned)
- ▶ Certain services rendered by non-profit organizations
- ▶ Certain services relating to culture, science and education
- ▶ Goods and services related to medical and veterinary activities
- ▶ Imports of certain assets included in a government-approved list
- ▶ Goods imported by individuals not for entrepreneurial purposes (certain limits apply)
- ▶ Turnover relating to international transportation services
- ▶ Imports of goods from an EAEU member state within the same legal entity (intra-entity transactions)

- ▶ Imports of raw cane sugar
- ▶ Imports of chemicals (raw materials) for the production of pesticides under certain conditions specified by the Code
- ▶ Works of art imported by non-state museums in accordance with the list approved by an authorized body in culture in agreement with the central authorized body for state planning
- ▶ Goods, works, and services on a gratuitous basis as part of charitable assistance by a non-profit organization established in the form of a fund in accordance with the civil legislation of the Republic of Kazakhstan
- ▶ Sale of refined gold and (or) silver by entities producing precious metals to entities producing jewellery and other products

### **Offsetting of VAT**

VAT paid on goods and services purchased by a VAT payer (i.e., input VAT), including reverse-charge VAT already paid and VAT paid at customs, may generally be offset (credited) when determining the taxpayer's VAT liability to the budget. However, no offset is granted for VAT incurred on supplies that are exempt or deemed to be made outside Kazakhstan.

### **VAT calculation and offset carry-forward**

A taxpayer's VAT liability is calculated as output VAT (i.e., VAT charged by the taxpayer) minus input VAT (i.e., VAT paid by the taxpayer to its suppliers, reverse-charge VAT and import VAT) in a given reporting period.

The amount by which input VAT exceeds output VAT may generally be carried forward against future VAT liability. In practice, obtaining a refund (if eligible) is a time-consuming process, although there are special refund procedures for certain situations (such as continuous exports).

#### **Non-recoverable input VAT**

Input VAT on certain items cannot be offset. These include:

- ▶ Goods, work and services not related to taxable turnover
- ▶ Cars purchased as fixed assets
- ▶ Goods, work and services when a VAT invoice is issued that is not in compliance with the requirements of the Tax Code
- ▶ Goods and services purchased out of petty cash in an amount exceeding 1,000 MCI (approximately USD 7,300), irrespective of the frequency of payment
- ▶ Goods, work and services purchased from suppliers declared by courts to be inactive entities
- ▶ Goods, work and services regarded by the courts as having been purchased by private business entities without actual intent to carry on entrepreneurial activities

#### **VAT compliance**

The tax period for VAT is a calendar quarter. The filing deadline for VAT returns is the 15th day of the second month following the reporting period. The VAT payment deadline is the 25th day of the second month following the reporting period.

#### **Reverse charge VAT**

Under the place-of-supply rules, certain services are deemed to be supplied where the purchaser of the services is located (e.g., consulting, auditing, engineering, design, marketing, accounting, advocacy, information processing, etc.). Where such services are rendered by a non-resident not registered for VAT purposes in Kazakhstan, the Kazakh purchaser of the services is required to assess and pay VAT to the budget on its own (similarly to the reverse charge mechanism). It is the obligation of a Kazakh purchaser of services to pay reverse charge VAT, which it should be able to offset against output VAT, subject to the general rules on VAT offsetting.

#### **EAEU**

The Tax Code lays down certain procedures and compliance requirements for exports and imports of goods from/to Kazakhstan to/from EAEU countries (Belarus, Kazakhstan, Russia, Armenia and Kyrgyzstan). Strict documentation and timing requirements apply (failure to observe these may result, for example, in the 0% VAT rate for exports to EAEU countries being denied).

Import VAT on goods is payable by the importer at a 12% rate in Kazakhstan (certain exemptions apply).

A VAT return for imports of goods into Kazakhstan from other EAEU member states must be filed with the tax authorities, and the tax must be

paid to the budget by the 20th of the month following the tax period (month).

#### **Electronic invoicing**

Taxpayers are obliged to issue electronic VAT invoices for their transactions (with certain exceptions).

An electronic VAT invoice can only be issued using the official online system provided by the state revenue committee for the receipt and processing of electronic VAT invoices. Electronic VAT invoices have a prescribed format and must be signed using an electronic signature. Electronic invoices must normally be issued within 15 calendar days after the date of a taxable transaction. Electronic VAT invoices are also required for taxpayers not registered as VAT payers when: (i) goods are sold via the virtual warehouse module of the online system, and (ii) the value of a transaction exceeds 1,000 MCI (approximately USD 7,300).

#### **Virtual warehouse**

With effect from 1 January 2019, the “virtual warehouse” module was introduced in the official online system, and it is now obligatory for the reporting of goods included in a special list (e.g., motor vehicles, certain household devices, sugar, etc.). The “virtual warehouse” allows for the systematization of inventory accounting, automatic calculation of ending inventories and monitoring of the movement of goods from entry into Kazakhstan until their sale to



final consumers.

### **Electronic waybills**

Electronic waybills should be issued upon movement, supply and/or shipment of certain goods. Starting 1 April 2023, the production and turnover of certain goods (e.g., biofuel, ethyl alcohol, certain types of petroleum products, etc.) are subject to mandatory issuance of electronic waybills. The list of goods subject to mandatory issuance of electronic waybills is established by the authorities.

### **VAT obligations for non-residents engaged in the e-commerce sale of goods and providing digital services to individuals (B2C)**

Non-resident entities engaged in e-commerce sales of goods and providing digital services to Kazakhstan individuals (B2C) are subject to VAT in Kazakhstan. According to the legislation, such non-resident entities are required to register conditionally in Kazakhstan as VAT payers and pay VAT liabilities to the state budget of Kazakhstan. There is no threshold for conditional VAT registration of such non-resident entities in Kazakhstan. For the purposes of conditional VAT registration, non-resident entities engaged in the e-commerce sale of goods and providing digital services to Kazakhstan individuals (B2C) should send a confirmation letter by post to the Kazakhstan tax authorities with certain established details. Non-resident entities are obliged to pay VAT calculated on the value of goods

sold in electronic form for each quarter no later than the 25th day of the second month following the quarter in which goods were sold or services provided.

Non-resident entities engaged in the e-commerce sale of goods and providing digital services to Kazakhstan individuals (B2C) are generally not obliged to file VAT returns or issue VAT invoices.

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*EY offers help in identifying VAT risks and calculating VAT compliance costs, as well as with cross-border VAT planning.*

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## **Subsurface use taxes**

Please refer to EY's publications on the taxation of oil and gas and mining companies.

## **Tax administration**

Kazakhstan has complex tax administration rules. Substantial fines and penalties may be imposed even for minor infringements.

### **Timing and frequency of Tax Code amendments**

Administrative changes that benefit taxpayers may be adopted more often than once a year, but not later than 1 December of the current year. New tax obligations and other provisions that are, by their nature, disadvantageous for taxpayers may not be introduced retroactively.





### **Tax returns**

Tax returns (declarations and calculations) are prepared by the taxpayer or the tax agent or by their representatives. Tax returns may be prepared on paper or electronically in the Kazakh or Russian languages.

Tax accounting policies

Tax accounting policies consist of a document adopted by a taxpayer/tax agent that regulates tax accounting in accordance with the Tax Code. All taxpayers/tax agents must have tax accounting policies.

### **Tax audits**

Many taxpayers are audited, and it is vital to manage the tax audit process. Tax audits may take the following forms:

- ▶ Comprehensive audit
- ▶ Thematic (targeted) audit
- ▶ Cross-check audit

### **▶ Stopwatch overview**

Tax audits may be divided into two types: periodical tax audits based on risk assessment procedures and unscheduled tax audits. The former type of tax audit may be initiated against taxpayers identified as high-risk profile entities based on semi-annual schedule approved by the competent authority. The competent authority publishes the semi-annual schedule of tax audits on its website before 25 December and 25 May. Tax audits may cover any period within the statute of limitations. The statute of limitations is generally three years, except in the case of large business entities, subsurface users and taxpayers subject to tax monitoring, for which the statute of limitations is five years. Tax audits can be intrusive and time-consuming and may sometimes even result in criminal proceedings, as discussed in the

“Penalties and interest” section below.

For certain types of taxpayers – those that have investment contracts, are subject to tax monitoring or have a total additionally assessed tax liability in excess of 20,000 MCI (approximately USD 146,000 for 2023) – the tax authorities issue a preliminary tax audit report setting out the results of a tax audit. The taxpayer has the right to submit objections to the preliminary tax audit findings before the final tax audit report is issued.

