

## Tax alert on Tax Code amendments

January 2021



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Dear Colleagues,

On 10 December 2020, the President of the Republic of Kazakhstan signed and enacted amendments to the Code dated 25 December 2017 “On taxes and other obligatory payments to the budget” (“Tax Code”).

In this alert we will be talking about the most important, in our view, amendments and additions to tax legislation.

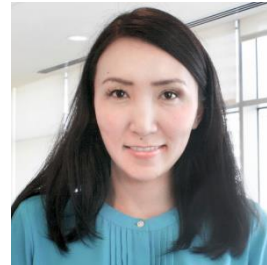
We hope this alert will be a useful resource to quick and up-to-date reference for latest developments. Please feel free to contact us if you need any further information – we will be more than happy to help!

To navigate this document, click this button.



Best regards,

**Deloitte team, Tax and Legal Department**



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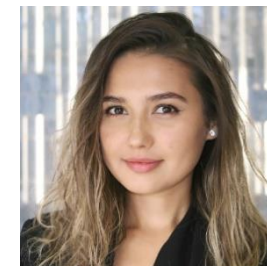
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## Tax administration

### Taxpayer rights

With the new Tax Code changes, taxpayers will be able to research information on the reliability and integrity of counterparties in authorised body data systems using a procedure approved by the Ministry of Finance in coordination with the National Chamber of Entrepreneurs.

### Statute of limitation

The statute of limitation for the execution of controlled foreign company (“CFC”) tax liabilities will be 5 years. This change shall be applied on a retrospective basis effective from 1 January 2020.

Likewise, the statute of limitation for large businesses classified as such in accordance with Entrepreneurial Code will also be set at 5 years starting from 1 January 2022.

### Investment tax credits

A new term “investment tax credit” has been added to change payment deadlines and allow taxpayers to reduce their payments by 100% and pay the credit amount off in stages.

Investment tax credit may be provided on corporate income tax (“CIT”) and (or) property tax for up to three years.

The procedure for reducing tax payments will be determined in an investment tax credit agreement.

Investment tax credits are awarded based on a taxpayer application and drawn up in a standard agreement between the applicant and Ministry of Investment and Development.

However, the Tax Code provides restrictions for certain categories of taxpayers who are not eligible to apply for an investment tax credit.

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## Tax administration

### Taxpayer registration

#### Obligatory Value added tax (“VAT”) registration

The threshold for obligatory VAT registration will be reduced from 1 January 2022 from 30 000 times the MCI (“monthly calculation index”) to 20 000 times the MCI.

At the same time, the minimum turnover threshold does not include turnover of a taxpayer applying a special retail tax regime.

#### Voluntary VAT registration

According to a new provisions, taxpayers that have been deregistered for VAT purposes and *have failed* to file an obligatory liquidation VAT return are not entitled to apply for voluntary VAT registration.

#### Registration of taxpayers performing specific activities

From 1 January 2022 the list of activities requiring tax registration will be extended to cover those involved in the production, wholesale and/or retail sale of gasohol, benzonal, nefras, mixtures of light hydrocarbons and ecological fuel.

### Appealing the results of cameral audit

The deadline for a taxpayer to appeal the decision of the tax authority on recognizing a notification as unfulfilled based on the results of cameral audit is extended from 5 business days to 10 business days from the date of its delivery (receipt) to a superior tax authority and (or) an authorized body or court.

### Offset and refund of taxes, payments to the budget

The offset and refund of the overpaid (collected) amount of taxes, payments to the budget, penalties will be made by the tax authority within 5 business days, instead of the previously provided 10 business days.

### The term National Bank “official refinancing rate” to be replaced throughout the Tax Code

The term “official refinancing rate” will be replaced throughout the entire Tax Code with “base rate”, due to introduction of such new term at the legislative level.

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### Targeted tax audit

A new targeted audit will be introduced to identify tax liabilities of taxpayers under investigation for issuing invoices without actually performing the work or services or supplying the goods indicated in them.

#### Period of targeted audits to confirm excess VAT, including VAT declared for refund

The tax audit period for taxpayers entitled to apply the simplified excess VAT refund procedures (large taxpayers subject to tax monitoring) will include only the period for which the taxpayer applied for an excess VAT refund as shown in a VAT return.

### Tax forms and reporting

#### Exclusion of indirect tax returns

To improve the tax reporting process, the return for indirect tax on imported goods will no longer have to be filed.

That being said, an application to import goods and pay indirect taxes will have to be filed, which the Tax Code will recognise as the equivalent of a tax return.

#### Procedure for withdrawing tax reporting

The deadline for publishing details (results) on the withdrawal of tax reporting on the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan website will be reduced from 5 business days to 1 business day.

### Procedure for suspending (extending and renewing) the submission of tax reporting

The period for which the tax authorities will be obliged to suspend (extend or renew) the submission of tax reporting or reject the suspension of tax reporting will be reduced from 3 business days to 1 business day.

