

Kazakhstan Mining Tax Guide

2022 edition



The background image shows a large-scale mining operation. A massive yellow off-road truck is in the foreground, partially obscured by a large, bright spray of water or steam. The truck is loaded with dark material, likely coal or ore. In the background, a large conveyor belt system is visible, transporting material across the site. The overall scene is industrial and dynamic, with a strong sense of scale and activity.

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This guide is intended to provide a general overview of the taxation regime applicable to investors in the mining sector in Kazakhstan.

This guide has three sections:

1. Mining industry background in Kazakhstan
2. Legislative framework applicable to companies operating in the mining sector
3. Taxes applicable to companies operating in the mining sector

As this guide is a highly summarized version of the rules effective as of January 2022, it is not a substitute for comprehensive professional advice, which should be sought before engaging in any transaction. It should also be noted that in this guide we do not deal with all the taxes of Kazakhstan. Here we cover only the most significant ones applicable to companies operating in the mining sector, so advice should be taken as to the actual taxes applicable to a particular mine.

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





Mining industry background in Kazakhstan

The economy is bouncing back from its pandemic-driven decline in 2020. GDP expanded by 0.4 percent quarter-on-quarter (seasonally adjusted) in the second quarter of 2021, following 1.3 percent growth in the first. Real GDP in the second quarter of 2021 was still 0.8 percent below the pre-crisis level. Investment has remained weak, however, and contracted by 1.8 percent in the first half of 2021, mainly due to inadequate FDI inflows.

Yearly inflation rose to 8.7 percent in August 2021, up from 7.5 percent in December. A surge in global food prices, logistical disruptions, and pent-up demand contributed to rising prices across the board. The Government set price caps on some staple food products and introduced export quotas on grain. The NBK tightened monetary policy and increased the policy rate by 0.25 percentage points to 9.5 percent in September.

Economic activity is projected with growth of 3.7 percent in 2022. Growth will be supported by the resumption of domestic activity, a supportive fiscal stance, and the rollout of vaccines. Improving growth prospects in foreign markets will buoy external demand for commodities.

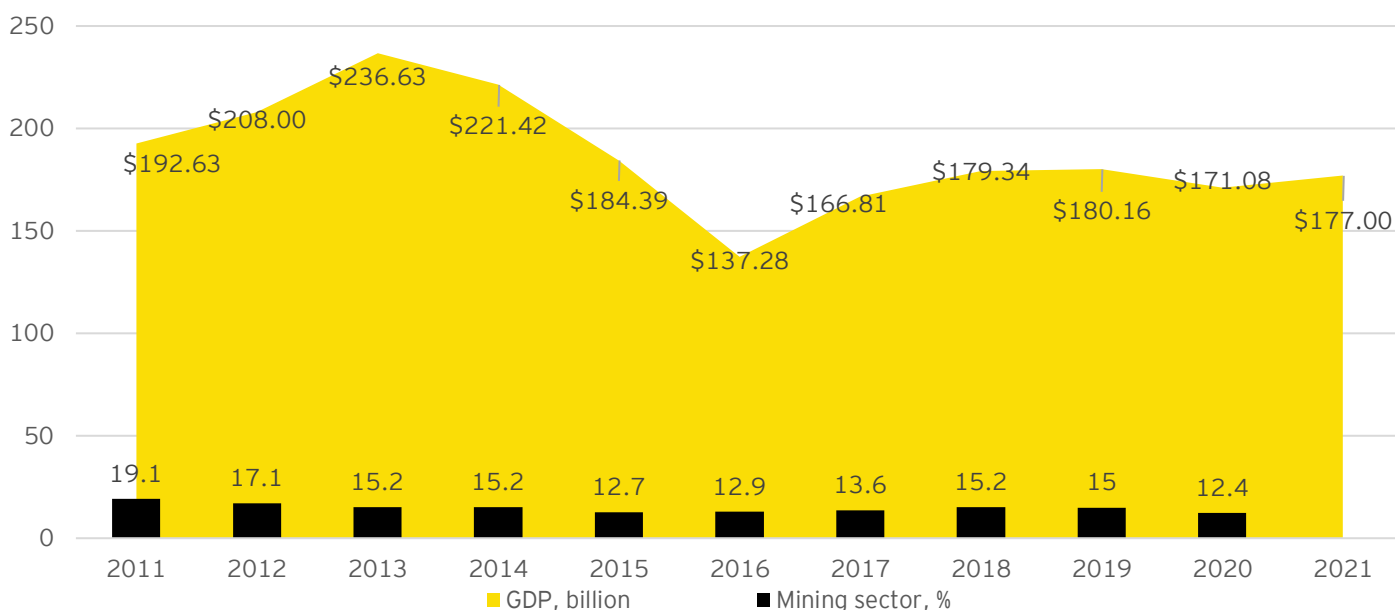
The mining industry in Kazakhstan has demonstrated sustainable growth and its future potential is closely connected to the development of metallurgy. State interests in the mining industry, as well as in the oil and gas industry, have strengthened over the last few years.

Today, Kazakhstan is a leading global producer of coal, copper, zinc, bauxite, uranium and chrome ore. Economically extractable reserves of mineral resources at the end of 2021 were as follows:

Mineral resources	Reserves as of 2021	Reserves, % of global total	Current World rank
Gold, thousand tons	402	1.3	13
Silver, thousand tons	176,257	5.7	2
Chromium, mln tons	230	40	1
Coal, bln metric tons	25.6	2.4	9
Copper, mln tons	20	2.3	10
Iron ore, mln metric tons	2.5	1.6	10
Lead, mln metric tons	2	2.3	8
Manganese, mln tons	5	2.2	9
Uranium, thousand tons	752	19	2
Zinc, mln tons	12	5	6

Mineral resources other than oil and gas are located predominantly in central and eastern parts of the country. Production statistics of major mining commodities and their distribution over regions of Kazakhstan in 2021 are presented below.

Volume, thousand tons	Mineral
117,000	Coal
119.7	Copper ore
64,000	Iron ore
5,200	Aluminum ore (bauxite)
7,000	Chromium ore
160	Manganese ore
220	Zinc in zinc concentrate
40	Lead in lead concentrate
22.5	Uranium
450	Silver



Source: agency on statistics of Kazakhstan (2021)

Legislative framework

Subsurface use rights include contracts (for hydrocarbons and uranium) and licenses (for solid minerals), which envisage payment of special taxes and other obligatory payments by subsurface users.