### **Standard audit file**

The standard audit file is a means for taxpayers to submit accounting data to the tax authorities online on a voluntary basis and enables a taxpayer's data to be analysed via the tax authorities' information systems. The submission of a standard audit file enables (i) a periodical tax audit based on risk management procedures to be conducted within 5 calendar days after the delivery of the tax audit order, and (ii) an unscheduled tax audit to be conducted within 10 calendar days after the delivery of the tax audit order.

### **Tax assessments**

Upon completion of a tax audit, the tax authorities usually issue a tax audit report (if no tax violations are found, a statement to that effect is made in the report). Based on the findings of the report, the tax authorities issue a notification of taxes and other compulsory payments due to the budget, as well as any penalties and interest. The tax authorities also issue a statement of administrative offences committed, if any, indicating the amount of administrative penalties due.

### **Contesting a tax audit or cameral (in-house) control report**

#### *Tax audit report*

After receiving a report on a tax audit, the taxpayer has 30 (thirty) business days to appeal the report. The appeal must be filed with the Ministry of Finance of Kazakhstan.

In some cases, the Ministry of Finance may, after receiving the appeal, carry out additional tax control measures with a view to gathering additional evidence. If, after considering the appeal, the Ministry of Finance issues a decision that does not yield the desired outcome, the taxpayer may appeal it to the courts of Kazakhstan. It is essential to point out that a court appeal may be filed even without the pre-appeal process described above. The time allowed for filing an appeal with a court of the first instance is 1 (one) calendar month after the date on which the taxpayer learned of the Ministry of Finance's decision on its appeal or after the taxpayer decides to appeal to the court.

#### *Cameral (in-house) control report*

Cameral (in-house) control is a part of a risk management system and is conducted upon issuance of all electronic VAT invoices and after the due date for filing tax returns. Based on the results of cameral (in-house) control, the violations identified are divided into the following categories:

- ▶ High-risk violation
- ▶ Medium-risk violation
- ▶ Low-risk violation

A high-risk violation is the one identified as a result of cameral (in-house) control conducted after issuance of all electronic VAT invoices for the tax period for the purposes of verifying the actual sales turnover. After receiving a cameral (in-house) control report, a taxpayer has 30 (thirty) business days either: (a) to remedy violations specified in the

report; or (b) to file an explanatory letter supplemented by supporting documents with the tax authority that issued the report.

Under tax legislation, a cameral (in-house) control report shall be deemed to be fulfilled if a taxpayer files an explanatory letter supplemented by supporting documents.

However, in practice, if a taxpayer decides to file an explanatory letter the tax authority, after reviewing it, either voids the cameral (in-house) control report or issues a decision to recognize the cameral (in-house) control report as unfulfilled.

If the report on a high-risk violation is not fulfilled within 30 (thirty) business days or the tax authority decides to recognize a cameral (in-house) control report as unfulfilled, the tax authority limits the issuance of electronic VAT invoices in the information system of electronic VAT invoices. Appealing the decision of the tax authority on limitation of issuance of electronic VAT invoices does not suspend its enforcement. In general, a decision to recognize a cameral (in-house) control report as unfulfilled can be appealed to either (a) a higher tax authority (i.e., a local State Revenue Department); or (b) the Ministry of Finance, within 10 (ten) business days. If after reviewing the appeal, the said tax authorities issue a decision with which the taxpayer disagrees, the tax authority should initiate a targeted tax audit to review the underlying issue in greater detail. It should be noted that the tax authorities do not always initiate targeted tax audits in a timely



manner.

### **Horizontal monitoring**

Horizontal monitoring is a form of tax administration based on the principles of cooperation, reasonable trust, legality, transparency, and enhanced information exchange with the tax authorities.

In international practice, horizontal monitoring regimes (also known as "Cooperative Compliance") have been implemented and are available for the largest taxpayers in more than 50 countries. In most of these, participation is voluntary.

In Kazakhstan, horizontal monitoring has been formally introduced since 2019 and is currently at the pilot stage.

Participation in the horizontal monitoring at the pilot stage is mandatory for subsidiaries of State (National) holdings and voluntary for the largest taxpayers who meet one of the following criteria:

- ▶ commercial organizations, except for state-owned companies, meeting both quantitative criteria at the date of application:
- ▶ the amount of fixed assets value shall be at least 325,000 times the minimum monthly wage (approximately KZT 1 billion)
- ▶ the amount of annual taxes payable shall be at least KZT 1 billion, or
- ▶ taxpayers implementing priority investment projects
- ▶ taxpayers with the status of operator or subsoil user

To be eligible for the horizontal monitoring regime, potential participants have to complete the following procedures:

- ▶ identify and mitigate historical tax risks
- ▶ implement an internal control system over tax processes
- ▶ automate tax compliance and tax accounting
- ▶ implement an information exchange system for sharing accounting and tax data with the tax authorities

If the specified criteria are met, horizontal monitoring pilot project is implemented in 2 phases:

#### **1. Pre-project**

The Pre-project phase is only applicable to voluntary participants in the horizontal monitoring pilot stage and includes readiness assessment and implementation of the recommendations of the tax authorities on elimination of historical tax risks, automation of tax compliance and tax accounting procedures, and improvement of the internal control system to the required standard.

#### **2. Pilot implementation of horizontal monitoring**

As part of the horizontal monitoring at the pilot stage, participants are required:

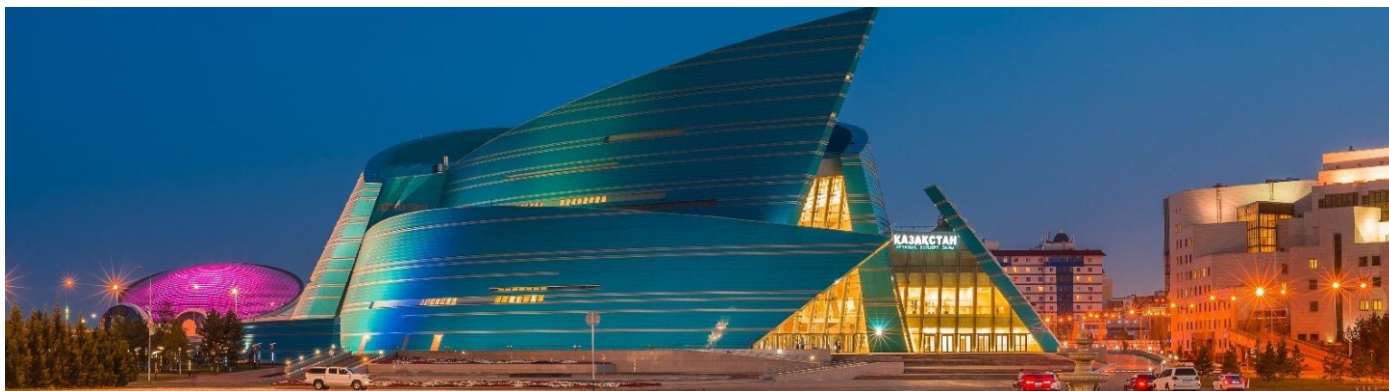
- ▶ to ensure compliance of the internal control system with the requirements established by the tax authorities
- ▶ to provide the tax authorities with

online access to documentation (information) disclosing tax records, including access to electronic data warehouse

- ▶ to provide access to IT systems with analytical tools that allow monitoring of the accuracy of tax reporting
- Whereas the Pre-project phase does not allow participants enjoy the benefits of the regime, at the Pilot phase a taxpayer gets the right:
- ▶ to apply a simplified procedure to refund excess VAT in the amount of 80%
  - ▶ to obtain tax authority recommendations regarding the correctness of fulfillment of its tax obligations

**Upon successful completion of the Pilot phase, participants of horizontal monitoring are entitled to the following additional benefits:**

- 1) Release from tax audits for the periods of horizontal monitoring, except for:
  - ▶ counter audits
  - ▶ tax audits conducted at the request of a taxpayer (or a tax agent)
  - ▶ tax audits triggered by violations of Criminal Code and the Law On Prosecutor's Office
  - ▶ tax audits conducted because of a taxpayer (tax agent) challenging tax audit results.
- 2) The possibility to obtain advanced tax rulings on planned transactions (operations) from the state revenue authorities allowing to clarify uncertain tax positions.
- 3) Simplified procedure to refund excess VAT up to 90% (instead of 80%).



