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URGENT ISSUES WHEN APPLYING TAX AND ENVIRONMENTAL LEGISLATION TO SUBSOIL USE

THE LEGISLATIVE BASE OF KAZAKHSTAN, A COUNTRY WITH CONSIDERABLE ECONOMIC DEPENDENCE ON ITS EXTRACTIVE INDUSTRIES, HAS SOME UNIQUE FEATURES, PARTICULARLY WITH REGARD TO ITS STRICT MANAGEMENT OF THE ACTIVITY OF SUBSOIL USERS.

Due to the specific character of their activities, subsoil users are responsible for discharge of waste products into the environment and the disposal of industrial waste, legally defined as emissions. In this regard, the norms of environmental and tax legislation of the Republic of Kazakhstan are complementary, establishing permissible limits for emissions and fines for exceeding those limits. The volume of emissions permitted for each subsoil user is limited and fixed by Emission Permits issued by state bodies on the basis of quotas for the maximum permissible volume of emissions generated by subsoil users according to their industrial requirements.

The tax legislation of the Republic of Kazakhstan envisages a fee for the emission of hazardous substances into the environment up to a permitted volume. In the event that a subsoil user exceeds

that permitted volume, the fees are charged tenfold. Moreover, in addition to the tax payments, an administrative fine is imposed on subsoil users and damage caused to the environment by emissions shall be repaired. The sums involved can be significant; for example, as of July 2012, emission payments in the Atyrau region reached 10.45 million KZT and the overall amount of fines to compensate for environmental damage was 2493 million KZT.

Thus, it is hard to overestimate the importance of observing the environmental legislative provisions for subsoil users, as failure to comply with them can not only result in significant financial and reputational risks for the companies, but can also cause the revocation of subsoil use licensing.

In view of the importance of preserving ecological stability and safety, an urgent issue in the field of environmental protection which requires government intervention is that of improving the legal framework on a continuous basis. Observing the requirements of environmental legislation will always remain the main issue for subsoil users.

However, in practice, every subsoil-using company quite often faces authorities that have varying interpretations of the application of legislative norms. One example is the issue of the permitted volume of

emissions, which is not made entirely clear by the legislation and can be interpreted in different ways.

The Kazakhstani Environmental Code establishes two categories for measuring permissible emissions, namely limits and norms.

The limits on environmental emissions are defined as the normative volume of emissions, set for a specified period of time. The norms are defined as parameters of permissible emissions, under which the observance of norms of environment quality is envisaged.

The Emission Permit granted to a company specifies the limits for the whole enterprise in grams per second and tons per annum. The norms are specified in the Project of Maximum Permissible Emissions (MPE) and are determined for each source of emissions within the enterprise. Moreover, the tenfold rate of payment for emissions is envisaged by the tax legislation only in the event that the limits specified in the Emission Permit are exceeded.

Nevertheless, in tandem with the current law enforcement practice, the state bodies used the concepts of limits and norms as interchangeable, collecting the tenfold rate of payment for emissions, not only for exceeding the limits specified in the Permit, but also for exceeding the norms specified

in the Project of MPE. For the purposes of the uniform application of the Tax and Environmental Codes on this issue, an amendment has been introduced by means of the Law On amending some acts of the Republic of Kazakhstan concerning Taxation of December 26 2012, according to which the tenfold rate of payment for emissions is applied for exceeding the established norms. The Amendment will come into effect on 1 January 2014.

It would seem the amendments were meant to provide clarification in relation to the object of taxation at the tenfold rate of payment, but at the same time the issue of the collection of a fee in the event that the limits are exceeded but the norms are not remains open to interpretation. Thus, we cannot exclude the possibility that a subsoil user, during the course of its activity, could create emissions into the environment which exceed the limits approved by the Permit, but at the same time remain within the norms established in the Project of MPE.

In compliance with the provisions of the Tax Code of the Republic of Kazakhstan, the object of taxation is the actual volume of environmental emissions within and/or over the established norms. Moreover, an economic estimation of damage is carried out in cases where the established norms are exceeded. In addition, administrative responsibility is meted out when the norms are exceeded. Thus, calculations of tax payments, compensation for damage and administrative fines are not linked to the limits specified in the Permit.

As shown by the practice of the state authorities in enforcing the law, this was also an issue of contention in the past. In order to avoid double payments, some companies recalculated the grams per second ratio into tons per annum and withheld sums already paid for exceeding the norms from the amounts payable for exceeding the limits. Though not fixed in stone by legislation, this approach seemed reasonable, since it eliminated the possibility of double payment for the same volume of emissions. Other companies made payments for exceeding both the norms of emissions and the limits established in the Emission Permit, which probably conforms to the position of the state bodies.

It is hoped that further improvements to the legislation in this sphere will ensure that different authorities' interpretations of the provisions of legislation do not result in varied results, but reflect an exact sense of the norms from the applicable provisions of the legislation.

REFERENCES IN THE ARTICLE

- ¹ Clause 10 of Article 495 of the Tax Code of the Republic of Kazakhstan.
- ² Report on receipt of payments for environmental pollution and funds from inspection activity as well as expenditure of funds for environmental measures in the Republic of Kazakhstan by regions as of July 1, 2012. http://www.eco.gov.kz/moos/index.php?option=com_content&view=article&id=1&Itemid=79&lang=ru.
- ³ Clauses 44 and 105 of Article 1 of the Environmental Code of the Republic of Kazakhstan.
- ⁴ Order of the Minister of Environmental Protection of the Republic of Kazakhstan as of March 30, 2007 # 94 On approval of forms of documents for issue of permits for environmental emissions and rules of their filling.
- ⁵ Alterations shall come into effect on January 1, 2013.

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