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### Term “Kazakhstan resident” expanded

An individual investment resident of the Astana International Financial Centre will be recognised as permanently residing in Kazakhstan for the current tax period if he/she is in the Republic of Kazakhstan for at least 90 calendar days (including arrival and departure dates) in any consecutive 12-month period ending in the current tax period.

For the purposes of this article, an individual should meet the conditions established by the Kazakhstan Constitutional Law On the Astana International Financial Centre.

### Start date of a non-resident’s activities in the Republic of Kazakhstan for the purposes of creating a permanent establishment of a non-resident

An amendment is introduced to a provision that determines the start date of a non-resident's activities in the Republic of Kazakhstan to create a permanent establishment.

In particular, according to current Tax Code the start date of a non-resident’s activities in the Republic of Kazakhstan is the date of:

1. conclusion of a contract (agreement) in relation to certain types of activities;
2. conclusion of the first labor contract (agreement) in order to carry out activities in the Republic of Kazakhstan;
3. non-resident individual, employee or other hired personnel arrival in the Republic of Kazakhstan with the purpose to fulfill the terms of the contract (agreement);
4. entry into force of a document certifying the right of a non-resident to carry out the established types of activities (geological study of subsoil, exploration,

preparatory work for the extraction of minerals, etc., as well as activities related to the pipeline).

If a number of the conditions are in place, the start date of a non-resident’s operations in the Republic of Kazakhstan is the earliest of those dates. Consequently, the date of conclusion of a contract (agreement) and the arrival date in Kazakhstan for the personnel will no longer take priority over the earliest date.

This provision has been introduced retrospectively from 1 January 2018.

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## Corporate income tax







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## Corporate income tax

### Aggregate annual income

A provision has been introduced between 1 January 2018 and 1 January 2021 to eliminate the taxation of process fuel used by factories for own process needs (incineration) when refining tolling oil.

It will be taxed in full from 1 January 2021 following the transition to a buy-back mechanism.

### Capital gains

A procedure has been introduced for determining initial asset cost when transferring ownership through foreign holding companies to the Republic of Kazakhstan within a single group.

These provisions apply if at least a 99% participation interest, securities or other forms of participation interest in entities transferring or receiving assets belong directly or indirectly to one individual. The provisions apply for the purpose of the subsequent sale of an asset by a resident legal entity that has taken over such an asset.

### Adjustment of aggregate annual income

To reduce the tax burden of real sector enterprises and help stimulate the recovery of their operations in the post-crisis period, the Tax Code now excludes the following from aggregate annual income (“AAI”):

- income arising as a result of cancellation of loan liabilities granted by a bank according to Civil legislation of the Republic of Kazakhstan in the form of principal debt relief, relief of interest, commission, penalties (interest, fine);
- income received by the borrower as a result of payment for such a person by a bank, an organization that carries out certain types of banking operations, as well as a collection agency of the state duty charged from a statement of claim filed with the court.

Also, according to the new edition, dividends received by a permanent establishment of a non-resident legal entity in the Republic of Kazakhstan *are not subject to exclusion from the AAI*, except for the cases where the conditions are met specified in subparagraphs 3), 4) and 5) of paragraph 9 of Article 645 of the Tax Code.

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## Corporate income tax

### General deduction provisions

To limit deductions in cases where a non-payer of VAT does not issue an e-invoice, from 1 April 2021, a new point will be added to the Tax Code whereby expenses incurred to purchase goods, work or services will be deducted provided documents are available confirming those expenses related to activities performed to generate income, and if e-invoices received from the following taxpayers are available:

- resident legal entities (except for state institutions and state secondary education institutions), non-residents operating in the Republic of Kazakhstan through a branch or representative office, individual entrepreneurs and individuals with private practices who are not registered as VAT payers in the Republic Kazakhstan (except for transactions between businesses, when the buyer is an entity applying the patent tax regime), in civil-legal transactions valued in excess of 1,000 times the MCI in force on the transaction date.

E-invoices are not required for deduction purposes with respect to:

- expenses to purchase work and services from a non-resident;
- goods imported into Kazakhstan from Eurasian Economic Union (“EAEU”) member countries;
- goods imported into EAEU member countries and subject to declaration in accordance with EAEU customs law and/or Kazakhstan customs law.

At the same time, a clarification is introduced that for the purposes of section 7 of the Tax Code (CIT), the date of issuing an invoice does not affect the date of recognition of expenses.

### Deductions on specific expenses

Under the new changes, obligatory employer pension contributions paid in favour of employees will be deductible up to amounts set in pension law. This will reduce the employer tax burden, which includes obligatory employer pension contributions from 2023.

### Deduction of expenses on accrued employee income and other payments to individuals

Following the changes, employer expenses for employees’ training, vocational training and/or retraining, and voluntary pension contributions paid by tax agents in favour of an employee are deductible. Thus, for the purposes of deduction, the requirement for training in a specialty related to the employer’s activities is excluded.

Also, there is an established rule on the right of the employer to deduct voluntary pension contributions paid by the tax agent in favor of the employee.