Mining companies in Kazakhstan are treated as subsurface users after they acquire relevant licenses (i.e. subsurface use rights). Subsurface use rights can be obtained by a legal entity in the following ways:

- ▶ obtaining subsurface use rights from the state (obtaining a license);
- ▶ acquisition of subsurface use rights from an existing subsurface user or the acquisition of a participatory interest (shares) in the charter capital of the subsurface user or its parent company;
- ▶ transfer of the subsurface use right in the order of succession during the reorganization of a legal entity (except for transformation or inheritance).

The license is issued solely by the competent authority – the Ministry of Industry and Infrastructural Development of Kazakhstan, except for the license for production of commonly occurring minerals which is issued by the local executive bodies of the region, city of state significance or the capital.

Today, Kazakhstani legislation identifies 6 types of license:

- ▶ a license for geological survey of subsurface – issued for **3 years**;
- ▶ a license for exploration of solid minerals – issued for **6 consecutive years**;
- ▶ a license for production of solid minerals – issued for a maximum of **25 consecutive years**;
- ▶ a license for production of commonly occurring minerals – issued for a maximum of **10 consecutive years**;
- ▶ a subsurface space use license – issued for a maximum of **25 consecutive years**;
- ▶ an artisanal mining license – issued for **3 years** and can be extended once for three years at the request of the license holder.

The implementation of subsurface use operations is also subject to legislative regulation, which includes key obligations such as:

- ▶ Signature bonus and payment for the use of land plots (rent);
- ▶ Procurement of goods, work and services and the share of local content in it;
- ▶ Annual minimum expenses for subsurface use operations;
- ▶ Minimum share of local content in personnel;
- ▶ Financing of research, scientific and technical, and experimental design work;
- ▶ Financing the socio-economic development of the region and the development of its infrastructure (for certain types of minerals);
- ▶ Financing the training of Kazakhstani personnel, etc.

The subsurface user is required to submit periodic reports to the competent authority, for example on the fulfillment of license obligations, on purchased goods, work and services, on controlling bodies, geological reports and other matters. Moreover, depending on the type of license, Kazakhstani legislation may envisage conducting an audit of the subsurface user.

Subsurface use legislation

Two major legislative acts in Kazakhstan govern the economic terms established in a subsurface use contract. They are the Subsurface Use Code¹, which contains the basic legal framework for granting, using, assigning or terminating rights to be a subsurface user, and the Tax Code², which is discussed in detail below.

Statutory accounting

Statutory accounting records are maintained in accordance with the Law on Accounting and Financial Reporting, under which most companies should prepare financial statements under International Financial Reporting Standards (IFRS).

Generally, a subsurface user should maintain separate tax accounting (i.e. ring-fencing) for contractual and non-contractual activities, except for specific cases. That is, tax obligations under each subsurface contract are accounted for separately from each other, and separately from non-contractual activity.

The Tax Code contains detailed requirements for a mandatory tax policy and a set of tax registers that provide the bridge from the underlying accounting records to the tax returns.

The table below presents a short overview of the main taxes and obligatory payments to the budget applicable to subsurface users:

¹Code On Subsurface and Subsurface Use, dated 27 December 2017 No.125-VI (the “Subsurface Use Code”)

²Code No. 120-VI of the Republic of Kazakhstan on Taxes and other Obligatory Payments to the State Budget, dated 25 December 2017 (the “Tax Code”)

Tax accounting and applicable taxes

Applicable taxes and obligatory payments to the budget	Tax base	Rate / amount
Signature bonus	A one-time payment for acquiring the rights to mining on the contract territory and / or for extension of the contract territory	The starting amount of the signature bonus is determined separately for each contract
Payment for compensation of historical costs	Part of the historical costs incurred by the government on geological investigation of the contract territory and exploration of mining fields	
Mineral extraction tax	The value of the taxable volume of mined-out reserves of mineral resources contained in mineral raw material	0%-18.5% (depending on the type of mineral resource and mineral raw material)
Excess profit tax ("EPT")	Starting from 1 January 2018, subsurface users operating under subsurface contracts for exploration and / or production of mineral resources, underground waters and / or therapeutic mud are not payers of EPT, provided that such subsurface contracts do not include production of other types of mineral resources	
Payment for the use of land plots	The validity period of the license for exploration and production of mineral resources	From 15 to 450 MCIs ³ , depending on the license's validity period
Corporate income tax	Taxable income, adjusted for specific income and expenses, as well as losses	20%
Withholding tax	Non-resident's income from activities in Kazakhstan that do not create a permanent establishment in Kazakhstan	5-20% (depending on the type of income). Exemptions or reduced rates under the relevant double tax treaty may apply
Branch income tax on non-resident's income operating in Kazakhstan through a permanent establishment	Net income derived from business activities of a permanent establishment in Kazakhstan	15%. A reduced rate under the relevant double tax treaty may apply
Land tax	Land plot area	The rates vary depending on the purpose of usage and relevant categories to which the land plot belongs. The rate could either be increased or decreased by local state authorities (by up to 50%)
Property tax	The average annual balance value of taxable assets as per the accounting books	1.5%
Payment for negative impact on the environment	The actual volume of emissions and discharges of pollutants (emissions into the environment), placement of sulfur in open form on sulfur maps and disposal of waste carried out on the basis of an appropriate environmental permit and environmental impact declaration.	The rates depend on the source and type of polluting substances, and may be increased by local state authorities
Value added tax ("VAT")	VAT applies to the following transactions: <ul style="list-style-type: none"> Supplies of goods, work and services in/from Kazakhstan; Imports of goods Electronic trade in goods, provision of services in electronic form to individuals by foreign companies. 	12% on sales in the territory of Kazakhstan, 0% on export sales

³Monthly calculation index ("MCI"). MCI for 2022 is KZT 3,063.



Tax regime

This section contains a description of applicable taxes and obligatory payments to the budget by subsurface users in the mining sector.

Signature bonus

The signature bonus is a lump-sum payment by a subsurface user for the right to use the subsurface, as well as for extension of the contract territory.

