Overview

The tax system in Kazakhstan is regulated by the provisions of the Tax Code. The current Tax Code has been effective since January 1, 2018, replacing the previous Tax Code that had been in effect since 2009.

Under the current Tax Code, corporate and personal income tax are imposed on residents and non-residents conducting business in Kazakhstan through a permanent establishment (PE).

Non-residents that do not operate through a PE in Kazakhstan are subject to income tax withholding at the source of payment (WHT) that applies in respect of income from Kazakhstani sources. Kazakhstan currently has a network of double taxation treaties (DTT) with 55 countries; some of the recently ratified treaties are expected to become effective soon.

Provisions of a DTT may reduce the applicable rates of WHT in respect of passive income, including dividends, interest and royalty, whereas active business income received by a non resident without the creation of a PE (e.g., provision of services) may be exempt from WHT in Kazakhstan.

In addition to income tax, the list of major taxes under the Tax Code includes indirect taxes (Value Added Tax, Excise Tax), payroll taxes and contributions to funds (Personal Income Tax, Social Tax, Obligatory Contributions to Pension Fund, Obligatory Contributions to Social Fund, Social Medical Insurance Contributions), taxes and other obligatory payments of subsoil users (Minerals Extraction Tax, Excess Profits Tax, Alternative Tax on Subsoil Use, etc.) and other taxes associated with ownership of land, property and vehicles.

In the international context, Kazakhstan has been a member of the World Trade Organization (WTO) since 2015 and is a member of the Eurasian Economic Union (EAEU) together with Russia, Belarus, Kyrgyzstan and Armenia.

Kazakhstan is not a member of the Organization for Economic Co-operation and Development (OECD).

OECD regulations are not legally binding in Kazakhstan, although the nation is voluntarily participating in the OECD’s recent tax initiatives.

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Legal system

Kazakhstan operates under a continental legal system, which is characterized by the codification of the rules of law, unified hierarchical system of sources of law and division into branches of law (criminal, civil, labor, family, administrative, etc.). According to the Constitution, the acting law of the Republic of Kazakhstan (RK) comprises of the norms of the Constitution, laws corresponding to it, other regulatory legal acts, international agreements and other obligations of the RK, as well as regulatory resolutions of the Constitutional Council and the Supreme Court of the RK.

Taxation authorities

The tax system in Kazakhstan is administered by the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan (the SRC). The SRC was established in 2014 from the combination of several state authorities: the Tax Committee, the Customs Committee and the Financial Police.

The main functions of the SRC in relation to taxation include, among others, the implementation of the state policy in the sphere of taxation; securing full and timely payment of taxes, customs duties, payments and other obligatory payments to the state budget; and the prevention, detection, suppression, disclosure and investigation of criminal and administrative offenses within its competence.

Being a central tax authority, the SRC has its territorial bodies, including departments of state revenues in regions, and state revenue divisions in each of the regions, cities and districts (i.e., local tax authorities).

Business vehicles

To do business in Kazakhstan, a foreign entity may establish a wholly owned subsidiary or a joint venture in the form of a Kazakhstani legal entity, or a representative office or branch registered in Kazakhstan of an existing entity registered outside of Kazakhstan.

The key difference between a legal entity and a branch or a representative office is that the former is a separate legal entity that is a resident of Kazakhstan for all legal purposes. A branch or representative office is a structural subdivision of an entity (foreign or local) located in a different place from the entity's main office.

A branch or representative office does not act in its own name, but on behalf of its parent company. It does not own property but is provided with property by its parent company, and it has no independent legal liability from that of its parent company.

A Kazakhstani branch of a foreign entity is considered a PE through which the non-resident conducts its business in Kazakhstan. Although the branch constitutes a Kazakhstani taxpayer, it is not considered a Kazakhstani resident for taxation purposes. However, it should be noted that in certain cases Kazakhstani branches of foreign legal entities may be considered as residents, such as for currency control purposes after July 1, 2019.

New business vehicle

The most common forms of legal entities selected for a business are limited liability partnerships (LLPs) and joint stock companies (JSCs).

In both LLPs and JSCs, the partners’ or shareholders’ liability is limited to their equity interest in the respective legal entity. Both LLPs and JSCs are separate legal entities for civil-law and tax purposes. LLPs and JSCs obtain their respective legal status from the moment of state registration with the RK Ministry of Justice. The procedure of state registration for LLPs and JSCs are highly similar. Once state registration is complete, LLPs and JSCs become registered with the Kazakhstani tax authorities.