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### Non-deductible expenses

Under the changes to the Tax Code, the following are not deductible:

- expenses up to the amount shown in an invoice and/or other document recognised as having entered into force by a court act *or ruling from the criminal investigation* authorities terminating prejudicial inquiries for non-vindicatory reasons, and issued by a private entrepreneur without performing work or services or dispatching goods;
- the expenses of an individual entrepreneur registered as a VAT payer; legal entity expenses in favour of an individual entrepreneur registered as a VAT payer; legal entity expenses in a civil-legal transaction where payment is made in cash, inclusive of VAT, irrespective of the frequency of payment, in an amount exceeding 1,000 times the MCI.

### Deduction of business trip compensation

From 1 January 2022, compensation paid to board members will no longer be deductible.

### Taxation of other taxpayer categories

The Tax Code extends the taxpayer categories transporting cargo under bareboat charter, time-charter and demise-charter contracts registered in the Kazakhstan international ships' register that are entitled to a 100% reduction of assessed CIT.

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## Corporate income tax

### Controlled Foreign Companies

The Tax Code has introduced significant changes to the CFC rules. We will issue a separate alert on this subject.

### Calculation of advance payments

The obligation to calculate and pay advance CIT payments for taxpayers engaged in electronic trade in goods that meet the conditions of paragraph 3 of Article 293 of the Tax Code is excluded.

At the same time, for the purposes of determining the AAI and the need to pay advance payments in accordance with subparagraph 1) of paragraph 2 of this article, the following types of income of taxpayers are not taken into account:

- carrying out activities on the territory of the SEZ, received from conducting priority activities, as well as,
- specified in the new Chapter 80-1, by the types of activities within the framework of the investment project defined by the investment agreement.



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# Tax alert on Tax Code amendments

## Special tax regime for retail tax

### Special tax regime for retail tax

A new Chapter 77-1 has been introduced into the Tax Code, which contains provisions for the application of a special tax regime for retail tax.

The special tax regime of the retail tax may be applied by taxpayers that are recognized as small and medium-sized businesses in accordance with the Entrepreneurial Code of the Republic of Kazakhstan for certain types of activities determined by the Government of the Republic of Kazakhstan.

The special tax regime for retail tax provides a special procedure for calculating CIT and Personal Income Tax ("PIT"), with the exception of taxes withheld at the source of payment. Thus, CIT and PIT obligations under this special regime are calculated by taxpayers themselves by applying a rate of 3% to the object of taxation for the reporting tax period.

Upon transition to a special tax regime for retail tax, before applying for a special tax regime VAT payers must submit a tax application to the tax authority no later than 5 business days at the place of location for deregistration for VAT.

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# Tax alert on Tax Code amendments

## Taxation of parties who have entered into an investment agreement

### Taxation of parties who have entered into an investment agreement

A new Chapter 80-1 has been introduced into the Tax Code, which contains provisions governing the taxation of parties who have entered into an investment agreement.

The provisions of this Chapter apply to legal entities that simultaneously meet the following conditions:

- A legal entity entered into an investment agreement in accordance with the Entrepreneurial Code of the Republic of Kazakhstan with a state body authorized by the Government of the Republic of Kazakhstan, which provides for tax preferences;
- A legal entity implements an investment project that corresponds to the list of activities approved by the Government of the Republic of Kazakhstan;
- A legal entity is not a subsoil user and (or) a person engaged in the production of excisable goods;
- A legal entity does not apply special tax regimes.

An investment agreement may provide for the following preferences:

1. Decrease in CIT by 100% on income from the implementation of an investment project by type of activity determined by the investment agreement;
2. Application of a 0 (zero) coefficient when calculating the land tax on land plots used for the implementation of an investment project;
3. Application of a 0% rate to the tax base when calculating property tax for

objects used for the implementation of an investment project;

4. Exemption of turnover for the sale of goods, works, services from VAT in accordance with subparagraphs 39), 43-1) and 47) of Article 394 of the Tax Code in respect of activities carried out by a person who has entered into an investment agreement in the territory of a special economic zone;
5. Reduction of tax liabilities, calculated from the amount of the actual expenses of the taxpayer, in accordance with article 712-3 of the Tax Code.

The term for application of reduction of a particular tax can vary from 8 to 10 years.

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# Value added tax





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## Value added tax

### Expansion of the list of VAT payers

The Tax Code expands the list of VAT payers, in particular, foreign companies providing services to individuals in electronic form will be regarded as VAT payers.

In connection to this, the Tax Code introduced a new section and articles on taxation of foreign companies that sell goods and services to individuals - residents of Kazakhstan in electronic form - Section 25, Chapter 90.

This norm enters into force on 1 January 2022.

The taxation procedure for a foreign company when carrying out e-commerce to individuals is discussed in detail in our separate tax alert.

### Taxable import turnover

In addition to taxes and customs duties, the amount of taxable imports of goods includes special, anti-dumping and countervailing duties.