The participants of the Pilot project are developing the practice of horizontal monitoring application and the regulatory norms of horizontal monitoring are being formalized, thus it is planned to extend the Pilot project until 2025.

During the Pilot phase, working groups consisting of participants of horizontal monitoring program and tax authorities develop methodology and approaches to horizontal monitoring. In particular, it is planned to include the concept of horizontal monitoring as part of the new Tax Code. It is also planned to develop regulations that will define:

- requirements for the disclosure structure of tax reporting
- technical requirements for information exchange with the tax authorities
- disclosure templates for reporting forms in the internal control system for horizontal monitoring purposes
- procedures for obtaining preliminary explanations on methodological tax issues

### **Risk management system**

The risk management system (RMS) is based on risk assessment and includes measures developed and applied by the tax authorities to identify and prevent risk, which is defined as the probability that damage will be done to the state as a result of taxes not being paid in full. The areas of application of the RMS are differentiated, with the following areas being highlighted:

- Selection of subjects (objects) of a periodical tax audit based on risk assessment
  - Classification of taxpayers (tax agents) by assigning the categories of low, medium or high risk to them
  - Confirmation of the amount of excess VAT
  - Determination of the degree of risk of a violation identified by cameral (in-house) control
  - Other forms of tax administration
- The tax authorities group taxpayers into low-, medium- and high-risk categories by analysing tax reporting data, information provided by state

authorities and local executive bodies and documents and/or other information relating to a taxpayer's business activities.

The non-confidential criteria of the RMS have been removed from the Tax Code and will be determined by the tax authorities within the framework of by-laws.

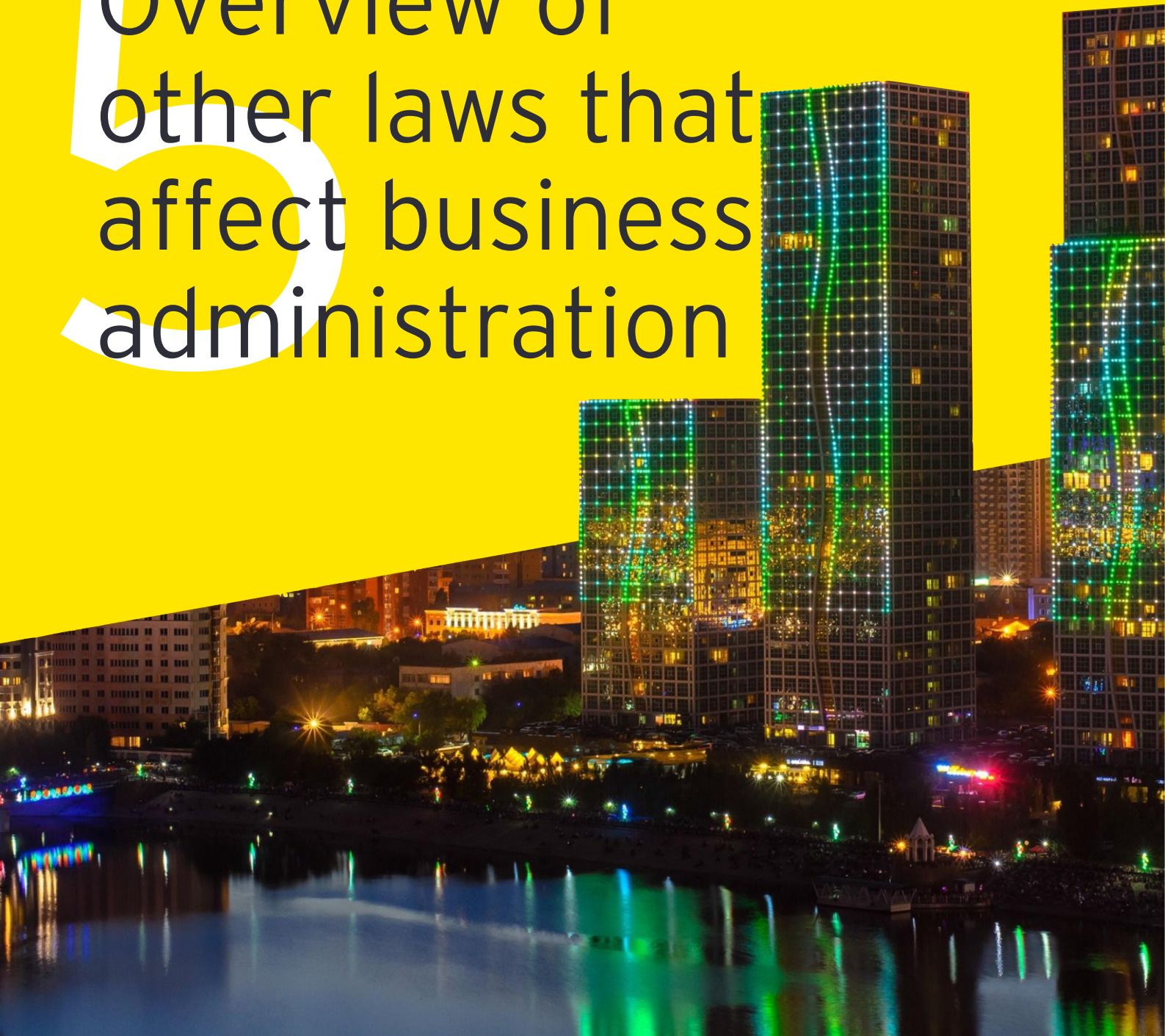
### **Penalties and interest**

The Administrative Offences Code imposes administrative penalties for non-compliance with tax regulations, including the following:

- Under-declaration of taxes: 20% to 80% of the under-declared amount
- Understatement of an advance CIT payment by more than 20%: 20% of the understated tax
- Failure to withhold taxes: 20% to 50% of the non-withheld tax
- Concealment of taxable items: 200% of taxes payable on the concealed amount

Interest is charged on late tax payments at a rate equal to 1.25

# 5 Overview of other laws that affect business administration





times the National Bank's base rate of charge (currently 9%) for each day of the delay.

In addition, criminal liability applies to tax offences in Kazakhstan. EY as a member of the Foreign Investors' Council (FIC) chaired by the President of the Republic of Kazakhstan is actively involved in the de-criminalization of tax offences. As part of this longstanding effort, EY and other FIC members proposed setting variable criteria for the state authorities to rely on when initiating criminal proceedings. As a result, a revised Article 3 of the Criminal Code entered into force, establishing thresholds for criminal liability under Article 245 of the Criminal Code. From September 2021, a criminal investigation is triggered if the amount of taxes and other mandatory payments to the budget accrued based on the results of a tax audit for the calendar year under review exceed: (a) 10% (ten percent) of the amount of all taxes and other mandatory payments to the budget calculated by the taxpayer for the calendar year, or (b) 50,000 or 75,000 MCI for the audited period. Tax evasion includes failing to submit a declaration, misstating income or expenditure data or concealing taxable items or the actual location of the taxpayer. Such violations trigger investigations by the Economic Investigation Service of the Financial Monitoring Committee and may even result in the prosecution of individuals who are thought to be responsible. Under the Criminal Code, individuals

who have committed a tax offence are exempted from criminal liability if they voluntarily pay taxes and other amounts due to the budget and acknowledge that they are at fault.

### **Clarification letters and rulings**

#### *Clarifications*

Taxpayers have the right to request clarifications of tax obligations, and the tax authorities are obliged to provide them. A taxpayer may apply to the tax authorities where it is registered or to a higher body if necessary (certain categories of taxpayers may apply to the Ministry of Finance). The tax authorities usually provide their opinion on specific tax queries in the form of a letter which is of an advisory nature and is not binding.

#### *Rulings*

The Tax Code also authorizes the Ministry of Finance to issue "advance rulings" on planned transactions when the following categories of taxpayers submit a request in the prescribed manner, accompanied by the relevant documents:

- ▶ Taxpayers that are subject to horizontal monitoring
- ▶ Taxpayers that have investment contracts for priority projects

The Ministry of Finance may refuse to issue an advance ruling. Late-payment interest is not chargeable on tax assessments made as a result of a tax audit if the taxpayer fulfilled tax obligations in

accordance with an advance ruling unless new facts are established.