The principal difference between LLPs and JSCs is that the latter are subject to regulation by the competent authority.
JSCs are also subject to stricter requirements for protecting minority shareholders' rights and must have more transparent business, management and reporting practices. In certain cases, Kazakhstani legislation requires that business be conducted through JSCs in certain sectors of the economy, such as banks, insurance companies and stock exchanges.

Establishing a legal entity in the form of an LLP can be an attractive option for investors. The key reasons for opting for LLPs are: (i) the management structure of an LLP is simplified, compared to the more rigid and complex corporate structure of a JSC; (ii) the charter capital of a JSC is much larger than that of an LLP; and (iii) unlike an LLP, a JSC is subject to various regulatory requirements, including public reporting.

Branch and representative office

A branch is a structural subdivision of a foreign legal entity that performs all or part of the foreign company’s functions and does not have a separate legal entity status.

The difference between a branch and a representative office lies in the range of functions that each is permitted to perform. A branch may perform any or all functions of its head company, including commercial activities as well as representative functions. The purpose of a representative office is predominantly to represent its head company and protect its legal interests in a foreign jurisdiction.

Similar to a branch, a representative office may contract and perform legal acts in the name of its parent company, but not on behalf of its parent company. However, a representative office may not engage in income-generating commercial activity. The functions of a representative office are limited and it merely acts in support of a company that actually enters into contracts and is engaged in commercial activity.

Registration with tax authorities

Registering a business vehicle requires obtaining a Business Identification Number (BIN) that is automatically included in the registry of taxpayers.

The obligation to register as a VAT payer arises if the amount of taxable turnover for VAT purposes exceeds the minimum threshold during the calendar year. The minimum threshold is indexed and is approximately US$176,000 for the year 2020.

Financing a subsidiary

Equity financing

The charter capital of a Kazakhstani LLP might be increased in several ways, including additional contributions of the participants or the adoption of a new participant. However, it is expressly provided in the law that the charter capital of an LLP may not be increased by offsetting the participants’ claims to the partnership.

Charter capital of an LLP may be increased through additional contributions of the participants. The procedure for increasing the charter capital includes several important steps, such as adoption of a resolution of participants for increase of the charter capital, amendment of the LLP foundation documents (charter and foundation agreement), record registration of the contribution with the National Bank of Kazakhstan (if the amount of the contribution exceeds the equivalent of US$500,000) and sending notification of the capital contribution to the territory’s justice department.

In respect of JSCs, the share capital is formed by the payment for the shares by the founders. Subsequent increase of share capital may be performed by the placement (sale) of the authorized shares of the JSC.

Under provisions of the Tax Code additional contributions to a charter capital or share capital does not represent a taxable event, and is not subject to corporate income tax (CIT) or VAT.

Debt financing

As an alternative to equity financing, Kazakhstani legal entities may obtain loans from local and foreign entities.

Withholding tax implications

Both dividends and interest payable to a foreign entity are subject to 15% withholding tax in Kazakhstan. The
applicable tax rate might be reduced under the respective DTT, if applicable, subject to certain administrative requirements.

Any kind of income (including interest and dividends) payable to a resident of a state with preferential taxation is subject to withholding tax at the maximum rate of 20%. The list of the countries with preferential taxation is approved by Kazakhstan’s Ministry of Finance and includes 58 countries and territories, where the income tax rate is lower than 10% and where legislation protects the confidentiality of financial information, beneficial owners and shareholders.

Unlike interest, dividends may be exempt from taxation in Kazakhstan subject to several conditions. Dividends payable by Kazakhstani entities to foreign legal entities may be exempt from WHT in Kazakhstan under the following conditions: (i) a recipient of dividends should not be a resident in a country with preferential taxation; (ii) a company that pays the dividends does not constitute a subsoil user, and no more than 50% of its value constitutes the property of a subsoil user; (iii) at the date of distribution of dividends, the respective shares or participating interest are owned for not less than three (3) years.

Moreover, a specific set of requirements have been introduced in the tax legislation for exemption of dividends payable by Kazakhstani subsoil users to their foreign participants. In addition to conditions (i) and (iii) as described above, in order to exempt dividends, a subsoil user should conduct subsequent processing of the certain portion of minerals extracted during the year. It is expected that the percentage of minerals subject to subsequent processing will be gradually increased from 50% effective in 2020 to 70% through 2022.

