

IV Investors' Voice

The American Chamber of Commerce in Kazakhstan

Kazakhstan's Leading International Business Association



February 2020

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#87

FINANCE, TAX, LAW UNDERPINNING THE INVESTMENT CLIMATE



- ▶ Green Finance: The Kazakhstan Approach
- ▶ Double Taxation and Tax Treaties
- ▶ Kazakhstan's Tightening Immigration Laws
- ▶ Insolvency Proceedings Simplified
- ▶ Transfer Pricing: Trends/ Reporting Rules
- ▶ The Leasing Option
- ▶ Directors' and Officers' Liability
- ▶ Recent Trends in Tax Administration
- ▶ Difficult Digits: Tax Challenges in the Digital Economy



visor KAZAKHSTAN

WHO WE ARE?

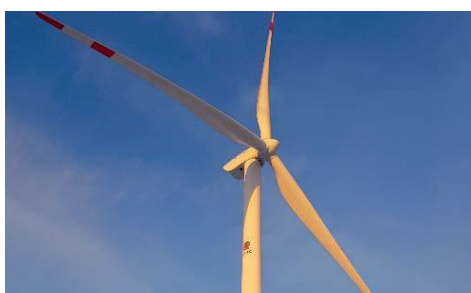
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In the renewable energy sector in Kazakhstan.

CUMULATIVE FULL SOCIAL AND ECONOMIC CONTRIBUTION OF COCA-COLA TO KAZAKHSTAN IN 2013-2017

Coca-Cola System in Kazakhstan has initiated an independent study together with a widely known international company "E&Y". The main objective of this study was to assess the contribution of the Coca-Cola System to the sustainable development of Kazakhstan between 2013 and 2017. The Coca-Cola System in Kazakhstan consists of The Coca-Cola Company (Coca-Cola CIS Services Ltd.) and Coca-Cola Icecek (JV Coca-Cola Almaty Bottlers LLP), which produces, markets and sells non-alcoholic beverages in Kazakhstan. The report analyzes contribution to all three aspects of sustainable development: economic, environmental and social.



₸ 300
bln

total contribution to Gross Domestic Product of Kazakhstan



₸ 81
bln

paid taxes and other payments in the government's budget



9 226
people

were provided with jobs in various sectors of economy, directly and indirectly*



₸ 74
bln

was the contribution to the labor income of the population of the Republic of Kazakhstan



1.6
bln liters

of water was returned to the nature through implementation of projects on rehabilitation of water supply. It is 3 times higher than the volume of water required for production of beverages by the Company in 2017



1 %

of the cost of each bottle of the Company's products bought by our consumers is invested in environmental or social initiatives



>\$4.5
mln

was invested in implementation of social projects

(*) Contribution to employment is shown for 2017

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EDITOR'S NOTE



Dear Readers,

The first Issue of *Investors' Voice* each year is often devoted to an overview of changes to Kazakhstan's Tax Code, which is subject to frequent modification, and our writers' recommendations to improve the Code for clarity, consistency, and conformity to international standards. The February 2020 Issue offers sixteen articles on tax and broader financial issues from the perspective of financial and legal experts at leading AmCham financial services and law firms. The range of commentary is very broad, yet targeted to both old and new financial and tax issues. Some of these are among the most intractable problems facing investors, some demonstrate the Government's efforts to address and resolve issues, and some examine entirely new issues emerging as Kazakhstan's economy evolves.

Our largest block of contributors is, as might be expected, from the Big Four audit firms – KPMG, Ernst & Young (EY), PricewaterhouseCoopers, and Deloitte – which among them possess an unrivaled critical mass of knowledge about priority financial issues. Alongside the Big Four are the law firms, which handle tax and tax-related investor disputes with the Government on a regular basis.

Taxation is a very important element in creating a positive investment climate. This does not mean that investors do not want to pay taxes, for taxation and financial challenges are an integral and acceptable part of business, but investors want to deal with a reliable and manageable Tax Code that does not lead into the courts when a difference of opinion arises over interpretation or implementation.

Many of the articles and issues in this month's *Investors' Voice* will be presented by their authors to the Prime Minister at the February meeting of the *Council to Improve the Investment Climate*, the dialogue platform created ten years ago exclusively for AmCham and its members. Also attending this Council meeting will be the Ministers of Finance, National Economy, Trade and Integration, and Justice. AmCham is fortunate to be able to speak directly to the most senior policy-makers whose decisions can resolve challenges affecting both companies and Kazakhstan's investment climate as a whole.