### **Administrative Procedural and Judicial Code**

The purposes of the Administrative Procedural and Judicial Code is:

- ▶ To protect the rights and freedoms of persons (individuals and legal entities) from illegal actions by state authorities
- ▶ To provide a set procedure for appealing the outcome of a complaint

The Code replaces the Law on Administrative Procedures and the Law on the Procedure for Consideration of Appeals of Individuals and Legal Entities. One of the Code's novelties is that it makes it possible to claim losses caused by the defendant (i.e., the state authority) related to the issuance of an administrative act or an administrative action (omission). Suits are to be filed with a specialized district court or an equivalent administrative court.

## Transfer pricing

Kazakhstan's transfer pricing (TP) legislation has wide applicability to businesses. TP rules apply to all cross-border transactions even if the parties are unrelated. TP rules also apply to certain types of domestic transactions if they are related to cross-border transactions, e.g., to domestic sales of hydrocarbons and minerals by subsurface users that are subsequently exported

The TP law<sup>1</sup> prescribes the following methods for determining market prices:

- ▶ Comparable uncontrolled price method
- ▶ Cost plus method
- ▶ Resale price method
- ▶ Profit split method
- ▶ Net margin method

Except for transactions involving agricultural products, no “safe harbour” is allowed in terms of deviation from the market price, although the TP law recognizes that there may be a range of market prices. In determining market prices under the comparable uncontrolled price method, adjustments to prices are allowed in at least some cases, except where one of the parties to a transaction is registered in a tax haven.

There are several compliance requirements that apply to taxpayers, including subsurface users, depending

on the type of the taxpayer and its revenues:

1. TP monitoring reporting (the deadline is 15 May of the year following the reporting year)
2. Notification of participation in a multinational group (before 1 September of the year following the reporting year)
3. Three-tier TP reporting, including:
  - Country-by-country reporting (within 12 months following the reporting year or upon the request)
  - Master file (within 12 months upon the request)
  - Local file (within 12 months following the reporting year)
4. General TP documentation (upon the request)

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*EY's TP services include assistance with all types of TP compliance requirements, reviews to identify TP risks, preparation of TP policies and procedures, assistance during TP audits and controversy, ad-hoc advisory and all other TP services.*

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## Employment regulations

The Kazakh Labour Code, which came into force in 2016, applies to employees and employers located in Kazakhstan, including branches and representative offices of foreign legal entities registered under Kazakh law. Employment relations between an employee and an employer are regulated by an employment

agreement. An employment agreement must be concluded with each employee and must reflect both the employee's and the employer's rights and obligations under the Labour Code. As a rule, an employee's rights under an employment agreement must not be worse than those established by the Labour Code. It should be noted that the recent amendments to Kazakhstan's labour legislation allow for an employment agreement to be entered into and amended by means of an electronic document certified with an electronic digital signature. Under the Labour Code, an employer is responsible for the proper execution of an employment agreement, which may be concluded for a fixed or indefinite term. An employment agreement may establish a probation period, which generally should not exceed 3 months. A longer probation period (up to 6 months) may be established for heads and deputy heads of organizations, chief accountants and deputy chief accountants and heads of branches and representative offices. Kazakh labour law generally limits the working week to 40 hours. Under the Labour Code, total overtime must not exceed 120 hours per year: 2 hours per day (1 hour per day for employees engaged in heavy work or work in harmful and/or dangerous conditions) and 12 hours per month. The monthly salary of an employee must not be lower than the minimum monthly salary established for the relevant financial year by Kazakh

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1 Law No. 67-IV of the Republic of Kazakhstan “On Transfer Pricing” of 5 July 2008.

budget legislation. The minimum monthly salary for 2023 is KZT 70,000 (approximately USD 150). Salaries must be denominated and paid in tenge only.

The minimum amount of paid vacation under the Labour Code is 24 calendar days. Additional vacation days must be provided for employees working in dangerous or harmful conditions.

Maternity leave is from 126 to 163 calendar days (70 days before the birth of a child and from 56 to 93 days after the birth). Additional unpaid childcare leave may be provided to one of the parents until the child is 3 years old.

Kazakh law requires an employer to insure its employees against work-related injury within the first ten days of the month following the month in which the employer begins work. The Labour Code provides for secondment arrangements, i.e., where an employee (the secondee) performs work for another legal entity (its branches, representative offices and/or other subdivisions) or the branches, representative offices and/or other subdivisions of the same legal entity:

- (i) in a certain field, skill area or position (function) specified in the employment agreement
  - (ii) in another field, skill area or position (function), subject to certain restrictions imposed by law
- The Labour Code limits secondment

to the following cases and states that the host entity must be:

- A legal entity (its branches, representative offices and/or other subdivisions) that is a founder, participant or shareholder of the employer and indirectly owns shares (participation interest in the charter capital) of the employer legal entity (i.e., to the “parent” company)
- A legal entity (its branches, representative offices and/or other subdivisions) whose shares (participation interest in the charter capital) directly or indirectly belong to the employer legal entity (i.e., to a “subsidiary”)
- A legal entity (its branches, representative offices and/or other subdivisions) whose shares (participation interest in the charter capital) directly or indirectly belong to an entity that directly or indirectly owns shares (participation interest in the charter capital) of the employer legal entity (i.e., to a “sister” company)

Secondment for the following purposes is prohibited:

- 1) Replacement of employees of the receiving party who refused to perform work in cases and in accordance with the procedure established by Kazakhstan's labour legislation
- 2) Performance of work in the event of downtime (temporary suspension of activities by the receiving party), implementation of a bankruptcy procedure by the receiving party, introduction of part-time work by the

receiving party in order to preserve jobs if there is a threat of employee dismissal

As an alternative, the Kazakh Labour Code provides for another secondment option, where a Kazakh legal entity engaged in providing staffing services (the seconding company) sends its employee to the host company to perform work for the host company as specified in an employment agreement or amendments thereto executed between the employee and the seconding company under the staffing services contract between the seconding company and the host company.

It should be noted that the amendments to the Kazakhstan Labour Code introduced a hybrid working model, meaning that, subject to consent between the employee and the employer, there may be an option to work from office or from home, provided that employment contracts reflect such an arrangement.

Moreover, the Kazakhstan Labour Code allows an employer or an employee to send notifications in the form of electronic documents certified with an electronic digital signature by various means, including email and other electronic means ensuring authorization and identification of the employee or employer.

In addition to the above-mentioned procedures for sending electronic



notifications, the Kazakh Labour Code provides for the electronic execution of employment contracts and amendments to employment contracts (employment documents) using electronic digital signatures. It should be noted that employment documents can be executed with electronic digital signatures via online services for the execution of electronic documents that are compatible with Kazakhstani electronic digital signatures.

Employment contracts can be concluded:

- online, via the enbek.kz portal, including certification with electronic signatures of the employer and employee
- on paper: each employment contract must be registered by the employer in the state system

Employers are obliged to enter information on new employment contracts, employment contract terminations and amendments to employment contracts (addendums) into the state unified information system of employment contracts within the established deadlines. Operations with employment contracts are carried out through the portal [www.enbek.kz](http://www.enbek.kz) "Electronic Labour Exchange".

## Import and export formalities and customs duties

### Customs regulation in Kazakhstan

Kazakhstan forms part of the unified customs territory of the EAEU along with Armenia, Belarus, Kyrgyzstan and Russia. The EAEU, which came into being on 1 January 2015, allows the free movement of goods, services, capital and labour within its borders. EAEU member states apply unified customs legislation and tariff and non-tariff regulations. There are various types of customs clearance procedures with distinct rules for the payment of customs duties and taxes, including release for internal consumption, temporary importation, reimport, customs (bonded) warehouse, free customs zone (for special economic zones and free warehouses) and other procedures. Goods imported from third countries and cleared through customs in an EAEU member state or produced/sufficiently processed in an EAEU member state may be moved within the EAEU without customs control/declaration.

### Customs duties and classification of goods

EAEU member states apply the common customs tariff to goods imported from third countries. This covers the classification of goods and the applicable rates of import duty. Import duty rates are expressed as a percentage of the customs value of

goods, varying from 0% to 80%, or as a specific amount in USD/euro per unit of measure.

Each EAEU member state sets its own export duty rates for exported goods. Export duties should be calculated using the rates of the EAEU member state in which goods are placed under an export procedure. Export duty rates in Kazakhstan vary from 3% to 20% of customs value or may be set as a specific amount in USD/euro per unit of measure.

Customs clearance fees are regulated by the domestic laws of EAEU member states. In Kazakhstan, the customs clearance fee is KZT 20,000 (around USD 40) per customs declaration.