For exploration contracts, except for licenses for exploration of mineral resources, prospecting and development of technogenic mineral formations, the bonus is a fixed amount of 280 MCIs (KZT 857,640). For exploration of common mineral resources, the bonus is a fixed amount of 40 MCIs (KZT 122,520).

For production contracts and contracts for combined exploration and production, except for contracts for development of technogenic mineral formations and licenses for production of mineral resources and prospecting where.

recoverable reserves have not been approved, the bonus is a fixed amount of 500 MCIs (KZT 1,531,500). Where recoverable reserves have been approved, the bonus is calculated by a formula applying a rate of 0.01% to approved recoverable reserves and 0.005% to provisionally approved recoverable reserves (but not less than KZT1,531,500).

For production contracts for common mineral resources the bonus is calculated by a formula applying a rate of 0.01% to approved recoverable reserves (but not less than KZT 367,560).

The signature bonus for subsurface use licenses is paid to the budget at the taxpayer's location no later than ten working days from the date of issue of such a license.

The amount of the signature bonus of a mining license, except for licenses granted as a result of an auction, is calculated on the basis of the rates expressed as a multiple of MCIs established by the law on the Republican budget and valid on the date of payment of the signature bonus:

Nº	Name	Rate, MCI	MCI @ KZT 3,063
1.	Exploration license	100	306,300
2.	Mining license	200	612,600
3.	Construction license:		
3.1.	if the area of the provided territory is up to 17,000 m ²	9	27,567
3.2.	if the area of the provided territory is from 17,000 m ² to 33,000 m ²	12	36,756
3.3.	if the area of the provided territory is from 33,000 m ² to 50,000 m ²	15	45,945
4.	License for geological study	50	153,150
5.	License for the use of subsurface space	400	1,225,200

Payment for compensation of historical costs

The obligation to compensate historical costs arises from the date when a confidentiality agreement is concluded between the subsurface user and the authorized state body on subsurface study and usage.

Mineral extraction tax ("MET")

MET on mineral raw materials

MET on mineral raw materials is calculated based on the actual volume of mineral resources contained in the mineral raw material (adjusted for actual losses within normal rated losses for the tax period). The tax base is the value of taxable volume of mined-out mineral resources contained in the mineral raw material for the tax period. For those minerals for which there are official price quotations recorded on the London Metal Market or London Bullion Market.

Association and published in the Metal Bulletin journal published by Metal Bulletin Journals Limited and the Metal-Pages journal published by Metal-Pages Limited, the tax base is determined based on the average quotation for such minerals. For other types of mineral, the value is calculated based on a weighted-average selling price of minerals, or on the actual production cost of extraction and primary processing (enrichment) determined in accordance with IFRS and the requirements of the accounting and financial reporting legislation of the Republic of Kazakhstan, increased by 20%.

The tax rates are established as follows:



No.	Mineral resources, raw materials, including those that have completed initial processing		Rates, in %
1.	Ores of ferrous, non-ferrous and radioactive metals	Chrome ore (concentrate)	16.2
		Manganese and iron manganese ore (concentrate)	2.5
		Iron ore (concentrate, pellets)	2.8
		Uranium (pregnant solution, mining method)	18.5
2.	Metals	Copper	5.7
		Zinc	7.0
		Lead	8.0
		Gold, silver, platinum, palladium	5.0
		Aluminum	0.25
		Tin	3.0
		Nickel	6.0
3.	Mineral raw materials containing metals	Vanadium	4.0
		Chromium, titanium, magnesium, cobalt, tungsten, bismuth, antimony, mercury, arsenic and others	6.0
4.	Mineral raw materials containing rare metals	Niobium, lanthanum, cerium zirconium	7.7
		Gallium	1.0
5.	Mineral raw materials containing trace metals	Selenium, tellurium, molybdenum	7.0
		Scandium, germanium, rubidium, caesium, cadmium, indium, thallium, hafnium, rhenium, osmium	6.0
6.	Mineral raw materials containing radioactive metals	Radium, thorium	5.0
7.	Rare Metals	Lithium, beryllium, tantalum, strontium	7.7
8.	Rare Earth Metals	Yttrium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium	6.0
Mineral raw materials that contain non-metallic minerals			
9.	Fuel, Chemical and Agronomical mineral raw materials	Bituminous coal, lignite coal, oil shales	2.7
		Phosphorites	4.0
		Boric anhydride	3.5
		Potassium and potassium-magnesium salts	6.0
		Baryte	4.5
		Talcum	2.0
		Gypsum	5.6
		Sulfur	6.0
		Fluorites	3.0
		Wollastonite	3.5
		Shungite	2.0
		Graphite and others	3.5
Stone-coloured raw materials			
10.	Mineral raw materials containing precious stones	Diamond, ruby, sapphire, emerald, garnet, alexandrite, red (noble) spinel, euclase, topaz, aquamarine and others	12.0
11.	Mineral raw materials containing ornamental stones	Nephrite, lapis-lazuli, rhodonite, charoite, malachite, aventurine, agate, jade, pink quartz, diopside, chalcedony and others	3.5
12.	Mineral raw materials containing industrial stones	Diamond, corundum, agate, jasper, serpentinite, asbestos, mica and others	2.0
		Alumina-bearing rocks (feldspar, pegmatite)	2.5
13.	Common Mineral Resources		4.7, but not less than
		Other non-metallic raw material, refractory clay, kaolin, vermiculite, common salt	0.02 MCI per unit volume



In certain cases, a coefficient of 0.01 applies to the mineral extraction tax rate for extracted coal, brown coal, and oil shale indicated above.

In some circumstances, the 0% MET rate may be applied to all types of mineral resource and mineral raw material extracted from off-balance reserves.

MET on common mineral resources

MET is calculated based on the actual volume of common mineral resources extracted by the subsurface user during the tax period. The taxable base is the volume of extracted common mineral resources during the tax period.