### Expansion of the list of business entities that qualify for simplified procedure for the return of excess VAT

The right to apply the simplified procedure for excess VAT refund without conducting a tax audit will also apply to producers of own goods, the list of which will be approved by the authorized body in the field of trade regulation in agreement with the Ministry of Finance of the Republic of Kazakhstan and the Ministry of National Economy of the Republic of Kazakhstan.

In doing so, the simplified procedure for return of excess VAT for such taxpayers will be carried out in the amount of no more than 50 percent of the amount of the excess of VAT for the reporting tax period.

### Expansion of the list of exempt turnover

The following turnover from sale of goods, works and services, the place of sale of which is recognized as Kazakhstan, is included in exempt turnover for VAT purposes:

- Sale of goods produced and sold in the implementation of priority activities in the territory of special economic zones (subject to certain conditions);
- Sale of vehicles and (or) agricultural machinery (subject to certain conditions);
- Provision of services of a designated operator, drawn up in uniform documents in accordance with the acts of the Universal Postal Union, for the transit of international mail from designated operators of other member countries of the Universal Postal Union through the territory of the Republic of Kazakhstan.

The abovementioned norms are introduced retrospectively from 1 January 1 2020.

### Financial transactions exempt from VAT

The list of financial transactions that are VAT exempt has been supplemented, with transactions of investment funds registered in accordance with the current law of the Astana International Financial Center, as well as management services for these funds.

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## Value added tax

### Expansion of the list of persons who are required to issue invoices

In order to attract a larger number of taxpayers to the issuance of electronic invoices, facilitate administration and tax control in connection with the limitation of tax audits, the list of persons who are required to issue invoices has been supplemented with the following:

- taxpayers who are not VAT payers, in the case of the sale of goods that have entered the "Virtual warehouse" module of the electronic invoice information system to such taxpayers;
- resident legal entities (except for state institutions and state secondary education institutions), non-residents operating in the Republic of Kazakhstan through a branch or representative office, individual entrepreneurs and individuals with private practices who are not registered as VAT payers in the Republic Kazakhstan (except for transactions between businesses, when the buyer is an entity applying the patent tax regime, simplified tax return or for peasant or farm enterprises), in civil-legal transactions valued in excess of 1,000 times the MCI in force on the transaction date.
- taxpayers providing international cargo transportation services.

This provision enters into effect on 1 April 2021.

### Taxable turnover

#### Addition to the list of transactions not recognized as taxable turnover

According to the amendments to the Tax Code, from 1 January 2018 to 1 January 2021, the transfer of the volumes of process fuel provided by the customer to the oil refinery for obtaining heat energy and for other technological processes for the production of oil products, due to the operating mode and technological characteristics equipment shall not be treated as taxable turnover.

It will be taxed in full from 1 January 2021 following the transition to a buy-back mechanism.

#### Clarification of the date of the turnover for the sale of goods, works and services

Changes in the Tax Code clarify the date of the turnover for the sale of goods, works and services whereby sale of goods on the basis of documents confirming the provision of identified goods at the disposal of the buyer, the date of the turnover is the last day of the month on which the date of the actual transfer of such goods to the buyer falls.

Thus, this clarification was made for the purpose of issuing a single e-invoice at the end of the month for goods sold on the basis of documents confirming transfer of identified goods at the disposal of the buyer.

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## Value added tax

### Issue of a corrected invoice

Article 419 of the Tax Code is revised and states that when issuing a corrected invoice, the previously issued invoice with any additional invoices are to be canceled. At the same time, in order to restore canceled additional invoices, it is necessary to issue additional invoices to the corrected invoice.

### VAT write-off upon deregistration

For taxpayers deregistered for VAT, excess VAT is subject to write-off accumulated:

- as of the date of tax authority's decision on deregistration (without notifying the taxpayer on the basis of paragraph 4 of Article 85 of the Tax Code), in case of failure to submit a VAT liquidation declaration within the established period;
- after fulfilling the requirements for the inclusion of the residual goods in taxable turnover.

Please note that previous edition of the Tax Code provided such write-off of excess VAT upon the expiration of the statute of limitation period.

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# International taxation





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## International taxation

### Income of non-residents from Kazakh sources

Income types not recognised as the Kazakhstan-source income of non-resident legal entities has been expanded from 1 January 2019 and include income received from:

- non-commercial organisations;
- AIFC bodies or their organisations.

### Income of non-resident legal entities exempt from WHT

#### Dividends payable by legal entities are exempt from WHT

As a general rule, dividends are not taxable at the source of payment once they have been held for three years (except in specific circumstances).

According to the current version of the Tax Code, for non-subsoil users paying dividends, the holding period is determined together with previous holding periods for shares or participation interests, if the taxpayer received the shares or participation interests following the reorganisation of previous owners.

At the same time, in accordance with the amendments, from 1 January 2019, this provision will be applied to cases, where shares or participation interests *were purchased by a legal entity from another legal entity, and the founders (owners) of the legal entities in question are the same entity.*

Further, in accordance with the amendments, from 1 January 2021, dividends payable to non-residents both subsoil users and non-subsoil users in respect of shares or participatory interests held for more than 3 years (also subject to certain other conditions) will be exempt only in respect of income that were earlier subjected to CIT.

