



## Tax alert

# Important tax law changes that may impact your business

Dear friends,

In this alert, we have prepared an overview of the changes made to Law No. 165-VII ZRK from 21 December 2022 “On Amendments and Additions to the Code of the Republic of Kazakhstan “On Taxes and Other Obligatory Budget Payments” (Tax Code) and the Law of the Republic of Kazakhstan “On Enactment of the Code of the Republic of Kazakhstan “On Taxes and Other Obligatory Budget Payments”

### Tax administration

#### Tax authority obligations

The Tax Code additions, which have to be published on the official website, introduce restrictions for certain taxpayers with respect to how they issue electronic invoices.

#### Tax secrecy

The Tax Code now defines information on taxpayers that is not recognised as a tax secret, specifically:

- on the semi-annual periodic tax review schedule based on a risk assessment system to be published on the official website by 25 December of the year preceding the review year, and by 25 May of the current calendar year;
- on personnel headcount as shown in tax reporting.

#### Extension and deferral procedure and conditions

A provision has been introduced to support entrepreneurial activity, whereby the schedule for executing tax liabilities may be reviewed based on a taxpayer application, but no more often than once.

## Desktop audits

Desktop audits can now be performed after e-invoices have been issued to highlight suspect taxpayers issuing e-invoices.

The term “high-risk violations” has been introduced with the above in mind and includes violations highlighted by desktop audits performed after e-invoices are issued to establish turnover from the sale of goods, work or services. If they agree with any violations highlighted by a desktop audit, taxpayers may either cancel or send an amended or additional e-invoice.

Desktop audit notifications now include an overview of the violation and the risk level (low, medium or high).

Since the changes, if taxpayers do not agree with notification of medium-risk violations, they should provide an explanation together with tax and/or accounting register excerpts and/or documents related to the violations in question and supporting data in tax reporting.

Likewise, if taxpayers do not agree with notification of high-risk violations, they should provide an explanation together with copies of documents supporting the transactions in question.

An addition has also been made allowing the tax authorities to recognise notification to correct violations highlighted by the tax authorities in a desktop audit as not executed if the taxpayer fails to correct the violations in full.

## Restrictions in issuing e-invoices in the e-invoice information system

If a taxpayer fails to execute notification of the results of a desktop audit for a high-risk violation within the deadline and/or if the notification is recognised as not executed, the taxpayer’s ability to issue e-invoices will be restricted.

The restriction will be in place by the end of the working day following the day of the above violation, based on a decision to restrict e-invoices made in accordance with the procedure and in the format to be established by the authorised body.

The tax authorities will likewise cancel any such restrictions within one working day of notification of a desktop audit being executed by issuing a decision in accordance with the procedure and in the format to be established by the authorised body.

## Taxes due recovered from debtor accounts

A procedure has been introduced for settling tax arrears at a debtor’s expense by presenting a court ruling citing the same. In addition, the tax authorities are entitled to perform a debtor counter audit as part of a tax audit.

## Tax audits

The Kazakhstan Entrepreneurial Code introduced risk level-based periodic tax audits from 1 January 2023.

Risk level-based periodic tax audits are prescribed semi-annually according to a decision of the authorised body.

The authorised body will publish a semi-annual schedule for period tax audits on the Internet by 25 December of the year preceding the audit year, and by 25 May of the current calendar year.

Therefore, the periodic tax audit schedule for the second half of 2023 is due to be published by the established deadline.

Unscheduled audits will now be prescribed if a taxpayer defaults on a notification of the results of a desktop audit for a medium-level risk.

Scheduled reviews can no longer be extended or suspended from 1 January 2023.

An addition has been made whereby the date a tax audit act is served is the day a record (act) of a taxpayer refusing to accept an act of tax audit is drafted.

## Tax accounting and accounting documentation

The Tax Code now recognises accounting documents or primary accounting documents drafted in the e-invoice system using electronic signatures retroactively from 1 April 2018 as accounting documentation.

For this reason, primary documents, including electronic acts of completion drafted in the e-invoice system using electronic signatures, are recognised as accounting documents.