No.	Resource	Rate, MCI	MCI @ KZT 3,063
1.	Metamorphic rocks: marble, quartzite, quartz-feldspar rocks	0.02	61.26
2.	Magmatic rocks: granite, syenite, diorite, gabbro, rhyolite, andesite, diabase, basalt, volcanic tuffs, slags, pumice, volcanic glass and vitreous rocks (perlite, obsidian)	0.02	61.26
3.	Sedimentary rocks: gravel, gravel-sandy mixture, sands and sandstones, clays and clay rocks (loams, siltstones, argillites, clayey shales), salt, gypsum rocks, marls, limestones, including shell rocks, chalk rocks, dolomites, limestone-dolomite rocks, siliceous rocks (treble, opoka, diatomite), natural pigments, peat	0.015	45.945
4.	Therapeutic mud	0.02	61.26

The tax rates are established in MCIs for a unit of extracted volume of the resources as follows:

MET on underground waters

No. p/s	Mineral	Rate, MCI	MCI @ KZT 3,063
1.	Underground water produced by a subsoil user, except underground waters listed in rows 2-5 of this table	0.003	9.189
2.	Underground water produced by a subsoil user to carry out activities regulated by legislation of the Republic of Kazakhstan on natural monopolies, and (or) subsequent sale to a natural monopoly entity to carry out activities regulated by legislation of the Republic of Kazakhstan on natural monopolies	0.001	3.063
3.	Underground mineral water or underground domestic potable water produced by a subsoil user and used for the production of alcoholic beverages, soft drinks and (or) food products (except for the production of agricultural products and (or) its processing)	0.250	765.75
4.	Actual losses of underground domestic potable water during the implementation of activities regulated by legislation of the Republic of Kazakhstan on natural monopolies, and (or) its subsequent sale to a natural monopoly entity to carry out activities regulated by legislation of the Republic of Kazakhstan on natural monopolies	0.005	15.315
5.	Actual losses of underground mineral or underground domestic potable water produced by a subsoil user, except underground waters listed in row 4 of this table	1	3,063



Payment for the use of land plots

Payment for the use of land plots is imposed for provision by the government of land plots under a license for the exploration or production of mineral resources. Payers for the use of land plots are entities that have received land plots based on a license for the exploration or production of mineral resources.

Payment rates are established in MCIs as follows:

No.	Period	Rate (MCI)	MCI @ KZT 3,063
1.	From 1 to 36 months of the license for exploration, for 1 block	15	45,945
2.	From 37 to 60 months of the license for exploration, for 1 block	23	70,449
3.	From 61 to 84 months of the license for exploration, for 1 block	32	98,016
4.	From the 85th month of the license for exploration, for 1 block	60	183,780
5.	From 1 month of the production license, for 1 km ²	450	1,378,350

A block means a territory for which a license for exploration or production of mineral materials has been issued. Each block has identifying coordinates and an individual code assigned to it by the authorized body.

EPT

Starting from 1 January 2018, EPT applies only to subsurface users extracting hydrocarbons. Subsurface users operating under subsurface contracts for exploration and / or production of solid mineral resources, underground waters and / or therapeutic mud are not payers of EPT, provided that such subsurface contracts do not include production of other types of mineral resources.

Corporate income tax ("CIT")

CIT applies to all companies at a rate of 20% of taxable income. Taxable income is calculated as the difference between aggregate annual income and statutory deductions.

Deductions

All expenses actually incurred by a taxpayer in carrying out activities which are directed at the receipt of income and which are supported by primary documentation are generally deductible for the purpose of determining taxable income.

The following are examples of deductible expenses:

- ▶ Interest expenses (accrued within paid, thin capitalization rules apply);
- ▶ Expenses incurred under a joint operating agreement based on information provided by the operator;
- ▶ Business trip and business expenses (within established limits);
- ▶ Excess of foreign exchange losses over foreign exchange gains;
- ▶ Insurance premiums except for those paid under accumulative insurance contracts;
- ▶ Doubtful receivables not redeemed within three years;
- ▶ Fines and penalties, except for those payable to the state budget;
- ▶ Training expenses actually incurred by a subsurface user for its personnel;
- ▶ Development of rural areas, within limits established in subsurface use contracts.

Geological studies and exploration and preparatory operations for the production of mineral resources include the following: appraisal, preparatory work, general and administrative expenses, and costs of bonuses. These costs, along with expenditure on the purchase of fixed assets and intangible assets (expenditure incurred by a taxpayer while acquiring the right to geological exploration, development, or extraction of mineral resources) form a separate depreciation group for tax purposes. These costs may be deducted once production commences by applying declining balance depreciation at a rate not exceeding 25%.

Taxpayers have a right to reduce taxable income for certain expenses (e.g. charity) not exceeding 4% of taxable income (3% for large taxpayers subject to monitoring).

Depreciation expenses

Fixed assets subject to depreciation include, among others:

- ▶ Tangible fixed assets, investments in immovable property, intangible assets etc. recognized in accounting records of a taxpayer in accordance with IFRS and legislation of the Republic of Kazakhstan on accounting and financial reporting, and intended to be used for activities to generate income;
- ▶ Assets with a useful life exceeding one year, manufactured and (or) acquired by concessionaires under concession agreements;
- ▶ Assets with a useful life exceeding one year which are intended for use in activities which are directed at the receipt of income and were received by a fiduciary for fiduciary management under a fiduciary management agreement or another document which is a basis on which fiduciary management is exercised.

The following items, among others, are not considered as fixed assets:

- ▶ Intangible assets with an indefinite useful life;
- ▶ Assets commissioned under investment contracts concluded before 1 January 2009;
- ▶ Construction in progress.

For tax depreciation purposes, fixed assets are split into four groups. Assets are depreciated at rates not exceeding the maximum depreciation rates set out in the following table:

No.	Type of fixed asset	Maximum depreciation rate
1.	Buildings, structures (except for oil and gas wells and transmission devices)	10%
2.	Machinery and equipment, except for machinery and equipment used for oil and gas production	25%
3.	Office machinery, computers and software	40%
4.	Fixed assets not included in other groups, including oil and gas wells, transmission devices, machinery and equipment for oil and gas production	15%



Subsurface users have the right to apply double depreciation rates in the year of commissioning “newly created” fixed assets, provided such fixed assets will be used in their contract activities for at least three years.

Expenses actually incurred on the use, repair, maintenance or liquidation of fixed assets are defined as “subsequent costs” and are deductible in the tax period when they are actually incurred.

Financing considerations

A general 4-to-1 debt-to-equity limit applies to both Kazakhstan and non-Kazakhstan sourced financing obtained from / guaranteed by a related party or obtained from an entity registered in a tax haven.