Thin capitalization

A Kazakhstani taxpayer that is financed with debt may be subject to the thin capitalization rules contained in the Tax Code. The thin capitalization rule exists in the form of limiting the deductibility of interest on loans extended by related parties, loans secured by related parties and loans extended by residents of jurisdictions with preferential taxation. Interest on the loans not included in any of these categories may be deducted in full.

This limitation does not apply unless the average annual amount of debt of the company exceeds four times the average annual equity (or seven times for financial organizations). If this ratio of debt to equity is above the threshold, the deductible amount of interest paid by the company in respect of such loans will be calculated under the special formula.

Stamp tax

There is no stamp tax imposed in relation to equity or debt financing in Kazakhstan.

Corporate income tax

CIT applies to Kazakhstani legal entities and non-residents acting through a PE in Kazakhstan at the standard rate of 20%. The tax year for CIT purposes is the calendar year. CIT is paid annually before April 10 of the year following the reporting tax period. However, taxpayers with aggregate annual income greater than MCI 325,000 (or approximately US$2.08 million in 2020) are obliged to pay CIT in advance on the monthly basis.

For CIT purposes, taxable income is calculated as aggregate annual income less deductible expenses and certain adjustments (if applicable). Aggregate annual income generally includes all kinds of income received from Kazakhstan and foreign sources. Expenses may be deducted provided that they are incurred for business purposes (i.e., relevant to generation of taxable income) and supported with primary documents confirming the business purpose of such expenses. Moreover, certain types of expenses are subject to the specific rules and limitations (e.g., depreciation of fixed assets, representation expenses, deductible taxes, etc.).

Dividends receivable by Kazakhstan companies are generally considered as taxable and should be included in aggregate taxable revenues. However, for CIT purposes, dividends may be excluded from taxable income (except for dividends paid by companies that enjoy exemption from CIT and other specific categories).

Tax losses on entrepreneurial activity may be carried forward for CIT purposes for the next 10 years inclusive, and may be offset against taxable revenues during these tax periods.

Tax on net income of a non-resident (Branch Profits Tax)

Non-residents who conduct business through a branch or PE in Kazakhstan are obliged to pay 15% tax on any net
income after the deduction of CIT. Unlike the tax on dividends that is paid only when the dividends are distributed, the tax on net income should be paid annually in the same manner as CIT.

The applicable rate of tax on net income may be reduced under provisions of the relevant DTT.

## Cross-border payments

### Transfer pricing

Kazakhstan's Law on Transfer Pricing applies to cross-border transactions, local transactions directly related to international transactions involving mineral resources, transactions with Kazakhstani entities enjoying tax exemptions or having tax losses for the last two years. In general, the Law on Transfer Pricing applies to any cross-border transaction concluded by a Kazakhstani resident company, including transactions concluded with independent parties.

Kazakhstani law requires that the price in any cross-border transaction should be based on the market level. If a transaction price deviates from the market price range, the tax authorities have the right to adjust the transaction price and assess additional tax obligations, fines and penalties to Kazakhstani taxpayers by increasing taxable revenues or decreasing deductible expenses.

The tax authorities may require that a taxpayer provide documents substantiating the economic rationale of a transaction price, information on the applicable pricing method or other documents supporting the price for review.

### Withholding tax

Non-residents that do not operate through a PE in Kazakhstan are subject to WHT that applies in respect of income from Kazakhstani sources.

The types of income considered to be income from Kazakhstani sources is quite extensive and includes, among others: (i) sale of goods and provision of services in the territory of Kazakhstan; (ii) provision of managerial, financial, consulting, engineering, marketing, auditing and legal services (except for representation of clients in court and notary services), regardless of the actual place of their provision; (iii) all kinds of income payable to entities registered in jurisdictions with preferential taxation; (iv) capital gains, dividends, interest and royalties; and (v) other kinds of income received from activities in the territory of Kazakhstan. The full list of non-resident income sources in Kazakhstan is provided for in Article 644 of the Tax Code. It is an extensive list that includes 34 categories of income, and also includes "other income received from activities in the territory of Kazakhstan."

Kazakhstani WHT rates are provided in the Tax Code depending on the type of income as follows: (i) income from provision of services and all kinds of income payable to residence of preferential tax jurisdictions are subject to 20% WHT; (ii) capital gains, dividends, interest, royalties and insurance premiums under risk insurance contracts are subject to 15% WHT; (iii) international transportation services and insurance premiums under risk re-insurance contracts are subject to 5% WHT.