Some customs procedures allow for the granting of full or partial exemptions from customs duties and taxes, e.g., to members of special economic zones, owners of free warehouses with special investment contracts, parties to investment contracts and in other cases. There are also certain non-tariff regulations, such as those limiting or prohibiting the import or export of certain goods.

### Kazakhstan and the WTO

#### *Import duties*

On 30 November 2015, Kazakhstan became the 162nd member of the WTO. According to its schedule of concessions, Kazakhstan undertook to reduce import duties by 2%-5% on nearly 3,900 items, and to 0% on some items, within five years after accession to the WTO.

As part of recent amendments to EAEU legislation, Kazakhstan approved a full list of goods (almost 3,900 items) to which reduced rates of import duty may be applied. Under EAEU legislation, goods included in this list that have been imported at reduced rates under the customs procedure of release for domestic consumption have the status of conditionally released goods and cannot be exported to other EAEU member states.

#### *Export duties*

Kazakhstan reserved the right to continue levying export duties on certain goods that are currently subject to export duty in Kazakhstan (petroleum and related products, remnants and scrap of ferrous and non-ferrous metals, elements of locomotive rolling stock, wool and hides of domestic animals, etc.). On acceding to the WTO, Kazakhstan undertook to begin calculating the export duty rate for crude oil using a formula based on the monthly average market price of crude oil.

## Licensing

Licences for certain activities  
Kazakh licensing legislation classifies permits/licences based on the risk level of activities to be carried out:

- High-risk activities require licences referred to as “first-category permits”
- Medium-risk activities require permits referred to as “second-category permits”

► Low-risk activities require the relevant government authority to be notified of the commencement/completion of activities

An exhaustive list of activities requiring licences, permits or notifications is contained in the Law on Permits and Notifications and includes 74 licences, 187 permits and 53 notifications. The range of business and professional activities that require permits/licences is extensive. It is important for investors to determine in advance whether a licence, permit or notification is needed. Kazakh law imposes various types of liability and substantial penalties for failure to comply with permit/licence regulations.

A licensing authority is required to issue a permit/licence within 15 business days after an application is submitted with all required supporting documents (except for certain permits/licences subject to different rules), provided that the applicant meets the relevant requirements. If the applicant does not meet the requirements or fails to provide supporting documents, the licensing authority may issue a substantiated refusal. In this case, the applicant may adjust the application and supporting documents and re-apply. Since the law does not limit the number of submissions, this process may take considerable time

A permit/licence may be revoked or suspended for an administrative offence committed in carrying out the activities authorized by the permit/licence. Revocation is imposed by a judge or an authorized body. The period of suspension of a permit/licence may not be less than one or more than six months.

It should be noted that on 30 December 2021, the President of the Republic of Kazakhstan signed the Law On Amendments and Additions to Certain Legal Acts of the Republic of Kazakhstan Concerning the Implementation of a New Regulatory Policy in the Sphere of Entrepreneurial Activities and Redistribution of Certain Functions of the Internal Affairs Bodies of the Republic of Kazakhstan. According to these amendments the state implemented the so-called "1-IN 2-OUT" principle, when a new requirement can only be introduced if two existing requirements are excluded. This principle is aimed at reducing excessive regulation and administrative costs of business entities. Full implementation of the new regulatory policy is expected by 2024. The detailed regulation of the above principle is set out in Article 82 of the Entrepreneur Code.

Below we present a summary of the most common types of licences in Kazakhstan.



### **Construction licences**

These are divided into three categories, depending on the complexity of facilities to be assembled and/or constructed. To obtain a licence for assembly and/or construction work, the applicant must meet all qualifying requirements approved by the Kazakh government. To obtain a first- or second-category licence, the applicant must have 10 or 5 years of experience in assembly, engineering and construction, respectively. No experience is required for a third-category licence. Please note that foreign companies entering the Kazakh market may apply for first- or second-category licences if they have the necessary experience. However, they must apply via duly registered branches in Kazakhstan. A foreign subsidiary in the form of a newly established LLP would be regarded as a separate legal

entity, and therefore no foreign experience would be recognized. Such an entity may apply only for a third-category licence.

### **Import/export licences**

The government establishes a list of goods whose import/export is subject to licensing. A licence is issued for each item of goods and must be granted within 30 business days after an application is received. The following types of licences are issued:

- ▶ A general licence, which is issued to a foreign trade participant based on a decision of an EAEU member state and allows a certain item of goods to be exported or imported in the quantity indicated in the licence
- ▶ An exclusive licence, which grants a foreign trade participant an exclusive right to export or import certain goods
- ▶ A one-time licence, which allows a

foreign trade participant to export or import a specified quantity of goods under a foreign trade agreement. Holders of import/export licences are required to submit a report on the use of the licence to the appropriate authorities. Permit and licence applications and notifications may be submitted online via the website [www.elisence.kz](http://www.elisence.kz).



# Banking regulations

## Banking system

### National Bank of Kazakhstan (NBK)

Kazakhstan has a two-tier banking system. The first tier is the NBK, which is the country's central bank. The NBK provides traditional banking services to its main client, i.e., the state, as represented by its central authorities. On the other hand, it exercises currency regulation and control, is responsible for the development and implementation of the monetary policy, functioning of payment systems, and within its competence carries out state regulation and supervision of the financial market.

### Agency for the Regulation and Supervision of the Financial Market and Financial Institutions

The Agency is a special government authority directly subordinate and accountable to the President of Kazakhstan. It performs state regulation and supervision of the financial market and financial institutions, including second-tier banks.

### Second-Tier Banks

The second tier includes all banks, except for the NBK and the Development Bank of Kazakhstan, which has a special legal status. One of the features of the Kazakh banking system is that only private banks operate on the banking services market. The Development Bank of

Kazakhstan and the Housing Construction Savings Bank, both with state shareholdings, have special status and perform specific functions in the financial sector to serve national interests. As a rule, banking operations in Kazakhstan must be licensed by the Agency. Foreign banks have operated in Kazakhstan since 1993. Since 16 December 2020, foreign banks have been allowed to open branches in Kazakhstan, provided that specific financial and regulatory conditions set by Kazakh law are met, including the provisions of the Tax Code.

### Islamic Banking

Islamic banks are also allowed to operate in Kazakhstan, subject to restrictions laid down in Kazakh law. Since the government recognizes the potential of Islamic finance in Kazakhstan, specific provisions for Islamic finance are envisaged at the legislative level (including the Tax Code). Islamic banking is subject to licensing by the Agency and generally should be Shariah compliant. Islamic banks cannot participate in the Kazakh deposit insurance system, and an Islamic bank's deposits cannot be insured by the Kazakh deposit insurance system.

## Currency regulations

On 2 June 2018, the President of Kazakhstan signed Law No. 167-VI On Currency Regulation and Currency Control (the "Currency Control Law"). The law came into force on 1

July 2019.

The Currency Control Law imposes certain formal requirements but does not impede most international business operations.

It distinguishes between the following parties to currency transactions:

- Kazakhstan residents, i.e., (i) Kazakh citizens (other than those who have permanent residency abroad); (ii) foreigners and stateless persons who have permanent residence status in Kazakhstan; (iii) legal entities registered in Kazakhstan, Kazakhstan-based branches/representative offices of such entities and diplomatic, trade and other official missions of Kazakhstan located abroad; (iv) branches of foreign financial organizations which have the right under Kazakh law to engage in banking or insurance activities in Kazakhstan (from December 2020); (v) branches of foreign non-financial organizations which are treated as permanent establishments of those organizations in Kazakhstan (except for branches and representative offices whose non-resident status is stipulated in international treaties concluded by Kazakhstan prior to the entry into force of the Currency Control Law)

- Kazakhstan non-residents, i.e., (i) foreign citizens and stateless persons (other than those who have permanent residency status in Kazakhstan); (ii) foreign legal entities and organizations not recognized as

legal entities under the laws of foreign states and Kazakhstan-based branches/representative offices of such entities that do not give rise to a permanent establishment of a non-resident under the Kazakh Tax Code; (iii) branches/representative offices of foreign non-financial organizations that have been accorded non-resident status under Kazakh currency law by agreements that were concluded on behalf of Kazakhstan with foreign organizations and entered into force before 1 July 2019 (a list of such branches/representative offices is to be established by the Kazakh government); (iv) international organizations, unless otherwise specified by the international treaty governing their establishment; (v) diplomatic and other official missions of foreign states

Individuals (residents and non-residents) may send and receive foreign currency in cash to and from Kazakhstan without restrictions, subject to the customs legislation of the EAEU and/or Kazakhstan. In accordance with Decree No. 830 of the President of the Republic of Kazakhstan of 14 March 2022 "On Measures to Ensure the Financial Stability of the Republic of Kazakhstan", it is forbidden for individuals (residents and non-residents) to export foreign currency from the Republic of Kazakhstan in cash and/or monetary instruments in foreign currency in an amount exceeding the equivalent of USD 10,000 (ten thousand) and calculated at the rate of the National Bank of the Republic of Kazakhstan on the date of such export.