Losses

Losses pertaining to subsurface use contracts may be carried forward for up to 10 years. Tax losses may not be carried back.

Branch profit tax

Branches of foreign legal entities are subject to a branch profit tax of 15% applied to taxable income after deduction of CIT. Such a rate may be reduced under relevant double tax treaty provisions provided that certain conditions are met.

Withholding tax (“WHT”)

Generally, income of a non-resident derived from Kazakhstani sources is subject to 20% WHT in Kazakhstan, except for the following:

- ▶ Income in the form of dividends, capital gains, interest and royalty - 15%;
- ▶ Income from international transportation services - 5%;
- ▶ Insurance premiums payable in accordance with reinsurance risk agreements - 5%;
- ▶ Income from insurance premiums in accordance with insurance risk agreements - 15%.

The Tax Code of the Republic of Kazakhstan establishes a list of income that is considered income from Kazakhstani sources.

The WHT rate on dividends, interest and royalty may be reduced under a relevant double tax treaty (taking into account provisions of the Multilateral Convention to Implement Tax Treaty Related Measures to

Prevent Base Erosion and Profit Shifting (MLI)) provided that certain conditions are met.

It should be noted that any type of income paid by a Kazakhstani legal entity to a non-resident legal entity registered in tax-blacklisted jurisdictions is subject to 20% WHT in Kazakhstan. There is a list adopted by the Kazakhstan Government of tax-blacklisted jurisdictions.

Taxation of dividends

Dividends paid by a Kazakhstani subsurface user legal entity to a non-resident legal entity are subject to WHT at a domestic rate of 15% (or 20% for entities registered in tax-blacklisted jurisdictions). However, such a WHT rate may be reduced under a relevant double tax treaty provided that the recipient of the dividends is the beneficial owner of such dividends, is a fully operating company and that all other administrative requirements are met. The application of any benefits under a double tax treaty is subject to the relevant MLI provisions.

3-year holding period exemption

Kazakhstan tax legislation envisages a domestic WHT exemption on dividends received by non-residents (except those registered in tax havens) if the following conditions are simultaneously met:

- ▶ at the date when the dividends are accrued, the non-resident has held the shares/participation interest (in respect of which the dividends are paid) for more than 3 years;
- ▶ in the course of a twelve-month period preceding the first day of the month of the dividends’ accrual, a resident legal entity, which is a subsurface user paying dividends, has been carrying out subsequent processing (after primary processing) of at least 70% of the mineral raw materials mined within that period, including coal, at its own production facilities located in the territory of the Republic of Kazakhstan and (or) those owned by a resident legal entity, which is its related party.

Starting from 1 January 2021, the three-year holding period exemption is applied if certain other conditions are met not just to “dividends” but to income previously taxed by corporate income tax.

The above exemption applies only to the part of dividends that was taxed by CIT.

Taxation of capital gains

Taxable Kazakhstan source income of non-residents includes amongst other items:

- ▶ capital gains generated from the transfer of shares/participation interest in a Kazakhstani legal entity;
- ▶ capital gains generated from the transfer of shares/participation interest in a foreign legal entity, if 50% or more of the value of its shares/participation interest or its assets derives from Kazakhstan / assets located in Kazakhstan (i.e. the indirect transfer of shares/participation interest in a Kazakhstan legal entity).

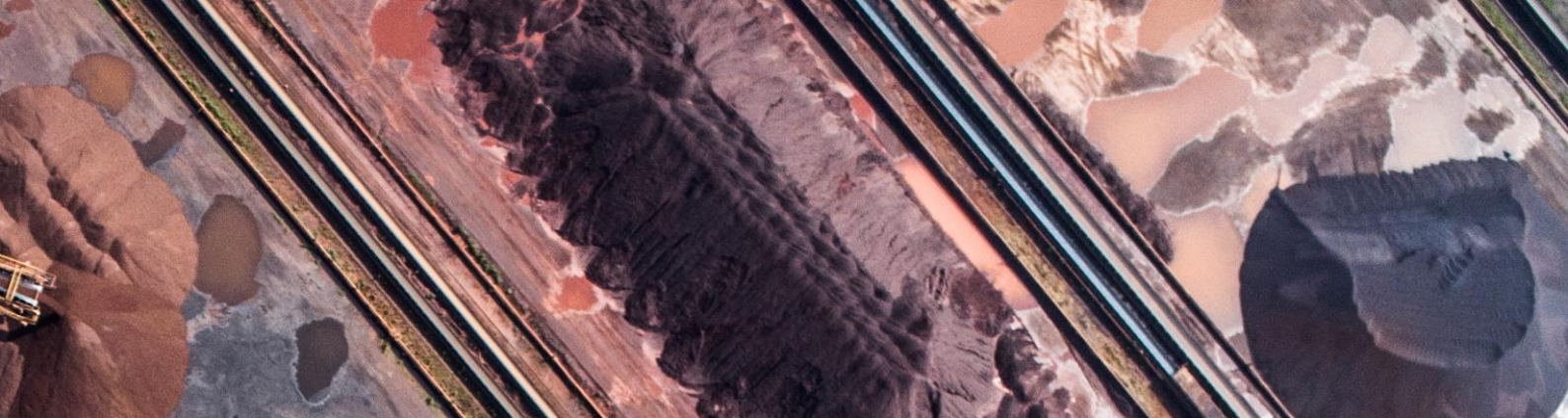
Capital gains received by a non-resident legal entity from the disposal of shares or participation interest would be subject to Kazakhstan WHT at a rate of 15% (or 20% for non-residents that are registered in tax-haven jurisdictions).

Please note that Kazakhstan applies an extra-territorial capital gains tax regime, i.e. if a nonresident sells its shares in a foreign entity that derives more than 50% of its value from Kazakhstan assets such a disposal of shares is considered income sourced in Kazakhstan and is subject to Kazakhstan WHT at 15% (or 20% for non-residents that are registered in tax-haven jurisdictions).

3-year holding period exemption

In accordance with Kazakhstan tax legislation, capital gains may be exempt from taxation in Kazakhstan provided that the following conditions are simultaneously met:

- ▶ the seller is not registered in a tax-blacklisted jurisdiction
- ▶ the legal entity has owned the shares subject to sale for more than 3 years;
- ▶ the legal entity whose shares are to be sold is not a subsurface user and does not derive 50% or more of its value from a subsurface user in Kazakhstan.