Topics covered by this month's articles include: green finance, international taxation, double taxation/ tax treaties, transfer pricing, bankruptcy, audits, leasing, corporate liability, digitalization, the Astana Financial Center, and the tightening regime for work visas. This is an ambitious list containing something for everyone. We hope you will find it informative and helpful in handling policy and daily challenges as they arise.

Doris Bradbury
Editor-in-Chief, *Investors' Voice*

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Rashid Gaissin graduated from Kazakh State Law University with honors, after which he received a Master's degree in petroleum law and politics from the University of Dundee (1999). He qualified as a solicitor of England and Wales, trained at the BPP law school in London, and articulated for two years at the Norton Rose London office.



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GREEN FINANCE: INTERNATIONAL PRACTICE AND THE KAZAKHSTAN APPROACH

by Rashid Gaissin, Co-Managing Partner, Integrates Law Firm
Zarina Syzdykova, Senior Associate, Integrates Law Firm

Over the last few decades, the excessive exploitation of our planet has done significant damage at an alarming rate. Mankind faces many challenges such as climate change, depletion of natural resources, waste disposal, global warming, water pollution, depletion of the ozone layer, and many other environmental concerns. At this point, the way to handle these environmental problems is to take steps towards a sustainable future at a global level: a commitment to social well-being, environmental protection, and economic development.

The Green Finance Concept

It is crucial to understand that maintaining sustainable development and creating a green economy require significant resources, both human and financial. The concept of green finance was developed with this objective. Green finance is an engine for development and support of eco-friendly projects that provide environmental benefits through new financial tools such as green bonds, green banks, carbon market instruments, green central banking, financial technologies, and green funds.



In 2010, 194 countries that are parties to the *United Nations Framework Convention on Climate Change (UNFCCC)* created the *Green Climate Fund (GCF)*, a global fund to assist developing countries in addressing the major environmental problems and their negative impact. The main goal of GCF is to provide funding for efforts to mitigate and adapt to climate change.

The initial resource mobilization of GCF was launched in 2014, gathering pledges worth USD10.3 billion. Funds came not only from developed countries, but also from developing countries and one city (Paris). Beginning in 2020, advanced economies came to an agreement to jointly contribute USD100 billion per year.

Green Bonds and Loans: International Experience

As a move towards green finance, the first green bonds were issued in 2007 by the European Investment Bank. The market did not develop rapidly from the beginning and its total volume was USD3 billion until 2013. By 2017, with increasing interest in environmental issues, the volume of the market reached USD155 billion. The goal set for 2020 is to increase the market volume up to USD1 trillion.

Green bonds issuance for 2019 reached USD100 billion in late June. In the last week of August it was over USD150 billion, and as of 22 October 2019 issuance of green bonds passed USD200 billion.

In accordance with the latest climate bonds data presented by *Climate Bonds*, the five largest green bonds/loans issuers as of October 2019 were the Dutch State Treasury Agency, KfW, Industrial Bank Co.Ltd., Republic of France, and the Noor Energy 1 (ACWA Power, Silk Road Fund). The same source provides the ranking of the largest green bond-issuing countries for 2019: the US occupying first place, followed by France, China, Germany, the Netherlands, Sweden, Spain, Japan, Italy, and Canada.

The successful issuance of green bonds resulted in rapid growth of global interest in green loans. Some EU countries, the US, Japan, China and several developed countries provide green loans through special modernization funds at a rate of 1% to 6% to enterprises switching to the best available technologies, where the interest on loans is partially or fully covered.

AIFC as the Basic Platform for Green Finance

In Kazakhstan green finance is one of the priority areas for the *Astana International Financial Centre (AIFC)*. The AIFC *Green Finance Center (GFC)* was established within the AIFC. The GFC develops the green bond market through attracting foreign investment in Kazakhstan's environmental projects and provides initial assistance on preparations for the issuance of green bonds on the *Astana International Exchange (AIX)* – the first international exchange in Central Asia providing global investor access to this region. The AIX has already adopted *Rules for the Issuance and Circulation of Green Bonds*, developed on the basis of the *Green Bonds Principles* of the *International Capital Market Association* and the provisions of the *Climate Bonds Initiative*.

As part of the development of the AIFC green finance system, the AIFC has also adopted the *Concept on Introduction and Development of Tools and Principles of Green Financing*, as well as the *AIFC Regional Leadership Strategy* in the field of green finance.

No green bond has been issued in Kazakhstan so far, but the GFC is actively involved in the process of the first issuance of green bonds in the country. According to AIFC Governor Kairat Kelimbetov, the AIFC is closely cooperating with the government and quasi-state authorities in order to ensure the first issuance of green bonds on the AIX. Governor Kelimbetov has also stated that as a part of the Islamic finance market development, the AIFC is engaged in issuing green Islamic securities, green *sukuk*. Together with the municipal governments of Almaty and Nur-Sultan, the AIFC is currently pushing for formation of a pool of green projects.