## CIT

### New provisions regarding the items which should not be recognized as income for tax purposes

The following will not be treated as income for tax purposes:

- an increase in the balance value of depreciable asset groups (subgroups) as a consequence of a subsoil user applying a nominal coefficient to hydrocarbon exploration and production or purely production contracts for complex projects (except for onshore gas projects) in accordance with point 6 of article 258 and/or point 2-1 of article 268 of the Tax Code (*from 1 January 2023*);
- a correction due to the introduction of a capital uplift concept in a package of regulatory and fiscal preferences from 26 August 2021;
- the value of property, the capital repair or reconstruction of public property received free of charge as charity by a 100% state-owned legal entity from a non-commercial organisation created as a fund in

accordance with Kazakhstan civil law (*retroactively from 1 January 2019*).

## **New provisions for insurance and reinsurance organisations to calculate CIT on insurance and reinsurance agreements due to the application of a new international financial reporting standard from 1 January 2023**

From 1 January 2023, insurance and reinsurance organisation income from concluding and executing insurance (reinsurance) agreements is determined based on reporting prescribed by the National Bank, inclusive of authorised body requirements to regulate, control and monitor the financial market and organisations, agreed with the authorised body and authorised body for tax policy (from 1 January 2023).

## **Offsetable expenses for CIT purposes**

The following expenses are deductible in accordance with proposed Tax Code changes:

1. Between 1 January 2022 and 1 January 2023, large businesses will be able to offset the value of goods damaged or lost during a state of emergency, if they have a copy of a document from the body leading a criminal investigation recognising the taxpayer as the victim of a crime related to the state of emergency, for the accounting value of goods as at the date of the state of emergency, and for which the following are available:
  - a document confirming the damage and loss of goods drafted in accordance Kazakhstan accounting and financial reporting law;
  - details in a tax register compiled in accordance with point 7-1 of article 215 of the Kazakhstan Tax Code.

In this respect, the amount deducted for the damage and loss of goods should not exceed the value of the goods.

2. Expenses incurred by the national infrastructure operator to provide rail network passenger services to a rail carrier transporting passengers, baggage, freight and mail free of charge, including with a temporary reduction factor of 0 to the tariff for variable rail network services to transport passengers in accordance with Kazakhstan law (*the adjustment is valid between 1 January 2022 and 1 January 2024*).

## **Deduction of obligatory social medical insurance contributions**

Taxpayer social medical insurance fund contributions will be deductible from 1 January 2023 up to the amount to be determined by law.

## **Deduction of business trip compensation**

From 1 January 2023, travel documents (including boarding passes) issued by a carrier or entity from which an electronic ticket or travel document was purchased, either hard copy or electronic will not be recognised as a confirmation of travel and reservation expenses and grounds for deducting business trip compensation costs (*from 1 January 2023*).

## **Interest deductions**

From 1 January 2023, to deduct interest using the formula:

$$(A + D+E) + (CK/CO) \times (\Pi K) \times (B + B + \Gamma),$$

D will include interest:

- for loans provided by a loan society created in Kazakhstan or bank that is a national development institution, in which the national management holding holds a controlling interest;
- in the form of a discount or coupon (inclusive of a discount or premium from the value of an initial listing and/or purchase cost) for debt securities held by the integrated pension fund.

## **Insurance and reinsurance organisation deductions**

From 1 January 2023, deductions linked to insurance and reinsurance organisation operations to conclude and execute insurance (reinsurance) agreements are determined based on National Bank reporting, inclusive of the requirements of the authorised body for the regulation, control and supervision of the financial market and financial organisations, agreed with the authorised body and authorised body for tax policy.

## **Deduction of subsoil user expenses to finance scientific research, technological work and/or development work, and transfer cash to an independent cluster fund**

*The change will be valid between 1 January 2022 and 1 January 2024.*

Freight carriers can deduct temporary compensation payments made in accordance with Kazakhstan railway law to passenger locomotive operators.

The above deductions can be taken up to the amounts set by the state body responsible for managing natural monopolies.

## **Taxation of non-commercial organisations**

From 1 January 2023, income generated by non-commercial organisations from contributions from the owners of apartments and non-residential premises in housing blocks, which is not recognised as AAI, will be included in their expenses to accumulate cash for major repairs to condominium common property and facilities.

## **Taxation of other taxpayer categories**

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From 1 January 2023, article 293 of the Tax Code will also apply to subsoil users developing onshore gas projects in accordance with Kazakhstan subsoil and subsoil use law.

In this respect, subsoil users will now be entitled to a 100% CIT exemption on onshore gas projects developed in accordance with Kazakhstan subsoil and subsoil use law in accordance with article 302 of the Tax Code.