An entity is not recognized as a subsurface user solely on the basis of its right to extract groundwater and (or) common minerals for its own use, and neither is an entity which, in the course of a twelve-month period preceding the first day of the month of the sale of shares or participating interests, has been carrying out subsequent processing (after primary processing) of at least 70 percent of mineral raw materials mined within that period, including coal, at its own production facilities located in the territory of the Republic of Kazakhstan and (or) those owned by a resident legal entity, which is its related party.

Value added tax ("VAT")

Mineral resources sold in the territory of Kazakhstan are subject to 12% VAT. Turnover arising from sales of refined gold to the National Bank of the Republic of Kazakhstan is taxed at 0% VAT (subject to certain conditions).

Imports of goods and equipment are subject to 12% import VAT. Export sales of mineral resources and international transportation services are generally subject to 0% VAT.

Registration procedures

VAT registration, a process separate from tax registration, is either compulsory or voluntary. Resident legal entities, branches or representative offices of nonresident legal entities and private entrepreneurs must register for VAT if turnover during the calendar year exceeds 20,000 times the MCI. The threshold is approximately USD 141,000 for 2022. The deadline for VAT registration is within 10 business days after the end of the month in which the turnover threshold is exceeded. Otherwise, it is possible to register as a VAT payer voluntarily before the threshold is reached or immediately upon incorporation.

Place of supply rule

The applicability of Kazakh VAT is determined based on the deemed place of supply of a given good, work or service. It is important to note that under the place of supply rules, a service may be physically performed outside of Kazakhstan, but deemed to be supplied inside Kazakhstan for VAT purposes. Examples of such services include services related to immovable property located in Kazakhstan, or consulting services performed outside of Kazakhstan for a customer inside Kazakhstan.

If the place of supply is deemed to be outside of Kazakhstan, the underlying good, work or service is not subject to Kazakh VAT. The place of supply is determined based on the following rules.

For goods:

- ▶ In case of transportation - the place where transportation of the goods began;
- ▶ other cases - the place where the goods are transferred to the recipient.
- ▶ For works and services:
- ▶ The location of the immovable property, in case works and services are provided in respect of such property.
- ▶ The place of actual provision of works and services in respect of the movable property.

The place of entrepreneurial or other activity of the purchaser of the following services: consulting, auditing, engineering, advocacy, design, marketing, legal, accounting, advertising, as well as services involving the provision and (or) processing of information; renting of movable property (except for transport), secondment services, communication services, etc.

- ▶ In other cases - the place of entrepreneurial activities (or any other activities) of the provider of works and services.

The place of supply of auxiliary and preparatory services is determined based on the place of supply of the main services.

VAT refund

The following VAT amounts are re-fundable to a VAT payer from the budget:

- ▶ VAT paid to suppliers of goods or services that were used for the purpose of zero-rated turnover (e.g. exports);
- ▶ Excess amounts of reverse charge VAT in case of purchases of work or services from a non-resident;
- ▶ VAT paid to suppliers of goods, work or services that were acquired using a grant;
- ▶ The amount of cash overpayment of VAT to the budget.

The Tax Code of the Republic of Kazakhstan provides for a simplified VAT refund system, which is available in the following cases, subject to certain conditions:

- ▶ the entity undergoes at least twelve consecutive months under tax monitoring;
- ▶ producers of goods of their own production, the list of which is approved by the authorized body in the field of regulation of trade activities in coordination with the authorized body and the authorized body in the field of tax policy;
- ▶ business entities that have converted at least 50 percent of the foreign exchange earnings received from the export of raw materials during the tax period.

Electronic VAT invoicing

All VAT payers are obliged to issue electronic VAT invoices.

Virtual warehouse

Created with the aim of systematization of inventory movement and calculation of inventory balances, the virtual warehouse stores information on inventory in taxpayers' warehouses, electronic documents, movements and write-offs of inventory from the virtual warehouse.

Electronic accompanying notes

An electronic accompanying note should be issued upon the movement, supply and/or shipment of certain goods. The accompanying note should be submitted by taxpayers in the "Virtual Warehouse" module and signed with an electronic digital signature.

Other taxes

Some other taxes and payments to the budget are presented below.

Payroll

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 Kazakhstan legislation, any income paid for work performed in Kazakhstan (regardless of whether it is paid from inside Kazakhstan or outside) is deemed Kazakhstan source income subject to statutory payroll taxation in Kazakhstan by the tax agent (i.e. a Kazakhstan entity, branch or representative office of a foreign entity responsible for calculating, withholding and remitting the payroll-related taxes/social payments to the budget).

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

Companies that engage freelancers (not registered as individual entrepreneurs) are obliged to act as tax agents (as defined above) and calculate relevant taxes and social payments from their income.

Personal income tax (“PIT”)

Income from employment (both tax residents’ and tax nonresidents’) taxable by tax agents, subject to certain exceptions, is subject to PIT at a 10% rate.

The taxable amount of a tax resident individual may be reduced by 14 MCIs, which is KZT 42,882 for 2022.

Other tax deductions include but are not limited to the following:

- ▶ Obligatory pension fund contributions
- ▶ Employee obligatory social medical insurance contributions
- ▶ Voluntary pension fund contributions made either by the individual or the tax agent for an individual’s own benefit under Kazakh pension law
- ▶ Medical expenses supported by documents within set limits
- ▶ Payments on mortgages with specific banks.

Income received in foreign currency is converted into Kazakh tenge at the official exchange rate effective on the date of income payment.

Under the withholding mechanism, a tax agent withholds PIT and transfers it to the state budget on a monthly basis by the 25th day of the month following the month in which income was paid to the employees. A special regime exists for “shadow” payroll in respect of income paid to individuals working in Kazakhstan under an agreement on the provision of personnel or a service agreement between an individual’s home-country employer and a counterparty in Kazakhstan.

Social tax (“ST”)

ST is an additional direct tax imposed on all Kazakhstan employers that is not earmarked for the social benefit of employees.

Employers must calculate ST at a flat rate of 9.5% of gross income, less the obligatory pension fund contributions and the employee’s obligatory social medical insurance contributions. The minimum monthly tax base for ST per employee is 14 MCI.