In February 2019, the Eurasian Development Bank and the AIFC signed a Memorandum of Understanding. In accordance with the MOU, the parties will work together to promote and develop the securities market and green finance instruments in the Eurasian region, in particular, opportunities for issuance of green bonds to finance projects in Kazakhstan and Russia.

The Green Economy: Legislative Regulation in Kazakhstan

In May 2013, Kazakhstan adopted the *Concept of the Draft Law* aimed at the transition of Kazakhstan to a green economy. To develop a green economy further, the new Environmental Code was adopted at the end of 2019. There is also a dossier on the draft Law of Kazakhstan 'On Amendments to some legislative acts of the Republic of Kazakhstan on environmental protection' (**Draft Law**), introducing *green finance* and *green projects*.

Green Investment in Kazakhstan: Opportunities

Some experts say that industrial projects and civil engineering, utilities and the public sector could be attractive areas for green investment in Kazakhstan. To increase the attractiveness of green bonds among investors, the legislation provides various tax breaks, for example, exemption from income tax on the payment of coupons. Sovereign issues are structured in

such a way that instead of paying a coupon, holders of green bonds receive a tax credit or subsidy. These legislative acts will hopefully serve as an engine to attract more direct private investment in green projects and loans.

In addition, the Draft Law suggests that priority should be given to purchasing goods produced from waste or secondary raw materials and using renewable energy that relies on green technologies to produce of goods, works, and services. As in some EU countries, Kazakhstan could also develop national programs to increase the share of 'green' public procurement.

Expert Opinion

There are already green provisions available in Kazakhstani and AIFC legislation. Kazakhstan has many opportunities to become the main regional platform for financing environmentally friendly projects both in Kazakhstan itself and in neighboring countries. Taking into consideration that Kazakhstan has no experience with green finance, it is difficult to say that the transition to a green economy and promotion of green finance will be fully adopted and will function smoothly. It will be clearer whether green finance will receive a boost for further development only after the first issue of green bonds, which may happen in the near future.



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DOING BUSINESS IN THE ASTANA INTERNATIONAL FINANCIAL CENTRE (AIFC)

by Altynay Tanasheva, Legal Adviser
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With Brexit and the trade wars between the US, China, and the EU dominating headlines, globalization and free trade seem out of favor. One region, however, is bucking the trend. China's ambitious *Belt and Road Initiative (BRI)* aims to further integrate the infrastructure and economies of Eurasia, and Kazakhstan is central to these ambitions as it lies on the doorstep of the European Union and the Eurasian Economic Union (consisting of Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia).

During his time in office, President Nazarbayev instituted the *2050 Kazakhstan Strategy*, in which Kazakhstan seeks to become one of the top 30 developed countries in the world by 2050. The plan recognizes the need to diversify the country's economy beyond the oil and gas sector, and so in 2015, he issued a decree that established the *Astana International Financial Centre (AIFC)*.

The AIFC is a special zone to promote foreign direct investment, develop local capital markets, and facilitate their integration into the international markets. The AIFC focuses on developing local financial technologies, green finance, and Islamic finance. Additionally, the *Astana International Exchange (AIX)* was launched in November 2017¹. AIX is a member of the AIFC and works to promote development of the securities market in Kazakhstan, thus creating a platform for the country's privatization efforts, and to facilitate Kazakhstan's implementation of the BRI.

In this article, we will consider the AIFC legal and regulatory framework to analyze how it promotes foreign investment and addresses some of the challenges foreign investors face in Kazakhstan's legal and tax systems. We will also look at key similarities and differences between the AIFC and the *Dubai International Financial Centre (DIFC)* – a free zone jurisdiction established in 2002 with a similar goal of attracting investment to the UAE.

Challenges for foreign investors in Kazakhstan's legal and fiscal systems

Kazakhstan's legal system is based on a civil code, and its corporate law system was inherited from the Soviet Union. Despite many legislative developments since independence, foreign investors still have many concerns about Kazakhstan's legal and fiscal systems, which include inconsistent application of the law and regulations that stifle establishment of a free market.

Doing Business in the AIFC The AIFC legal system

The AIFC acting law comprises the following:

- (1) The Constitution of Kazakhstan, the statute on the Astana International Financial Centre dated 7 December 2015, as amended (*AIFC Statute*);
- (2) The AIFC Acts adopted by the AIFC governing bodies (*AIFC Bodies*), which "may be based on the principles, legislation, and precedents of the law of England and Wales and/or the standards of leading international financial centers"; and
- (3) The effective legislation of Kazakhstan on matters not covered by the *AIFC Statute* and *AIFC Acts*.

