February 8, 2019

Important changes have been introduced into Kazakhstan’s legislation, including, inter alia, in relation to administrative and criminal liability for offences associated with the understatement of taxes: (i) increase to the thresholds of criminal liability for tax evasion, (ii) decrease to the list of conditions for exemption from criminal liability and (iii) increase to the rates of administrative fines for tax understatement. These changes to the Criminal Code and the Administrative Code came into effect on February 3, 2019.

As follows from its title, the Law envisages further humanization of criminal law. However, changes relevant to criminal liability for tax offences, in our view, will not change the situation for major taxpayers significantly. At the same time, the Law increases the rates of administrative fines for understating taxes in relation to medium and large business by 1.6 times.

Please see below a more detailed overview of certain changes to the Criminal Code and the Administrative Code.

(i) Changes to the Criminal Code

Change of thresholds for the purpose of Article 245 of the Criminal Code

The Law has increased the threshold of liability for the evasion of paying taxes and (or) other mandatory payments to the budget under Article 245 (Tax Evasion by Organizations) of the Criminal Code.

Tax evasion by businesses “in a large amount” was defined previously as underpayment of taxes exceeding 20,000 monthly calculation indices. The Law has changed the definition of the term “large amount” for the purpose of Article 245 of the Criminal Code by increasing it to 50,000 MCIs (126.25 million Tenge or approximately US$330 thousand).

Similarly, the threshold for tax evasion by businesses in an “especially large amount”, which previously meant underpayment of taxes exceeding 50,000 MCIs, now has been changed to 75,000 MCI (189.375 million Tenge or approximately US$495 thousand).

Change of conditions for release from criminal liability under Article 245 of the Criminal Code

Previously, the Note to Article 245 of the Criminal Code stated that a person may be released from criminal liability (except for the offences committed by a criminal group) if the crime was committed for the first time and under condition of voluntary payment of assessed taxes and interest to the state budget.

The Law has removed from the text of the Note the words “for the first time” and, therefore, decreased the amount of conditions to be met for exemption from criminal liability under this article.

The Law has introduced a Note to Article 241 of the Criminal Code that provides for criminal liability for various...
Exemption from criminal liability for accounting violations

violations of accounting requirements, such as inclusion in the accounting of deliberately false information on income and expenses or failure to maintain bookkeeping.

The Note to Article 241 exempts an accused person from criminal liability under the following conditions: (i) if the offence was committed for the first time, and (ii) in case of voluntary payment of damage caused.

(ii) Changes to the Administrative Code

Increased rates of fines for understatement of taxes

The Law has increased the rates of administrative fines for understatement of taxes and other obligatory payments to the budget imposed under Article 278 of the Administrative Code as follows:

- in relation to small businesses or non-profit organizations – from 15 percent to 20 percent
- in relation to medium scale businesses – from 30 percent to 50 percent
- in relation to large scale businesses – from 50 percent to 80 percent of the accrued taxes and other mandatory payments to the budget

(iii) Tax amnesty

A separate set of changes in the tax legislation is associated with introduction of so-called “tax amnesty.” The tax amnesty will be implemented by writing off interest penalties and administrative fines accrued in respect of unpaid taxes in case of payment of such tax arrears existing as of October 1, 2018 within the period ending 31 December 2019.

The following categories of taxpayers may not use this possibility to write off the interest and administrative fines: (i) large taxpayers subject to monitoring; (ii) subsoil users and producers of excisable goods; (iii) individuals, except for tax arrears resulting from entrepreneurial activity and activities of a private notary, private enforcement agent, advocate or professional mediator.

4. In 2019 one monthly calculation index (MCI) is set at the level of 2,525 Tenge or approximately US$6.6.

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