### Credit (loan) arrears exemption

In accordance with the amendments introduced for banks entitled to deduct the amount of expenses for creating provisions (reserves), the list of income exempted from CIT at the source of payment has been expanded with respect to the following types of income:

- *credit (loan) arrears and/or credit (loan) related arrears, including penalties (fines or interest) that have been waived in accordance with the procedure and under the conditions in point 3 of article 232 of the Tax Code, including interest arrears accrued as at 31 December 2012 inclusive.*

This provision is introduced for a period from 1 January 2020 until 1 January 2027.

- *credit (loan) arrears that have been waived in accordance with the procedure in subpoint 12) of point 5 of article 232 of the Tax Code, including interest on the same in respect of non-resident borrowers liquidated in the country of residence, or for which there are no pledges at the time of forgiveness.*

This provision is valid from 1 January 2020 until 1 January 2021.

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### Procedure for taxing the income of non-resident individuals

According to the amendments to the Tax Code, the provisions regarding the exemption from taxation of dividends paid to non-resident individuals are being clarified.

As for legal entities, an individual's dividends on shares/participation interest held for three years (except in specific cases) are exempt from taxation.

Thus, in accordance with the amendments, the above exemption *will only apply to income previously subjected to CIT*.

### New income types exempt from PIT

The provision excluding credit (loan) arrears that have been waived in accordance with the procedure and under the conditions in point 2-1 of article 232 of Tax Code, including interest accrued up to 31 December 2012 inclusive has been reintroduced from 1 January 2020 until 1 January 2027 (subpoint 13) of article 654).

### Technical addition to the procedure for applying exchange rates to the income of a non-resident received in foreign currency

When paying income in foreign currency, income taxed at the source is converted into tenge at the market rate on the last business day preceding the income payment date.

The amendment has retroactive force from 1 January 2018.

### Special international treaty provisions governing double taxation issues

The beneficial owner requirement when income is paid to a non-resident or when income is accrued but not paid to a non-resident, will only apply to related parties retroactively between 1 January 2018 and 1 January 2021.

Following the introduction of the Multilateral Convention (MLI) in Kazakhstan, from 1 January 2021, the beneficial owner of income concept now applies:

- to income payments to non-residents that are related parties for the tax agent; and
- when the double treaty with the non-resident's country of residence does not include MLI provisions.

When income is paid to a non-resident related party that is a resident of country whose double tax treaty includes MLI provisions, that income will be exempt from tax at the source if:

- *the income is taxable in the non-resident's country of residence (with no taxable income reduction or exclusion entitlement); and*
- *the nominal tax rate applicable in the non-resident's country of residence is at least 15%.*

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### Clarification to the procedure for non-residents to apply for an income tax refund based on an international treaty

If a non-resident reapplies for a treaty-based refund of income tax paid in an already audited period, and receives a rejection, the tax authorities will base that rejection on:

- the recognition of the non-resident's permanent establishment (permanent place of business) in Kazakhstan in accordance with article 220 of the Tax Code;
- a tax agent withholding and transferring the non-resident's Kazakhstan-source income using own funds in accordance with point 5 of article 645 of the Tax Code.

### Clarification of legislative requirements for the signatures and stamps of competent authorities or overseas notaries confirming the residency of non-residents

In order to apply the provisions of an international treaty, the signatures of officials and stamps of competent authorities confirming the residency of non-residents or foreign notaries should be legalised in accordance with the statutory procedure, or a document legalising the signatures of officials and stamp of competent authorities should be placed on:

- the website of the legalising state body;
- the website of another state organisation or public notary chamber collecting (storing) electronic apostilles from other countries.

The amendment enters into force retroactively from 1 January 2019.

### Clarification around the date a non-resident's residency is confirmed

Clarifications have been made to the provisions regarding the validity period of the residence certificate. So, according to the amendments, when confirming residency at a specific date, a non-resident is recognised as a resident of a country with which Kazakhstan has entered into an international treaty from the start of the calendar year until the date residency is confirmed.

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## Taxation of individuals

### Payers

To ensure compliance with the Law introducing the Tax Code, the point whereby gaming tax and fixed taxpayers are not PIT payers has been removed.

### Annual personal income

To ensure compliance with the amendments in article 244 (CIT deductions), travel compensation for a member of a board of directors or other taxpayer management body (with certain restrictions) was excluded from the list of income not considered as income of an individual.

The list of items not recognised as personal income was expanded with the following:

- the cost of statutory uniforms issued to an employee;
- voluntary pension contributions transferred by a tax agent to the integrated accumulated pension fund or voluntary savings pension fund in favour of an employee;
- dividends on a resident legal entity's purchase of securities or participation interest from a non-resident legal entity.

Employers and partners are no longer required to sign an agreement to transport employees from their place of residence in Kazakhstan to their place of work and back again to confirm the related expenses.

### Income subject to taxation at the source of payment

#### Employment income

To ensure compliance with the description of the "employee" concept, the text contains amendments which extend the provisions regarding employee's income to the income of members of the board of directors or other management body of a taxpayer.