From a legal perspective, this is one of the most interesting aspects of the AIFC. It is clear from regulations (but not from the publicity surrounding the AIFC) that English law does not apply to the AIFC and its Participants directly. In order for English law to apply in the AIFC, the AIFC Bodies must enact an AIFC Act that adopts a principle or a provision of English law, or any other law. Also, court cases are not listed as a source of the Acting Law of the AIFC, and it is uncertain whether English courts' decisions will be taken into account by the AIFC courts.

Furthermore, any matters not concerning relations between the Participants, the AIFC Bodies or their employees are governed by the national law of Kazakhstan. For instance, the AIFC tax regime is governed by Kazakhstan's Tax Code (except for the provisions specified by the AIFC Statute itself, which will be discussed further on). Therefore, whenever an AIFC Participant has a dispute with the tax authorities, national tax legislation applies. Appeals against the tax authorities' actions must be brought forth in the national court system, which disincentivizes foreign participation in the AIFC.

With respect to "*investment disputes*," a proposed amendment to the *Kazakhstan Entrepreneurial Code* would allow an investor to include an opt-in provision in the relevant investment contract so that any "investment disputes" under the contract are subject to the jurisdiction of the AIFC Court or the AIFC arbitration center, where there is no other jurisdictional connection with the AIFC. An "investment dispute" is defined as any dispute stemming from the contractual obligations between an investor (including a major investor) and government authorities in connection with the investment activities of the investor.

It is not yet clear if the amendments will be enacted into law. If so, the existing definition of an "investment dispute" would need to conform to international law by removing the reference to "contractual obligations" and eliminating the mandatory contractual choice of jurisdiction. This will be an effective means of protecting investors' rights and interests.

1 AIX's shareholders include the AFSA, Goldman Sachs International, the Shanghai Stock Exchange, the Silk Road Fund (indirectly, via China-Kazakhstan Production Capacity Cooperation Fund Co., Ltd.) and NASDAQ, which also provides AIX's trading platform.

Ownership restrictions and permitted activities

There are no restrictions on foreign ownership of entities registered in the AIFC. Legal entities registered according to the AIFC acting law, as well as other AIFC-credited legal entities (*Participants*), may conduct *Regulated Activities*, *Ancillary Services*, or other *Permitted Activities*.

The *Regulated Activities* include financial services such as Islamic banking services, reinsurance and insurance broker services, and other services approved by the *Astana Financial Services Authority (AFSA)* following approval by the State Revenues Authority and the Ministry of Economy. Companies carrying out *Regulated Activities* (*Regulated Activities Participants*) must obtain a license from the AFSA in addition to their registration as *Participants*. Brokers holding a national license must have their license recognized by AFSA.

Ancillary Services include legal, auditing, accounting, consulting services provided to AIFC Bodies, and *Regulated Activities Participants*. Such *Participants* (*Ancillary Services Participants*) do not need a license or specific authorization – AIFC registration is sufficient.

Other permitted activities are those activities that do not fall into the list of *Regulated Activities* or *Ancillary Services*. They do not need to obtain a license or be authorized.



AIFC tax regime

There are four types of exemptions available to the AIFC *Participants* depending on their activities as shown on the following chart:

Type of exemption Participants' category	Corporate income tax (CIT) until 1 January 2066	Property and land tax on the facilities located within the AIFC ⁵	Employment personal income tax until 1 January 2066 ⁶	Personal and corporate income tax on capital gains from selling securities or participation interests in the capital of <i>Participants</i> , dividends, and premium on securities or participation interests of <i>Participants</i>
Regulated Activities Participants	Yes	Yes	Yes	Yes
Ancillary Services Participants	Yes, but only concerning services provided to <i>Regulated Activities Participants</i> .	Yes	Yes	Yes
Participants carrying out other types of activities (including oil and gas companies)	No	No	No	Yes

⁵ The AIFC Statute does not specify the duration of this exemption.

⁶ Interestingly, the AIFC Statute does not refer to exemptions from other personal taxes and mandatory payments, such as social tax, social payments, mandatory pension fund payments and mandatory medical insurance payments, which in total account for around 20-25% of the employee's salary.

The relevant regulations require exemption-eligible Participants to implement split tax accounting and account separately for (1) *Exempt Services* and (2) *Services that are not classified as Exempt Services*.