### CIT at the source

Non-residents' Kazakhstan-source income now includes:

- the income of entities registered overseas as liabilities on advances (prepayments) received, provided, simultaneously:
  - a double tax treaty has not been signed with the non-resident's country;
  - an agreement (contract) is valid for over two years;
- insurance payments to non-resident individuals made under a pension annuity agreement.

Non-resident legal entity dividends on securities listed in Kazakhstan are exempt from CIT at the source if they were traded during the tax period in accordance with criteria determined by the Kazakhstan Government.

The exemption does not cover the dividends of non-resident legal entities for the shares of companies that are not subsoil users and also subsoil users performing subsequent processing work (after initial processing) of at least 70% of extracted minerals at own production facilities and/or those belonging to a related resident legal entity in Kazakhstan if the shares have been owned for three years. With the changes, dividends payable to non-resident legal entities on the shares in question (except for those payable to entities registered in a low-tax country and included in an authorised body list) are subject to CIT at the source at a reduced 10% rate, provided relevant conditions are met. Only the following types of income previously subject to CIT are subject to the reduced 10% CIT rate:

- taxable income reduced by income and expenses stipulated by the Tax Code, and losses carried forward in accordance with the Tax Code, less
- CIT calculated.

In this respect, advance CIT payments are not considered when determining income previously subject to CIT.

The reduced CIT at the source rate does not apply if the above conditions are not met. Nevertheless, if the above conditions have been met, once the relevant tax period has ended, a tax agent will be entitled to amend CIT tax reporting already filed for a non-resident. If excess CIT has been paid, a tax agent will be entitled to an offset and/or refund in accordance with the procedure stipulated by the Tax Code.

From 21 February 2023, tax agents, to calculate, withhold and pay CIT at the source for non-resident legal entities, capital gains recognised as Kazakhstan-source income in accordance with point 6 of part 1 of point 1 of article 644 of the Tax Code will include resident individuals paying non-resident legal entities not registered with the tax authorities.

In this respect, a resident individual paying income will be recognised as a tax agent, except when concluding securities' transactions on the stock exchange.

CIT at the source is calculated, withheld and paid on the income of non-resident legal entities in accordance with the procedure in article 650 of the Tax Code.

### VAT

Value added tax (VAT), e-invoices

The changes provide the following VAT and import VAT exemptions:

- a three-year import VAT exemption for works of art imported by state museums. A list of the relevant works of art will be approved by the authorised body for culture together with the central authorised body for state planning;
- an import VAT exemption for materials and supplies to produce pesticides included in a list of imported goods;
- a five-year VAT exemption for turnover on the sale of household devices and/or household electronics made in Kazakhstan;
- a VAT exemption for entities producing precious metals on turnover from the sale of refined gold and silver to entities producing jewellery and other items. A proposal has been made to exempt the sale of refined gold by refineries to jewellers to support the domestic jewellery sector;
- the 70% VAT reduction has been extended to farm produce processing. The concession is due to be expanded to fishing companies processing fish at their own facilities;
- the 70% VAT reduction for sugar, confectionary and yeast production has been extended;
- raw cane sugar imports will be exempt from VAT;
- passenger carrier deductions of expenses incurred for mainline network services are deductible with a reduction factor of "0" against the approved tariff, while temporary compensation payments are deductible for freight carriers;
- aircraft refuelling for overseas airlines is subject to 0% VAT;
- the VAT refund period has been reduced from 155 calendar to 75 working days;

The period for refunding excess VAT confirmed by an audit has been reduced from 155 to 75 working days.

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If a temporary import is located in Kazakhstan for over two years, it is recognised as a taxable import and subject to VAT.

- VAT on Internet trading has been changed;

Changes have been made to how VAT is paid on goods (services) sold over the Internet to individuals, so that sales in foreign currency are recalculated into tenge at the market rate on the final business day preceding the tax payment date. Furthermore, the turnover completion date is the date the customer pays for goods (services) and at the same time, VAT paid for Internet sales to individuals is not subject to refund.

## E-invoices

The list of entities able to issue and obliged to issue e-invoices has been changed for 2023 in article 412 of the Tax Code.

The category of entities permitted not to issue e-invoices has been extended in article 412 for 2023.