The list of income not considered as employee income subject to self-taxation was specified:

- property income;
- the income of resident work immigrants;
- the income of individuals with private practices;
- the income of individual entrepreneurs.

#### Pension payment income

According to the amendments, payments from the pension savings formed at the expense of voluntary professional pension contributions in accordance with the legislation of the Republic of Kazakhstan before 1 January, 2014 were excluded from the list of taxable pension payments.

At the same time, this list was expanded with payments to individuals in the form of a lump sum payment for the burial of a deceased person who had pension savings.

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## Taxation of individuals

### Income adjustment

To benefit taxpayers, the following types of income are no longer taxable:

- capital gains on the sale of units of open and closed unit investment funds,
- income in the form of the travel, accommodation and meal expenses of a non-commercial organisation that are not related to an employment agreement and/or service agreement,
- insurance premiums up to 320 times the MCI in value under an endowment insurance agreement concluded for three years or more.

To avoid the repeat taxation of an outstanding guarantee compensation of depositors in liquidated banks, any outstanding guarantee compensation amount recorded in an individual pension account to account for voluntary pension contributions is recognised as non-taxable income.

Due to the difficulties encountered in practical application, the 90% employee income adjustment for income up to 25 times the MCI was moved from non-taxable income items to article 356 "Determination of taxable income at the source of payment."

The provision regarding endowment insurance premiums has been significantly improved to promote the long-term endowment life insurance policies, which are recognised as one of the main types of insurance in developed countries.

Thus, an adjustment has been introduced for the individuals entering into endowment insurance policies not only for themselves, but also for their relatives or spouses. A separate subpoint has been added excluding buyout amounts payable by insurance companies under endowment policies from taxable income.

The provision treating the taxation of a foreign company that is part of the

organisational structure of a CFC has been amended to exclude the double taxation of dividends and reads as follows:

- dividends allocated from the financial profit of a controlled foreign company and/or foreign company that is part of the organisational structure of a consolidated group previously subject to personal income tax.

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# Tax alert on Tax Code amendments

## Taxation of individuals

### Tax deductions

According to the amendments to the Law introducing the Tax Code, individuals receiving income under civil contracts have a right to apply PIT deductions for obligatory pension fund contributions and obligatory social medical insurance contributions. This provision has been introduced retrospectively from 1 January 2018 which means tax agents would have to recalculate PIT for previous periods if an individual submits correspondent application.

From 1 January 2020 individuals can apply a PIT deduction for obligatory social medical insurance contributions. There is no requirement for individuals to submit an application for this deduction with a tax agent.

### Application of deductions with tax agent

Referring to deductions that were not applied by a tax agent in a timely manner due to individual's late appeal, a clarification was introduced regarding the possibility of providing the documents for application of deductions within the statute of limitation.

### Voluntary pension contributions tax deduction

Article is amended by the limitation on the unclaimed amount of the guarantee compensation, which is recorded on the personal pension account for accounting the voluntary pension contributions.

### Calculation, payment and reporting procedure

The chapter is amended by article 353-1, defining the specifics of calculating, withholding and paying PIT from a lump sum pension payment.

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# Tax alert on Tax Code amendments

## Taxation of individuals

The term "oralman" has been replaced by a new term "kandas" - ethnic Kazakhs who were permanently residing outside of Kazakhstan borders at the time it had acquired the sovereignty and their children of Kazakh nationality who returned to live in their historical homeland.

### Declaration on assets and liabilities

Foreign nationals who are residents will be required to submit a declaration on assets and liabilities along with the citizens (also called "input" declaration), regardless of the presence of property or participation in housing construction in Kazakhstan. The requirement to file the declaration in case of presence of such property remained in relation to non-resident foreign nationals only.

As the tax authorities can obtain data on the registered property and Kazakhstani bank accounts of individuals through the "Integrated Database" information system, the need to submit this information in the "input" declaration has disappeared.

The minimum amount of cash to be declared has been changed from 5 880 times the MCI to 10 000 times the MCI.

The limit for reflecting receivables / payables has been removed, however the document confirming such a debt must be notarized.

The minimum amount for reflecting the money in foreign bank accounts has been set at 1 000 times the MCI. The list of voluntarily declared property has been changed. Thus, an individual has the right to declare any property or asset worth over 1 000 times the MCI, provided there is an appropriate valuation document.

### Declaration on income and property

Along with the "input" declaration, foreign nationals who are -Kazakhstan residents have an obligation to submit a declaration on income and property, regardless of the fact of receiving Kazakhstan sourced income subject to self-declaration and obligation to submit a declaration prescribed by Kazakhstan laws. The requirement for foreign nationals to submit income and property declaration under certain conditions remained in relation to non-residents only.

The short declaration on income and property is excluded.