The Currency Control Law states that transactions between Kazakhstan residents and non-residents may be in any currency. However, transactions between residents must only be in KZT, except for:

- Transactions in which one of the parties is the NBK, the Ministry of Finance or an overseas diplomatic office of Kazakhstan
- Transactions in which one of the parties is a resident that has the right to conduct foreign currency transactions
- Transactions involving foreign currency classified as banking operations and other operations which banks and authorized organizations have the right to carry out under a licence issued by the NBK or the Agency for the Regulation and



Supervision of the Financial Market and Financial Institutions or under Law No. 262-VI of the Republic of Kazakhstan of 3 July 2019

- ▶ Payment for banking services related to foreign currency transactions
- ▶ Transactions involving the acquisition, sale, payment of interest on and/or redemption of securities denominated in foreign currency
- ▶ Transactions between commission agents and their clients when services rendered by commission agents involve the conclusion and execution of export or import contracts with non-residents, including the repayment of foreign currency to the principal
- ▶ Purchase and/or sale of refined gold bullion using national currency
- ▶ Transfer of promissory notes denominated in foreign currency in fulfilment of monetary obligations
- ▶ Payments for goods sold in duty-free shops and for goods and services provided to passengers in international traffic
- ▶ Transactions between branches (representative offices) of foreign entities
- ▶ Transactions involving payment of an individual's expenses in connection with a business trip outside the Republic of Kazakhstan, including hospitality expenses, and transactions involving the repayment of unused advances issued in connection with a business trip outside Kazakhstan
- ▶ Gratuitous transfers of money or currency valuables by individuals to

other individuals or to legal entities whose statutory activities involve charity

- ▶ Bank deposits by individuals in favour of other individuals
- ▶ Transactions between professional participants in the securities market acting on behalf of their customers and individuals or legal entities involving the transfer of money and financial instruments from/to accounts for the recording and storage of money and financial instruments owned by customers by way of the performance and termination of contracts for brokerage services
- ▶ Transactions involving the payment of taxes and other mandatory payments to the budget in cases provided for by the Tax Code
- ▶ Operations of a recipient of mineral resources on behalf of the Republic of Kazakhstan involving the transportation, storage and sale of mineral resources that are transferred to the state under the Tax Code by way of the in-kind fulfilment of a tax obligation by a subsurface user
- ▶ Payments by individuals for goods, works and services in transactions concluded and executed in a special economic zone whose borders wholly or partially coincide with sections of the customs border of the EAEU

The range of currency transactions covered by the NBK's monitoring system has increased, with simplified procedures introduced for the collection of transaction information. In order to monitor currency

transactions, the NBK (or authorized banks in certain cases) assigns registration numbers to currency contracts under which currency transactions take place, currency contracts involving the movement of capital, accounts held by residents (excluding banks and branches/representative offices of foreign entities) with foreign banks and export or import currency contracts where payments are made through such accounts.

Authorized banks that process foreign currency payments or transfers are required to notify the NBK of transactions in an amount equalling or exceeding a threshold set by the NBK. The NBK is entitled to request a copy of the currency contract and information on the currency contract from the currency control agents or the resident sender. Please note that various ancillary regulations are currently in the process of being drafted.

## Currency regimes

### Registration of foreign currency contracts involving capital movement

According to the Rules on the Monitoring of Currency Transactions, approved by Resolution No. 64 of the Board of the National Bank of 10 April 2019 (the "Rules"), the NBK is responsible for monitoring and registering currency transactions and currency contracts. Registration is required for currency contracts involving capital movement



(financial loans, equity participation, transactions involving securities, equity interests and financial instruments, acquisition of real estate, acquisition of exclusive rights to intellectual property, transfers of funds in the context of trust management, and gratuitous transfers of funds) where one of the parties is a resident and the contracts reach certain thresholds.

According to the Rules, a capital movement currency contract must be registered when it involves:

- 1) The receipt of property/money in the Republic of Kazakhstan and/or a resident's obligation to return to a non-resident property/money with a value exceeding the equivalent of USD 500,000 (five hundred thousand) (approximately KZT 214,500,000)
- 2) The transfer of property/money from the Republic of Kazakhstan and/or a non-resident's obligation to return to a resident property/money with a value exceeding the equivalent of USD 500,000 (five hundred thousand) (approximately KZT 214,500,000)

A resident (other than an authorized bank and a branch/representative office of a foreign entity) that is a party to a currency contract must apply to the NBK before obligations under the contract are fulfilled by any parties. Non-residents may receive and transfer foreign currency from/to their branches (representative offices) in Kazakhstan.

The registration requirement does not apply to capital movement currency contracts whose parties include the NBK or the Ministry of Finance or to currency operations carried out by participants of the Astana International Financial Centre within the territory of the Centre.

#### **Notification**

The notification regime requires information to be provided to the NBK on foreign currency transactions exceeding the threshold of USD 50,000 (KZT 21,500,000) and on the opening of bank accounts with a foreign bank (for legal entities) as well as information on the purchase and sale of foreign currency on behalf of a client, regardless of the amount.

#### **Repatriation**

A Kazakh resident must ensure that currency proceeds under export or import contracts are repatriated to Kazakhstan (i.e., credited to a bank account with a local bank) within the established time limit.

According to the rules for carrying out export-import currency control approved by National Bank Resolution No. 42 of 30 March 2019, from 1 July 2019 an export or import currency contract must be registered if the amount of the contract exceeds the equivalent of USD 50,000 (KZT 21,500,000) or if the contract amount is not specified (framework agreements). If an export or import currency contract is denominated in a currency other than USD and the exchange rate against the USD is not specified

in the contract, the USD equivalent of the contract amount should be determined using the market exchange rate at the contract's signing date (or, failing that, at the date of the contract's entry into force).

Currency contracts whose amount is not specified or exceeds USD 50,000 (KZT 21,500,500) and that are amended after 1 July 2019 must be registered before obligations begin to be fulfilled by one of the parties, but not later than 30 calendar days after the date on which the currency contract became subject to registration.

Late registration of currency contracts concluded after 1 July 2019 will incur a warning in the first instance. A repeat violation within a year will incur an administrative fine of 100 MCI (Administrative Offences Code, Article 244). In 2023, that amounts to KZT 345,000 (approximately USD 747).

The repatriation requirement is considered to be partially or fully satisfied when:

- National and/or foreign currency is credited to accounts held by a resident with foreign banks that were opened to fulfil the resident's obligations under the terms of a financial loan received from a non-resident or to support the activities of branches/representative offices opened by the resident abroad
- Foreign currency received by residents from exhibitions and sporting, cultural and other similar

events held outside the Republic of Kazakhstan is used to cover costs incurred during those events

- Foreign currency earnings are credited to foreign bank accounts of resident transportation companies in order to pay port dues and other charges outside Kazakhstan and cover expenses associated with the handling of those companies'

transport facilities and passengers outside Kazakhstan and the maintenance of

branches/representative offices of those companies outside Kazakhstan

- An obligation of a non-resident is terminated by crediting a counterclaim under an export or import currency contract

- An obligation of a non-resident is terminated by the replacement of the original obligation between a resident

and the non-resident with another obligation between the same parties with a different subject matter or method of performance

- An insurance payment is received upon the occurrence of an insured event under an agreement on insurance of the risk of non-performance by a non-resident

#### **Submission of information (reports) by branches (representative offices) of foreign non-financial organizations**

According to the Rules on the Submission of Information by Branches (Representative Offices) of Foreign Non-Financial Organizations, approved by National Bank

Resolution No. 41 of 30 March 2019, from 1 July 2019

branches/representative offices of

foreign non-financial organizations that have operated in the Republic of Kazakhstan for more than one year must submit information (reports) on their activities to the National Bank. Based on the information received, local branches of the National Bank compile a list of branches/representative offices that provide information on transactions with residents and non-residents.