ST must be remitted to the state budget on a monthly basis by the 25th day of the month following the tax period. Monthly social insurance contributions are deducted from the monthly ST amount due (see the Social insurance contributions section).

Social insurance contributions (“SIC”)

Employers must make SIC, which are a part of the ST, at a rate of 3.5% of income paid to i) Kazakhstan citizens and repatriated ethnic Kazakhs, ii) foreigners with a Kazakhstan residence permit and iii)

individuals who are citizens of a member country of the Eurasian Economic Union and working in Kazakhstan under employment contracts.

For 2022, income received in excess of 7 minimum monthly salary (MMS⁴) (KZT420,000) per month is not subject to SIC. The minimum monthly tax base for obligatory SIC per employee is the MMS.

Employer and employee obligatory social medical insurance contributions (“OSMIC”)

Employers must make, at their own expense, employer contributions to the Social Medical Insurance Fund on a monthly basis at a rate of 3% of the employee’s

gross income (applicable to Kazakhstan citizens, repatriated ethnic Kazakhs, citizens of Eurasian Economic Union member countries and foreign citizens holding a Kazakhstan residence permit).

In addition to employer OSMIC, the employer in its capacity as a tax agent should withhold and remit to the Social Medical Insurance Fund monthly employee contributions calculated from the employees’ gross income (Kazakhstan citizens, repatriated ethnic Kazakhs, citizens of Eurasian Economic Union member countries and foreign citizens holding a Kazakhstan residence permit) at a rate of 2% of such employees’ income.

For 2022, income subject to employer and employee OSMIC is capped at 10 MMSs (KZT600,000) per month.

Obligatory pension fund contributions (“OPFC”)

OPFC at a rate of 10% of the gross salary of employees (Kazakhstan citizens, repatriated ethnic Kazakhs and foreigners with a Kazakhstan residence permit) must be withheld and remitted to the state pension fund by the employer on a monthly basis not later than the 25th day of the month following the month in which the income was paid to the employees. For 2022 income received in excess of 50 MMSs (KZT 3,000,000) per month is not subject to OPFC. OPFC are deductible for PIT, ST and SIC purposes.

Obligatory professional pension fund contributions (“OPPFC”)

Under the Kazakhstan Law on Pension Coverage, employers must also make, at their own expense, OPPFC contributions at a rate of 5% of the gross salary of employees in certain harmful professions in sectors including, among others, mining, oil and gas, pharmacy, and consumer goods.

Income of individuals under service agreements

According to Kazakhstan legislation, all Kazakhstan tax agents paying income to individuals under civil service agreements should withhold 10% PIT, 10% OPFC and 2% OSMIC calculated from income paid under the service agreement. OPFC and OSMIC are deductible for PIT purposes.

⁴MMS = Minimum monthly salary. MMS for 2022 is KZT 60,000.

Property tax

Property tax is calculated as 1.5% of the average residual book (not tax) value of immovable property per annum. Applicability of the property tax to specific subsurface user's assets may require additional analysis.

Land tax

Land tax applies to industrial land (including mines) and varies from KZT 48.25 to KZT 5790 per hectare depending on the land quality. For other types of land plot, the land tax depends on the land quality and purpose of such plot.

Local authorities, on the basis of land zoning designs (drawings) created in accordance with land legislation of the Republic of Kazakhstan, have the right to lower or raise land tax rates by no more than 50 percent of the basic land tax rate for certain types of land plot.

Transport tax

Most vehicles are subject to tax according to established rates. The tax on vehicles is paid annually and computed based on MCI. For motor vehicles the tax ranges from 1 to 200 times the MCI per year depending on the engine capacity of the vehicle. For aircraft, boats and trains, the tax is based on engine power. Transport tax does not apply to quarry dump trucks with a payload capacity of 40 tons or more, specialized medical transport vehicles, sea vessels registered in the international ship registry of Kazakhstan, or special vehicles subject to property tax.

Payment for negative impact on the environment

The Tax Code of the Republic of Kazakhstan provides for 4 categories of taxable assets, depending on the degree of damage to the environment, for which different applicable rates are provided.

Transfer pricing

Kazakhstan's Transfer Pricing (TP) legislation has a wide applicability to businesses. The impact on subsurface users is particularly strong. The TP rules apply to all cross-border transactions even if the parties are unrelated.

The TP rules also apply to certain types of domestic transaction if they are related to cross-border transactions, e.g., to domestic sales of various ores by subsurface users that are subsequently exported.

The TP law⁵ prescribes the following methods for determining a market price:

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

Except for transactions involving agricultural products, there is no "safe harbor" allowed in terms of deviation from the market price, although the TP law recognizes that there can 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 taxpayer and its revenues:

1. TP monitoring reporting (the deadline is 15 May of the year following the reporting year)
2. Notification on 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 request)
 - Master file (within 12 months upon request)
 - Local file (within 12 months following the reporting year)
4. General TP documentation (upon request)

Customs

Kazakhstan is a member of the World Trade Organization (WTO). Due to the WTO accession in 2015, Kazakhstan undertook an obligation to gradually reduce import duty rates by 2022 with respect to nearly 3,500 goods, including various equipment items, non-precious metals and products made from them, as well as other goods used in the mining industry. Under EAEU legislation, goods included in the list of goods to which reduced rates of import duty may be applied, that have been imported under the release for domestic consumption customs procedure at reduced rates, have the status of conditionally released goods. They cannot be exported to other EAEU member states.

Kazakhstan is also a member-state of the Eurasian Economic Union (EAEU) together with Russia, Belarus, Armenia and Kyrgyzstan, which envisages free movement of goods within its customs borders. In this regard, goods produced or customs cleared in one of the EAEU member-states are transferred to other EAEU member-states without payment of customs duties. Customs regulation in Kazakhstan is mainly based on the EAEU Treaty, including the Customs Code of the EAEU, and the Customs Code of the Republic of Kazakhstan.

Generally, equipment, spare parts and materials used in the mining industry are subject to import duties set by the Common Customs Tariff of the EAEU upon import from non-EAEU countries.