Kazakhstan has a network of DTTs with various nations. Pursuant to a relevant DTT, applicable rates of WHT on dividends, interest and royalty, as well as active business income received by a non-resident without creation of a PE (e.g., provision of services) may be reduced, or may be completely exempt from WHT in Kazakhstan.

Under provisions of the Tax Code, in order to apply provisions of the relevant DTT, certain conditions should be met. The recipient of income should not use provisions of the DTT for the benefit of a third party and should provide the Kazakhstani tax agent with the official document confirming its residency (e.g., tax residence certificate) in the country that contracted the DTT with Kazakhstan. The Kazakhstani tax authorities are very demanding as to the content and legalization of such documents.

### Taxation of capital gains

The list of income derived by non-residents from Kazakhstani sources includes, inter alia, gains received on the sale of shares/participating interest of a foreign legal entity if more than 50% of the value of such shares or participating interest derived from a property situated in Kazakhstan. Therefore, the sale of shares in a foreign holding company that owns Kazakhstani assets may trigger tax obligations in Kazakhstan.

It is important to note that gains realized by non-residents from the sale of shares or participating interest in
Kazakhstan entities may be exempt from WHT under the same conditions as provided in respect of exemption of dividends (as described above). In addition, capital gains are not subject to taxation in cases of sale of shares listed in the Kazakhstan or foreign stock exchange under an open bidding method.

CFC rules

Controlled foreign companies (CFC) rules apply in Kazakhstan to individuals and legal entities holding directly or indirectly or controlling more than 25% of the shares or participating interest in a company (or other organizational form) registered in jurisdictions with preferential taxation.

The Tax Code requires that the total amount of profit earned by a CFC should be included in the taxable income of a Kazakhstan taxpayer, whereas a corresponding amount of income tax paid in a foreign state on the same profits may be excluded to avoid double taxation. In addition, Kazakhstani residents are subject to certain reporting requirements in connection with foreign-controlled companies.

Currency control

In Kazakhstan, different currency control regimes are imposed under the Law on Currency Regulation and Currency Control and the relevant subordinate legislation. Depending on its nature, amount and other characteristics, a transaction in a foreign currency may be subject to a regime of notification or registration. The main supervisor of currency control is the National Bank of Kazakhstan (NBK). The regulations on currency control are rather detailed and will be considered in relation to a specific currency operation on case-by-case basis.

The new Law on Currency Control became effective on July 1, 2019. It applies to residents and nonresidents who conduct operations in a foreign currency in the territory of Kazakhstan, as well as transactions of residents outside of Kazakhstan. The term “resident” under the new law includes, inter alia, branches of foreign legal entities operating in Kazakhstan “that constitute a permanent establishment under the Tax Code.”

Payroll taxes

Payroll taxes in Kazakhstan are paid by employers on behalf of employees. Generally, employment income includes any conceivable benefit in exchange for labor, such as employment benefits in excess of salary. The group of payroll-related taxes and payments includes:

- Personal income tax (10%) withholding from employees’ gross income
- Contributions to pension fund (10%) withholding from employees’ gross income
- Social tax and social contributions (9.5%) to be paid on employer’s cost
- Obligatory medical insurance contributions (2%)

Personal income tax (PIT) and contributions to the pension fund are withheld by the employer from gross salary at the source of payment, whereas social tax, social security and obligatory social medical insurance contributions are paid as expenses by the employer.

Payroll taxes are paid by an employer on a monthly basis, whereas tax declarations are submitted on a quarterly basis.

Indirect taxes

VAT

Value-added tax (VAT) applies to the sale of goods and services in Kazakhstan, including the import of goods and services by local VAT payers from non-residents. The amount of VAT payable to the state budget is calculated as a difference between output VAT charged on taxable turnovers and input VAT payable to the local suppliers of goods and services.

The standard rate of VAT is 12%. Taxpayers are obliged to register as VAT payers if the amount of taxable turnover for
VAT purposes exceeds during the calendar year the minimum threshold, which is currently set at MCI 30,000 in 2020 (or approximately US$192,000). The tax period for VAT is a calendar quarter, and VAT is paid on a quarterly basis. The amount of VAT payable to the state is calculated as a positive difference between Output VAT charged by the taxpayer on its taxable turnovers, less Input VAT paid to the local suppliers of goods and services and confirmed with primary documents (VAT-invoices).