That list includes branches/representative offices engaged in the following activities:

1. Production of crude oil and natural and associated gas
2. Construction services
3. Services related to mining
4. Architectural, engineering and other technical services
5. Research and development



Late submission of a report incurs a warning in the first instance. A repeat violation within a year will incur an administrative fine of 10 MCI. In 2023 that amounts to KZT 345,000 (approximately USD 75).

In addition, if a branch or representative office of a foreign non-financial organization submits an incomplete and/or inaccurate report on transactions with residents and non-residents, it will receive a warning the first time. A repeat violation committed within a year will incur an administrative fine of 10 MCI, which currently amounts to KZT 34,500 for 2023 (approximately USD 75).

#### **Sale and purchase of foreign currency**

Legal entities may buy and sell foreign currency on the domestic currency market only through authorized banks.

A resident legal entity may purchase non-cash foreign currency in the equivalent of up to USD 50,000 (inclusive) in one bank on one day for purposes not related to the discharge of obligations expressed in a foreign currency. "Purposes not related to the discharge of obligations expressed in a foreign currency" include: (i) the transfer of foreign currency to a foreign bank account owned by such a resident legal entity; (ii) free-of-charge bank transfers; and (iii) the transfer of foreign currency to such entity's bank accounts in Kazakh banks.

For amounts exceeding the equivalent of USD 50,000, a resident legal entity must indicate the reason for purchasing foreign currency and provide a copy of the underlying contract or invoice (any payment document) to support the reason for purchasing foreign currency. A resident legal entity must also provide an advance instruction to its servicing bank to sell the foreign currency (i.e., convert it to Kazakhstan tenge) if such foreign currency is not utilized within 10 (ten) business days. This restriction does not apply to authorized banks or authorized organizations. Individuals may buy and sell currency through foreign currency exchange offices.

#### **Special currency regime**

The Currency Control Law authorizes the Government of Kazakhstan, upon recommendation of the National Bank and relevant government bodies, to introduce a special currency regime in the event of a threat to the economic security and domestic currency market of Kazakhstan. A special currency regime may include, among other things, a requirement for a percentage of the amount of a currency transaction to be deposited with an authorized bank without interest, a requirement to obtain a special permit from the NBK to carry out currency transactions, the mandatory sale of foreign currency received by Kazakhstan residents, restrictions on the use of foreign banks and limits on settlements in foreign currency.

#### **Financial monitoring**

It is important to consider the possible implications of the financial monitoring system established by Law No. 191-IV of the Republic of Kazakhstan of 28 August 2009 "On Countering Money Laundering and the Financing of Terrorism" (the "Anti-Money Laundering Law"). Under that law, certain types of transactions are subject to financial monitoring, depending on the amounts involved. This includes gratuitous payments and/or transfers made by individuals and legal entities in favour of other individuals or legal entities amounting to KZT 7,000,000 (approximately USD 15,170) or more, transactions with a value of KZT 10,000,000 (approximately USD 21,672) or more entered into by legal entities that have existed for less than three months, and other operations and transactions specified in the Anti-Money Laundering Law.

Monitoring is conducted by the Financial Monitoring Committee of the Kazakh Ministry of Finance.

In addition, the Anti-Money Laundering Law contains the term "suspicious transaction", meaning a transaction or attempted transaction where there are grounds to suspect that money and/or property used in the transaction is derived from criminal activity or that the transaction itself is undertaken for the purpose of money laundering or the financing of terrorism or other criminal activity. The Kazakh government establishes the list of



criteria for characterizing transactions as suspicious, such as a transaction's inconsistency with the nature of a legal entity's business as specified in its constituent documents, transactions with non-profit organizations, transactions relating to charitable activities, etc. Furthermore, any transaction may potentially be considered suspicious if an authorized person of a financial monitoring agent decides to treat it as such based on his/her experience and knowledge.

#### **Anti-monopoly regulations**

Anti-monopoly law requires prior permission from or notification of the anti-monopoly authority for mergers and other types of economic concentrations where the total book value of the entity's assets exceeds 10,000,000 MCI (approximately USD 74,770,811); otherwise, the deal may be invalidated or terminated. Anti-monopoly law also prohibits anti-competitive horizontal agreements (cartels) and vertical agreements, concerted practices, abuse of a dominant market position and unfair competition. All types of monopolistic activity (i.e., anti-competitive agreements, concerted practices, abuse of a dominant position) may entail administrative fines of up to 5% of income with confiscation of the monopolistic income for a period of up to a year, or criminal sanctions if actions result in major damage or the receipt of substantial income. Unfair competition entails an administrative fine of up to 1,500 MCI (approximately USD 11,215)

#### **Subsurface use regulations**

From 29 June 2018, subsurface use in Kazakhstan is regulated by the new Subsurface Use Code. The Subsurface Use Code establishes different regulatory regimes for subsurface companies depending on the types of mineral resources being explored and produced.

Subsurface use rights for the exploration and production of hydrocarbons are granted on the basis of contracts concluded by the competent government authority with winners of auctions, which are determined by the amounts of subscription bonuses proposed by the auction participants. Since 1 September 2020, such auctions have been held online. Starting 1 January 2023, amendments to the regulations of auctions will come into force.

The Subsurface Use Code also envisages the right of the competent government authority to conclude contracts for exploration and production of hydrocarbons and uranium through direct negotiations with national companies of Kazakhstan.

Subsurface use rights for exploration and production of solid mineral resources are granted on the basis of licences issued by the competent government authorities. Such licences are issued on a first come, first served basis, meaning that all applications for licences for exploration and production of solid mineral resources within the same block are considered in the order in which they are received, and each

application is considered only after the preceding application has been rejected.

Under the Subsurface Use Code, the acquisition of subsurface use rights from subsurface use companies (e.g., farmouts) or of shares/participating interests in subsurface use companies is subject to approval by the competent government authority. Furthermore, where such acquisition relates to a subsurface area of strategic importance, the state has the right of first refusal over the rights or shares/interests being sold. Before subsurface sites can be acquired, therefore, it is necessary to obtain approval from the competent government authority and a waiver from the state confirming that it will not exercise its right of first refusal over the sites.

On 1 January 2022, a new concept of an "agreement for promoting entrepreneurship" was introduced into the Subsurface Use Code. Such agreements are signed by the state authorities in the field of hydrocarbons, uranium mining and solid minerals with the National Chamber of Entrepreneurs of Kazakhstan and subsurface users on a voluntary basis and are aimed at supporting local producers. Performance under such an agreement is monitored and the results are published on Internet resources by the National Chamber of Entrepreneurs of Kazakhstan in cooperation with the state authorities in the field of hydrocarbons, uranium mining and solid minerals, based on information provided by subsurface users through the system.

# 6 EY in Kazakhstan



In 1992, EY was the first international professional services organization to open an office in Kazakhstan. It is part of our EMEIA practice, encompassing Europe, the Middle East, India and Africa. In Kazakhstan, EY has three offices: in Astana, Almaty and Atyrau.

#### About EY

EY is a global leader in assurance, tax, transaction and consulting services. Its combined global revenues for the financial year 2021 were USD 40 billion. With a total headcount of over 312,250 people, EY operates in more than 150 countries around the world. In 1992, EY was the first international assurance and advisory services organization to open an office in Kazakhstan, reaching out to a wide range of clients from various industry sectors, including multinational corporations as well as public and private companies. Today, EY Kazakhstan has about 700 employees working in three offices in Astana, Almaty and Atyrau. EY Kazakhstan provides over 85 services across all industries, including assurance, tax and law (financial, tax accounting and HR outsourcing solutions, people advisory services, immigration support, etc.), transaction and business advisory services and digital as well as professional education and training delivered by the EY Academy of Business.

#### Encouraging investment

EY is committed to enhancing the business and investment environment in Kazakhstan. We organize a variety of professional events and knowledge sharing sessions in order to promote international best practices and industry expertise, as well as to advise the investment community on the most recent or anticipated changes in the regulatory environment. EY is involved in the work of the Foreign Investors' Council, chaired by the President of the Republic of Kazakhstan, and co-chairs its working group on Investment Policy. EY is also actively involved in several business, professional and industry associations in Kazakhstan.

#### Supporting our clients in a dynamic landscape

At EY, we know that businesses in emerging markets need innovative thinking and practical advice in order to succeed. We support our clients by facilitating their sustainable development strategy and helping them create new growth opportunities in today's dynamic economic environment.