Subpoint applies to civil and legal transactions between business entities, except when the customer is:

- an entity is entitled to apply the special patent tax mechanism, file a simplified return or for farms;
- farms applying the special tax mechanism for agricultural producers and agricultural cooperatives.

The following entities obliged to issue e-invoices have also been added to article 412 from 2023:

- legal entities duly accredited to confirm compliance as defined by Kazakhstan technical regulation law;
- taxpayers operating as customs representatives, customs carriers, temporary storage warehouse owners, customs warehouse owners and the authorised economic operator in accordance with Eurasian Economic Union and/or Kazakhstan customs law.

Taxpayers are entitled to draft e-invoices in foreign currency if they have a subsoil use contract in place approved by the Kazakhstan President.

E-invoice values and totals are shown in tenge, except when foreign currency can be used for transactions (operations) under a production sharing agreement (contract) or subsoil use agreement approved by the Kazakhstan President.

E-invoice issue dates have been changed. The statute of limitation is due to be changed to a specific issue date.

The circulation and issue period for e-invoices drafted at the customer's request has been reduced to meet the requirements of point 14 of article 412 of the Tax Code: the customer will be able to request a document for 180 days, while suppliers will be able to draft a document for 195 days from the turnover completion date.

This should help reduce the administrative burden on suppliers; rule out negative consequences for suppliers; and

improve the tax discipline of purchasing entities due to the limited timeframe customers have to issue invoices.

From 2023, taxpayers will be blocked from issuing e-invoices after a desktop audit in accordance with point 1 of article 120-1 of the Tax Code. The tax authorities are obliged to publish information on their website on taxpayers whose ability to issue e-invoices has been restricted.

E-invoices should be issued by the 20<sup>th</sup> of the following month if goods are imported from outside the EAEU and sold in the same tax period. If they are imported and sold in different periods, then they should be issued within the usual period.

## Personal income tax (PIT)

### Annual personal income:

- Statutory compensation to employees for business trips have been cancelled as they are not considered personal income. The amount in question has been set by employers since 1 January 2018.
- The value of uniforms issued to employees will not be treated as personal income from 1 January 2023.

Any income not shown in subpoints 1) – 16) of article 321 and received in Kazakhstan or from sources outside of Kazakhstan is included in annual personal income. The previous version included income from tax agents or from sources outside of Kazakhstan. The new rules entered into force from 1 January 2023.

### Digital assets

From 1 January 2023, capital gains from the sale of digital assets in Kazakhstan have been treated as capital gains from the sale of property in Kazakhstan, which means they will be taxed independently by individuals.

Income from the sale of digital assets from sources outside of Kazakhstan has been defined as the positive difference between the sales and purchase cost of digital assets from 1 January 2024.

From 1 January 2024, residents who are Kazakhstan citizens, Kandas and residence card holders and who own digital assets as at 31 December are obliged to file a PIT return.

### Income adjustments

The list of supporting documents required to claim deductions on voluntary pension contributions has been changed. Pension agreements are no longer required (as since May 2021 pension accounts have been opened to record voluntary pension contributions without pension agreements). The change entered into force from 1 January 2023.

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The types of income subject to PIT adjustments now include compensation for personal tenge deposits. The change will be valid between 1 January 2023 and 1 January 2025.

### Single Cumulative Payment

By law, entities providing the following services will not be recognised as SCP payers from 1 January 2023:

- consulting and/or marketing services;
- accounting or audit services;
- financial, insurance and intermediary insurance broker and agent services;
- legal, justice and court services;
- entities operating according to agency agreements. Agency agreements cover civil and legal agreements concluded in accordance with Kazakhstan law, where one party (agent) is obliged, for a fee, to perform, at the request of the other party, specific actions on its own behalf, but at the expense of the other party or on behalf of and at the expense of the other party;
- digital mailing and/or digital asset handling services.

### Subsoil use

The specifics of executing tax liabilities under exploration and production contracts or hydrocarbon production contracts for complex projects have been presented.

The stability, including fiscal stability, of hydrocarbon exploration and/or production contracts for complex projects, which is a main legal security and investment stimulation measure of the Package of Regulatory and Fiscal Preferences from 26 August 2021, has been stipulated. The Tax Code article in question consolidates the stability of taxation of hydrocarbon exploration and/or production contracts under complex projects similarly to the fiscal stability of investment liability and tax regime contracts with major oil and gas projects in Kazakhstan.