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# Tax alert on Tax Code amendments

## Taxation of individuals

### Declaration on income and property

In order to reduce the number of declarants, cases where income and property declaration submission is required have been specified:

- For individuals obliged to submit a declaration in accordance with Kazakhstan laws "On Anti-corruption", "On banks and banking activities in the Republic of Kazakhstan", "On insurance activity", "On the securities market";
- When receiving income subject to self-declaration;
- In case of foreign assets possession (money in foreign bank accounts over 1 000 times the MCI in aggregate, real estate, securities, share in the authorized capital of a legal entity) or acquisition, alienation, free receipt of foreign property;
- If there is a right to offset or return of PIT - and if an individual would like to exercise such a right;
- If there is a notarized document of Accounts Receivable or Payable.

The obligation to submit annual declaration on income and property has been removed from the following individuals:

- Those who have no income subject to self-declaration (having only income from tax agents);
- Those who have no changes in assets (acquisition, alienation, gratuitous receipt of property), including assets outside Kazakhstan.

### Controlled foreign company tax credit

Due to the introduced amended method of offsetting foreign tax for CFC taxation described in article 303 of the Tax Code, article 639 (CFC tax credit) was excluded from chapter on universal declaring as it duplicates the provisions on CFC tax offset.

### Procedure and Terms of Tax Payment

There is also an amendment related to timing of payment of tax calculated in income and property declaration, which allows to avoid penalties for late payment of PIT from CFC profit, reflected in the additional declaration in the absence of approved financial statements as of the date of submission of income and property declaration (does not apply to PIT from the total profit of CFC registered in countries with preferential taxation).

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# Tax alert on Tax Code amendments

## Other taxes and budget payments

### Excisable goods

The list of goods subject to excise duties has been supplemented with gasohol, benzonal, nefras, light hydrocarbon mixture and ecological fuel.

### Excise duty calculation

The mechanism for calculating excise duties on excisable goods has been amended to introduce combined tax rates consisting of fixed and ad valorem rates.

As such, excise duties on any such goods are calculated the amount generated by adding excise duties charged as the product of a fixed (specific) tax rate and the volume of excisable goods sold (transferred or imported) and the share of the maximum retail price of the goods to the relevant ad valorem (percentage) tax rate.

### Tax base for excisable goods amended

The tax base for alcoholic products has changed except for vodka, special vodka and other alcoholic products with ethanol content in excess of 15%, to the volume of alcoholic products sold for export, if excise duties have already been paid on them due to their movement by the producers from the license production address.

### Land tax

Base land tax rates for agricultural land not used in accordance with Kazakhstan land law will be increased 20 times from the date the owner or land user receives a written demand from the authorities to clear any violations of Kazakhstan land law. The increase does not extend to the organisation specialising in improving the quality of commercial bank loan portfolios whose sole shareholder is the Kazakhstan Government and its subsidiaries.

A coefficient of 0 will apply to land tax rates for land used to implement investment projects for entities that have entered into an investment agreement.

### Property tax

The property tax rate for entities that have concluded investment agreements will be 0%.

### State fees

A new fee has been introduced for issuing a document confirming the residency of a foreign national or stateless person who is an investment resident of the Astana International Financial Centre of 7,000 times the MCI.

### State duties

The Tax Code states that state duties have been introduced for issuing Kazakhstan residence permits of 4 times the MCI.

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# Tax alert on Tax Code amendments

## Subsoil user taxation

### Liquidation fund

To rule out amounts transferred to liquidation fund being recognised as the income of a new subsoil user, the period for receiving liquidation fund has been extended by 30 calendar days from the moment the fund is received.

The amendment has retroactive force from 1 January 2018.

### Geological exploration work deductions

The Tax Code specifies that accumulated cost amortisation charges are deductible for a split-off after 1 January 2018 of a part of an exploration site and the conclusion of a new production contract.

The termination of production contracts or joint exploration and production contracts in connection with *the re-registration of subsoil use rights to a subsoil use license* is not recognised as the completion of subsoil use operations under those contracts. Consequently, the final value balance of a group of depreciable assets during the re-registration period is not deductible.

### Preparatory uranium production work

In article 260 of the Tax Code, sulphuric acid for acidification has been added to the list of preparatory mining work assets creating a separate group.

The amendment has retroactive force from 1 January 2020.

The above additional also increases the property tax base by the value of sulphuric acid for acidification.

### Amortisation and concessions

According to the new wording of articles 271 and 274, a contract to produce underground water is not recognised as a subsoil use contract provided the subsoil user extracting underground water is a subsoil user solely because it holds the right to produce underground water and uses the underground water to produce non-alcoholic beverages.

Accordingly, investment tax concessions may be applicable to fixed assets having a direct cause and effect relationship to any such contracts instead of the double deduction of depreciation.

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# Tax alert on Tax Code amendments

## Subsoil user taxation

### New terminology

The Tax Code provides a definition for the term “depleted deposits”, which was previously included in the Subsoil Use Law.

### Tax audits

Following an addition to article 145 of the Tax Code, an unscheduled audit will not be performed if subsoil use rights are re-registered as a subsoil use license.

### Export rent tax

Export rent tax will be abolished for coal. To compensate, coal mineral extraction tax (“MET”) will be increased.