#### Our core services

- Assurance
- Tax & Law
- Strategy and Transactions
- Consulting
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# 7

## Appendix





## Double tax treaties

The following table lists the WHT rates under Kazakhstan's double tax treaties.

No.	Country	Dividends, %	Interest, %	Royalties, %
1.	Armenia	10	10	10
2.	Austria	5/15(a)	10	10
3.	Azerbaijan	10	10	10
4.	Belarus	15	10	15
5.	Belgium	5/15(a)	10	10
6.	Bulgaria	10	10	10
7.	Canada	5/15(a)	10	10
8.	China	10	10	10
9.	Croatia	5/10(b)	10	10
10.	Cyprus	5/15(a)	10	10
11.	Czech Republic	10	10	10
12.	Estonia	5/15(b)	10	15
13.	Finland	5/15(a)	10	10
14.	France	5/15(a)	10	10
15.	Georgia	15	10	10
16.	Germany	5/15(b)	10	10
17.	Hungary	5/15(b)	10	10
18.	India	10	10	10
19.	Iran	5/15(c)	10	10
20.	Ireland	5/15(b)	10	10
21.	Italy	5/15(a)	10	10
22.	Japan	5/15(a)	10	10
23.	Korea (South)	5/15(a)	10	10
24.	Kyrgyzstan	10	10	10
25.	Latvia	5/15(b)	10	10
26.	Lithuania	5/15(b)	10	10
27.	Luxembourg	5/15(d)	10	10
28.	Macedonia	5/15(b)	10	10
29.	Malaysia	10	10	10
30.	Moldova	10/15(b)	10	10
31.	Mongolia	10	10	10
32.	Netherlands	5/15(a)	10	10
33.	Norway	5/15(a)	10	10
34.	Pakistan	12.5/15(a)	12.5	15

No.	Country	Dividends, %	Interest, %	Royalties, %
35.	Poland	10/15(c)	10	10
36.	Qatar	5/10(a)	10	10
37.	Romania	10	10	10
38.	Russian Federation	10	10	10
39.	Saudi Arabia	5	10	10
40.	Serbia	10/15(b)	10	10
41.	Singapore	5/10(b)	10	10
42.	Slovak Republic	10/15(e)	10	10
43.	Slovenia	5/15(b)	10	10
44.	Spain	5/15(a)	10	10
45.	Sweden	5/15(a)	10	10
46.	Switzerland	5/15(a)	10	10
47.	Tajikistan	10/15(e)	10	10
48.	Turkey	10	10	10
49.	Turkmenistan	10	10	10
50.	Ukraine	5/15(b)	10	10
51.	United Arab Emirates	5/15(a)	10	10
52.	United Kingdom	5/15(a)	10	10
53.	United States	5/15(a)	10	10
54.	Uzbekistan	10	10	10
55.	Vietnam	5/15(f)	10	10
56.	Non-treaty countries	15(g)	15(g)	15(g)

- (a) The lower rate applies to dividends paid to companies owning at least 10% of the payer. The 10% or 15% rates apply to other dividends.
- (b) The lower rate applies to dividends paid to companies owning at least 25% of the payer. The 10% or 15% rates apply to other dividends.
- (c) The lower rate applies to dividends paid to companies owning at least 20% of the payer. The 15% rate applies to other dividends.
- (d) The lower rate applies to dividends paid to companies owning at least 15% of the payer. The 15% rate applies to other dividends.
- (e) The lower rate applies to dividends paid to companies owning at least 30% of the payer. The 15% rate applies to other dividends.
- (f) The lower rate applies to dividends paid to companies owning at least 70% of the payer. The 15% rate applies to other dividends.
- (g) For payments to entities registered in tax havens (as per the list of countries with preferential tax regimes) the rate is 20%.

## List of countries with preferential tax regimes

### Approved by Order No. 142 of the Minister of Finance of the Republic of Kazakhstan of 8 February 2018

1. Principality of Andorra
2. State of Antigua and Barbuda
3. Commonwealth of the Bahamas
4. State of Barbados
5. State of Bahrain
6. State of Belize
7. State of Brunei Darussalam
8. Republic of Vanuatu
9. Co-operative Republic of Guyana
10. Republic of Guatemala
11. State of Grenada
12. Republic of Djibouti
13. Dominican Republic
14. Commonwealth of Dominica
15. Kingdom of Spain (only as regards the Canary Islands)
16. People's Republic of China (only as regards the Macao and Hong Kong special administrative regions)
17. Republic of Colombia
18. Federal Islamic Republic of Comoros
19. Republic of Costa Rica
20. Malaysia (only as regards the Labuan enclave)
21. Republic of Liberia
22. Lebanese Republic
23. Republic of Mauritius
24. Islamic Republic of Mauritania
25. Portugal (only as regards the Madeira Islands)
26. Republic of Maldives
27. Republic of the Marshall Islands
28. Principality of Monaco
29. Republic of Malta
30. Mariana Islands
31. Kingdom of Morocco (only as regards the city of Tangier)
32. Union of Myanmar
33. Republic of Nauru
34. Kingdom of the Netherlands (only as regards Aruba and the dependent territories of the Antilles)
35. Federal Republic of Nigeria
36. New Zealand (only as regards the Cook Islands and Niue)
37. Republic of Palau
38. Republic of Panama
39. Independent State of Samoa
40. Republic of San Marino
41. Republic of Seychelles
42. State of Saint Vincent and the Grenadines
43. Federation of Saint Kitts and Nevis
44. State of Saint Lucia
45. United Kingdom of Great Britain and Northern Ireland (only as regards the following areas):
  - 1) Anguilla Islands
  - 2) Bermuda Islands
  - 3) British Virgin Islands
  - 4) Gibraltar
  - 5) Cayman Islands
  - 6) Montserrat Island
  - 7) Turks and Caicos Islands
  - 8) Isle of Man
  - 9) Channel Islands (Guernsey, Jersey, Sark and Alderney)
  - 10) South Georgia Island
  - 11) South Sandwich Islands
  - 12) Chagos Islands
46. United States of America (only as regards the following areas):
  - 1) US Virgin Islands
  - 2) Guam
  - 3) Commonwealth of Puerto Rico
  - 4) Wyoming State
  - 5) NOTE: Delaware State is excluded from the list of preferential tax regimes from 1 December 2022
47. Republic of Suriname
48. United Republic of Tanzania
49. Kingdom of Tonga
50. Republic of Trinidad and Tobago
51. Sovereign Democratic Republic of Fiji
52. Republic of the Philippines
53. Republic of France (only as regards the following areas):
  - 1) Kerguelen Islands
  - 2) French Polynesia
  - 3) French Guiana
54. Republic of Montenegro
55. Democratic Republic of Sri Lanka
56. Jamaica

## List of countries exempt from CFC rules:

Approved by Order No. 1320 of the  
Minister of Finance of the Republic of  
Kazakhstan of December 20, 2021

1. Armenia
2. Austria
3. Azerbaijan
4. Belarus
5. Belgium
6. Canada
7. China
8. Czech Republic
9. Estonia
10. Finland
11. France

12. Germany
13. India
14. Iran
15. Ireland
16. Italy
17. Japan
18. Latvia
19. Luxembourg
20. Malaysia
21. Mongolia
22. Netherlands
23. Norway
24. Pakistan
25. Poland
26. Romania

27. Russia
28. Singapore
29. Slovakia
30. Slovenia
31. South Korea
32. Spain
33. Sweden
34. Switzerland (certain cantons)
35. Tajikistan
36. Türkiye
37. Turkmenistan
38. Ukraine
39. United Kingdom
40. USA
41. Vietnam





# Key macroeconomic indicators of Kazakhstan

	2012	2013	2014	2015	2016	2017	2018	2019
GDP growth, %	4.8	6.0	4.2	1.2	1.1	4.1	4.1	3.8
GDP per capita, USD	12,387	13,891	12,807	10,510	7,715	9,248	9,813	9,409
Inflation rate,%	6.0	4.8	7.4	13.6	8.5	7.1	5.3	4.6
Gold and foreign currency reserves (USD billion)	28.3	24.7	29.2	27.9	29.7	31.0	30.9	29.5
KZT/USD annual average exchange rate	149.11	152.13	179.19	221.73	342.16	326.00	344.71	416.7
Any other Kazakh-source income paid to non-residents that is not received from a tax agent (local legal entity)	20%	20%	20%	20%	20%	20%	20%	20%

Sources: Statistics Agency of Kazakhstan, National Bank of Kazakhstan

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