Customs legislation establishes various types of customs procedures for the customs clearance of goods, including release for domestic consumption, temporary import, bonded warehouse, export of goods and other customs procedures. Some customs procedures envisage full or partial exemption from payment of customs duties and taxes. Also, exemption from payment of customs duties and taxes is granted to participants of special economic zones and owners of free warehouses holding special investment contracts, investors operating under investment contracts concluded with the competent state authority in the sphere of investments and in some other cases. There are also certain non-tariff regulations, such as those limiting or prohibiting the import or export of certain goods.

Kazakhstan has 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, and others). For instance, export duties are applied to metals as follows:

Name	Customs duty rate	Term of customs duty
Waste and scrap of ferrous metals; ingots of ferrous metals for remelting (charge ingots)	5% of the customs value, but not less than 5 euros per 1 ton	From 30 November 2018
Cooper scrap and waste	10% of the customs value, but not less than 84 euros per 1 ton	From 30 November 2020
Primary aluminum alloys	10% of the customs value, but not less than 76 euros per 1 ton	From 30 November 2020
Aluminum waste and scrap	10% of the customs value, but not less than 76 euros per 1 ton	From 30 November 2020

⁵The Law of the Republic of Kazakhstan on Transfer Pricing No. 67-IV dated 5 July 2008.

EY in Kazakhstan

Introduction

EY was the first international professional services firm to open an office in Kazakhstan in 1992. Today we have a network of three offices in Nur-Sultan, Almaty and Atyrau. EY in Kazakhstan has significant experience serving leading companies in the country's energy, financial services, metallurgy, railway transportation, industrial production sectors. Our clients include national and major foreign investors operating in Kazakhstan.

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Our services

Assurance

- ▶ External audit
- ▶ Accounting and Financial Reporting
- ▶ Financial and Accounting Advisory Services
- ▶ Fraud Investigation and Dispute Services
- ▶ Climate Change and Sustainability Services

Consulting

- ▶ Performance improvement
- ▶ Risk
- ▶ Risk and Assurance
- ▶ Advisory for Financial Services
- ▶ Academy of Business

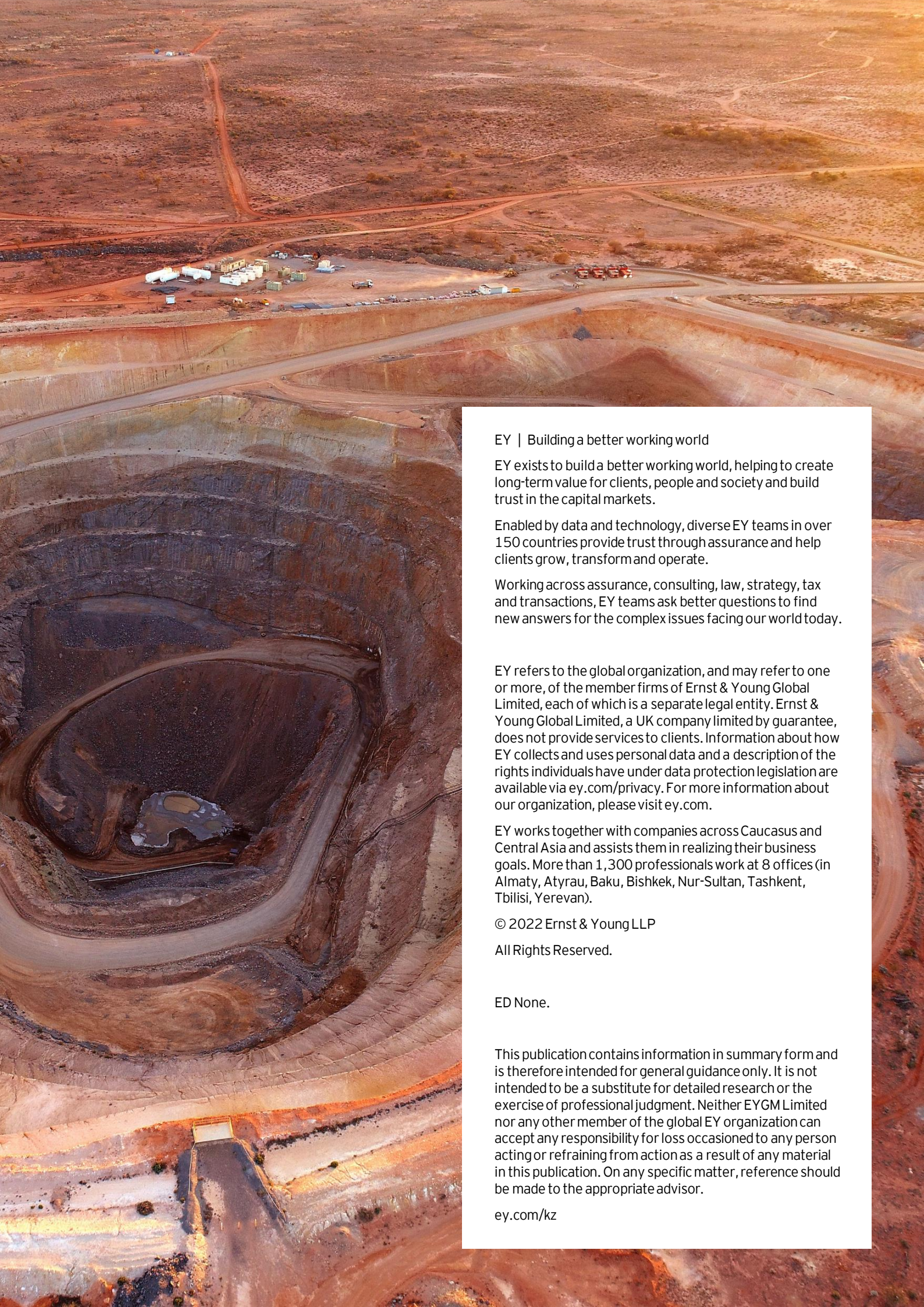
Tax

- ▶ Business Tax
- ▶ Indirect Tax
- ▶ International Tax
- ▶ People advisory services
- ▶ Transaction Tax
- ▶ Law

Strategy and Transactions

- ▶ Lead Advisory (M&A, Corporate Finance)
- ▶ Transaction Diligence
- ▶ Valuation, Modeling and Economics
- ▶ Strategy
- ▶ Transaction Strategy and Execution
- ▶ Turnaround and Restructuring Strategy





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ED None.

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