### Subscription bonus

The subscription bonus rate for geological surveying will be reduced from 2,000 to 50 times the MCI. At the same time, the production license rate will increase from 50 to 200 times the MCI.

The area of prospecting territory has been changed from km<sup>2</sup> to m<sup>2</sup> to match the Subsoil Use Code as follows:

- 0.3 km<sup>2</sup> > 17,000 m<sup>2</sup>
- 0.5 km<sup>2</sup> > 33,000 m<sup>2</sup>
- 0.7 km<sup>2</sup> > 55,000 m<sup>2</sup>.

### Reimbursement of historical costs

Following the removal of the term “commercial discovery” from the Tax Code, the number of events affecting the payment date has been increased. As such, subsoil users compensate for historical costs from the start of contract territory (site) production and from the earlier of:

- a declaration of a commercial discovery;
- the transition to the production period (stage) in accordance with Kazakhstan subsoil use law;
- the issue date of a mineral production license;
- the conclusion of a contract to produce minerals.

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# Tax alert on Tax Code amendments

## Subsoil user taxation

### Transition from a subsoil use contract to a subsoil license

The Subsoil Use Code allows subsoil users to re-register their contract to a license. The new version of the Tax Code has included an article 723-1 describing the transition procedure in 7 points.

According to point 1:

- To re-register one contract as one license, during the re-registration period, the contract and license in question will be treated as an integrated subsoil use contract, and operations under the contract and license as integrated contractual operations for which joint separate tax accounting is maintained.
- To re-register one contract as two or more licenses, during the re-registration period, the part of the contract reallocated in accordance with points 2-7 of this article and each license will be treated as a single subsoil use contract, and the operations under that part of the contract and licenses will be treated as integrated contractual operations for which tax accounting is kept separately.

According to point 2:

- To re-register one contract as one license, the contractual objects of taxation are recognised as objects of taxation for the license from the start of the tax period in which the re-registration took place.
- To re-register one contract as two or more licenses, the contractual objects of taxation should be allocated to the licenses in accordance with point 3 of this article from the start of the tax period in which the re-registration took place.
- Points 3-6 determine the methods for allocating general and indirect income and expenses, general and indirect value balances for group 1 fixed assets,

geological exploration work, accumulated liquidation fund capital and accumulated losses to the licenses if there are two or more licenses.

Point 7 states that fixed assets, the liquidation fund and losses are allocated using the same allocation method selected from those provided in subpoints 1)-5) of point 11 of article 723.

Taxpayers should send notification of the allocation methods selected to the tax authorities by 31 March of the year following the year in which subsoil rights were re-registered. If notification is not sent in good time, the method referred to in subpoint 1) of point 11 of article 723 will be used for allocation purposes.

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# Tax alert on Tax Code amendments

## Subsoil user taxation

### Minerals extraction tax

#### Tax base

A procedure has been added to convert foreign currency prices into tenge for non-exchange minerals. As such, transactions concluded in foreign currency are converted into tenge using the market exchange rate on the date title to the minerals for export transfers, including minerals that have undergone initial processing (enrichment) according to a contract.

The above change enters into force retroactively from 1 January 2020.

#### MET rates

As rent tax on coal is being abolished from 1 January 2021, the MET rate on coal, brown coal and slate coal will increase from 0% to 2.7%.

In certain cases, a coefficient of 0.01 is applied to the MET tax rate for coal, brown coal and slate coal.

In addition, clay-containing rock with a rate of 2.5% has been categorised as other non-metallic minerals that are not common minerals with a rate of 4.7%, but no less than 0.02 times the MCI per unit.

### MET on underground water

#### Object of taxation

From 1 January 2021, underground water will be exempt from MET provided it is recycled and extracted together with hydrocarbons and represents a threat to public health and the environment, in accordance with Kazakhstan water-related law.

MET is no longer paid on the reinjection of underground water, including as steam

generated from it, into the subsoil (pumping of technical water) to support seam pressure.

#### MET rates

Positive changes clarifying when subsoil users should apply the maximum MET rate of 1 MCI per m<sup>3</sup> have been included in article 748 of the Tax Code.

As such, the rate of 1 MCI applies to actual losses of mineral and domestic underground drinking water extracted by subsoil users. In this respect, actual losses of domestic drinking water during operations regulated by Kazakhstan law on natural monopolies and/or its subsequent sale to a natural monopoly are taxed at 0.005 times the MCI.

In addition, the number of cases when the reduced rate of 0.003 times the MCI applies has been extended, which simplifies the administration of this provision.

The change has retroactive force from 1 January 2018.

### Excess profits tax

The amendments confirm that subsoil users producing common minerals do not pay excess profits tax.

### Alternative subsoil use tax

Amendments have been made to article 766 to expand the borders for the application of the alternative subsoil use tax from the continental shelf to the Kazakhstan sector of the Caspian Sea.

Subsoil users with joint exploration and production contracts that are in the exploration stage are entitled to apply the alternative subsoil use tax, provided they meet the criteria set by article 766.

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