VAT at a 0% rate applies on export, international transportation and certain services relevant to international transportation by railroads, sale of aviation fuel by airports to foreign airlines serving international flights.

Excessive amounts of input VAT accumulated in connection with turnovers subject to 0% VAT may be refunded from the state budget subject to several requirements. Generally, the VAT refund procedure includes submitting a refund request within the statute of limitations and successfully passing a thematic (special, focused on one certain issue) tax audit of the requested amounts.

Property tax
Property tax is payable by Kazakhstani legal entities in respect of immovable property, which includes buildings, constructions, premises and other structures, which are considered to be fixed assets or investments in immovable property. Property tax is calculated at 1.5% of average annual book value of immovable property owned, leased (in certain cases) and possessed (on the basis of concession agreements).

Land tax
Land tax is specifically calculated for each separate land plot and depends on the type of land plot (land plots intended for rural usage, land plots of inhabited areas, land plots used for industrial purposes, land plots used for dwellings, etc.), the quality of soil for rural usage land plots, the type of inhabited area and other parameters.

Vehicle tax
Vehicle tax is specifically calculated for each separate vehicle and depends on the type of transport (cars, lorries, trucks, buses, motorcycles, ships, vessels, airplanes, etc.), engine capacity, tonnage and number of seats for buses.

Preferential tax regimes

Special Economic Zones
In Kazakhstan, Special Economic Zones (SEZs) are created to facilitate modern, highly productive and competitive manufacturing; to attract investments and new technologies in certain economic sectors and regions; and to boost employment. Each SEZ has been established to promote a particular priority activity, such as tourism, petrochemicals, construction, trade, logistics, textiles or metallurgy. Priority activities are approved by the Kazakhstani government for each SEZ.

In order to enjoy the benefits available under the special regime applied to SEZ, a legal entity should be registered as a participant of the SEZ and included in the unified register of participants of the SEZ. As a participant of the SEZ, a legal entity operates based on an agreement related to performing the activities agreed with a managing company of the SEZ.

A special legal regime is applied to SEZs that concerns tax, customs, land and employment issues. The tax regime of each SEZ is established in the Tax Code. Tax benefits may vary depending on the SEZ. In general, SEZ participants may enjoy tax benefits in respect of CIT, VAT, social tax (in the case of the Park of Information Technologies SEZ only), property tax, land tax and land rental payments.

Tax and customs preferences under investment contracts
Preferential tax treatment is offered by the Entrepreneurial Code for investors implementing a specific investment project. These tax preferences are not granted automatically but on the basis of an investment contract executed between a Kazakhstani legal entity implementing the project and the authorized body.

Astana International Financial Center
On July 5, 2018, Kazakhstan launched the Astana International Financial Centre (AIFC) with a special legal regime
based on English Law.

The AIFC is designed as a high-technology stock exchange that will list the shares of the largest Kazakhstan enterprises. The Independent Court and International Arbitration Centre were established in the AIFC to ensure the protection of the rights of investors and participants.

The companies established under the AIFC rules or recognized by the AIFC (“AIFC Participants”) may enjoy simplified currency, visa and labor regimes, as well as certain tax exemptions until January 1, 2066. The tax regime in the AIFC is based on the Tax Code with certain exceptions provided by the Constitutional Law of the Republic of Kazakhstan dated December 7, 2015, On International Financial Center “Astana,” which provides the following tax exemptions for AIFC Participants:

- Exemption from CIT of income received by AIFC Participants from provision of certain financial services until January 1, 2066
- Exemption from CIT of legal, audit, accounting and consulting services provide to AIFC Participants and AIFC bodies until January 1, 2066
- Exemption from land tax and property tax of the two aforesaid categories

Legal entities and individuals that are not considered AIFC Participants may be exempt from tax on certain categories of income such as dividends and capital gains received in connection with the ownership of shares or participating interest of AIFC Participants, as well as dividends and capital gains received from securities listed at the AIFC.

1. In 2018 the size of 1 MCI is set at 2,405 Kazakhstan tenge under Law of the Republic of Kazakhstan “On the Republican Budget for 2018–2020,” dated November 30, 2017, No. 113-VI. Due to the fluctuations of the exchange rate, this indicator may be within US$7 and US$6.30 during 2018; or average 1 MCI equals approximately US$6.70.


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