Changes have also been made to increase maximum depreciation on geological research, exploration and natural resource production preparatory work costs and other subsoil user deductions, as well as for fixed assets for complex oil and gas projects.

A corresponding adjustment has been made due to the introduction of the capital uplift concept proposed in the Package of Regulatory and Fiscal Preferences from 26 August 2021.

The capital uplift concept was presented in the Package of Regulatory and Fiscal Preferences from 26 August 2021 and is new in Kazakhstan tax law.

With respect to the taxation of subsoil users that have concluded hydrocarbon exploration and/or production contracts under complex projects, capital uplift means the application of a conditional increasing coefficient to specific subsoil user expenses to take deductions from aggregate annual income.

For this reason, the Tax Code has introduced new sections:

- regarding the introduction of a conditional coefficient to be used to determine expenses for hydrocarbon exploration and/or production contracts under complex projects (except for onshore gas projects).
- increasing maximum amortisation against expenses after the start of production for hydrocarbon exploration and/or production contracts under complex projects (except for onshore gas projects), which was stipulated in the Package of Regulatory and Fiscal Preferences from 26 August 2021;
- determining the historical value of assets under hydrocarbon exploration and/or production contracts under complex projects (except for onshore gas projects);
- determining the subgroup (group) balance value following a subsoil user's disposal of fixed assets under hydrocarbon exploration and/or production contracts under complex projects (except for onshore gas projects);
- removing from income an increase in the group (subgroup) balance value of depreciable assets created as a consequence of a subsoil user applying a conditional coefficient under hydrocarbon exploration and/or production contracts under complex projects;
- exempting from property tax subsoil users under hydrocarbon exploration and/or production contracts under complex projects (except for onshore gas projects) within the framework of contractual activities.

Previously, subsoil users could choose to apply alternative subsoil use tax under specific contracts, but from 1 January 2023, subsoil users with complex contracts are obliged to pay alternative subsoil use tax in accordance with the Package of Regulatory and Fiscal Preferences from 26 August 2021.

Transitional provisions have been stipulated for when current subsoil use contracts are converted to hydrocarbon exploration and/or production contracts under complex projects in accordance with the Kazakhstan Subsoil and Subsoil Use Code.

Losses cannot be carried forward to calculate alternative subsoil use tax for offshore hydrocarbon exploration and production or production contracts due to the Package of Regulatory and Fiscal Preferences from 26 August 2021.

Reduced rates for alternative subsoil use tax have been stipulated for offshore hydrocarbon exploration and/or production contracts to stimulate investment in the projects in question in the Package of Regulatory and Fiscal Preferences from 26 August 2021.

To support gas project development, subsoil users developing onshore gas projects in accordance with Kazakhstan subsoil and subsoil use law will be able to reduce corporate income tax by 100% in accordance with article 302 of the Tax Code.

### Property tax

Lessors pay property tax on leased facilities. At the same time, lessees pay property tax on facilities given for finance lease.

Buildings and installations that, in accordance with IFRS 16, are not recognised as fixed assets in book accounting but rather treated as receivables, are the object of taxation for property tax under a finance lease.

The tax base for facilities under a finance lease is the average annual value of receivables, including long-term receivables, in accordance with IFRS and/or Law on Accounting as 1/13 of the receivable amount (including long-term) as at the 1st of each month of the current tax period and the 1st of the month of the tax period following the reporting period.

### Digital mining charge

The amending law extends the list of taxpayers that are required to pay the digital mining charge:

- entities performing digital mining in Kazakhstan;

- entities providing IT infrastructure to perform IT and data processing operations for entities performing digital mining.

The digital mining charge should be paid at the taxpayer's location.

In this respect, the tax period for the charge is the calendar quarter. The deadline for filing returns with the tax authorities is the 15th of the second month following the reporting tax period. The payment deadline for the digital mining charge is the 25th of the second month following the reporting tax period.

### Special tax treatment

The list of activities eligible for special tax treatment from 2023 has been changed.

Entrepreneurs leasing non-residential premises have been removed from the list.

The list now includes entrepreneurs subleasing trading facilities pertaining to trade markets, category 1, 2 and 3 immovable facilities in accordance with Kazakhstan trading law, and also located in trading locations, trading facilities and public catering locations.



If you want to express an opinion or otherwise take an active part in this issue, please reach out to the Tax and Legal Department experts shown below.

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