Contracting in foreign currencies

Kazakhstan has been tightening its national currency control regulations for quite some time now as part of its “de-dollarization” initiatives. The AIFC Statute provides that Participants are subject to the national currency control rules, with a number of exemptions introduced in the AIFC Statute in 2019 and the AIFC Act. These exemptions are as follows:

1. Participants are allowed to express and carry out their contracts and transactions in the currency of the party's choice. The general rule applicable nationwide is that expressing and carrying out transactions in a foreign currency between residents of Kazakhstan (which currently includes Kazakhstan legal entities, citizens, and branches/representative offices of foreign companies classified as having a permanent establishment in Kazakhstan) are prohibited;
2. Participants are not required to register their foreign currency contracts, while the general rule is that any currency transaction exceeding \$500,000 in value requires registration with Kazakhstani regulatory authorities;
3. There are no restrictions on purchase of foreign currency. For Kazakhstani residents, the \$100,000 limit applies to a purchase of any foreign currency per day; and
4. Instead of the National Bank (Kazakhstan's central bank), all currency control functions are vested in the AFSA.



It is not yet known whether the limited exemptions above, alongside other benefits of doing business in the AIFC will provide a sufficient incentive for foreign investors to choose the AIFC over other jurisdictions.

Awards of the AIFC Courts and Arbitration Center

The procedure and conditions of enforcement of AIFC Court judgments are governed by national legislation. The AIFC Court appoints an “*enforcement judge*” whose role is to help streamline enforcement procedures.



The AIFC International Arbitration Court, however, operates under a separate set of rules based on the standards of several world-class institutions including those of the illustrious *London Court of International Arbitration (LCIA)*.

Awards of the AIFC International Arbitration Court are not automatically enforceable. In order to enforce an arbitration award, a party to a dispute can either: (1) enforce the award through the national system of enforcement, or (2) obtain a ratification of the award by the AIFC Court. Given the concerns identified with respect to the national legislation on the enforcement of arbitration awards, the second option seems more favorable to foreign investors.

It is of note that the AIFC has recently introduced a completely digitalized system (with allegedly no hard copy filings required at all) for processing AIFC Courts and arbitration center cases called “*eJustice*”. The system is a positive development and is expected to streamline the procedural aspects of dispute resolution at the AIFC Court and arbitration center.

AIFC vs. DIFC – Key Similarities and Differences

The AIFC is not unique and, in fact, has much in common with several financial services “*free zones*” in the Middle East, such as the Abu Dhabi Global Market and the Dubai International Financial Center (DIFC). The DIFC is often held up as the paradigm for such “*free zones*” and it is helpful to compare the AIFC with its existing counterparts.

AIFC vs. DIFC

Key Similarities and Differences

	AIFC	DIFC
Legal system	AIFC Statute and AIFC Acts. The AIFC Bodies may adopt provisions of foreign law. Kazakhstan's national legislation applies to matters not covered by AIFC laws.	Common law system based on English law. DIFC laws apply in all civil matters.
Foreign ownership restrictions	None	None
Permitted activities	No restrictions, but main tax exemptions only apply to Regulated Activities Participants and, partially, to Ancillary Services Participants.	Very few restrictions, but different licensing requirements apply. Financial businesses (e.g. investment banking) are subject to more onerous regulatory requirements than non-financial businesses (e.g. retail).
Activities outside of the AIFC/DIFC	No restrictions provided the participant carries out principle business in the AIFC. No tax exemption for activities outside of the AIFC.	Not permitted
Tax regime	Regulated Activities Participants and Ancillary Services Participants (with restrictions) are exempt from corporate income tax until 1 January 2066.	DIFC registered entities benefit from a 40-year guarantee of zero taxes on corporate income and profits.
Immigration requirements	Non-Kazakhstani nationals working for Participants and members of their families are eligible to receive a five-year entry visa on arrival. Work permits are not required for employees of the Participants and AIFC Bodies. Non-Kazakhstan nationals can also apply for an "investor visa" and a tax residency with an annual payment of approximately US\$45,000 to the budget (effective upon the introduction of relevant changes to the Tax Code, which are still in the being drafted).	DIFC work permits and residency visas are required for employees of DIFC registered entities.
Foreign currency controls	It is not yet clear whether Participants will be exempt from national currency controls.	None
Own Courts and arbitration center	Yes, any company can opt into a jurisdiction (appeals against the Court of First Instance's decisions go to the AIFC Court of Appeals and not to local courts).	Yes, any company can opt into jurisdiction (appeals against the DIFC Court's decisions go to the DIFC Court of Appeals and not to local courts).
Enforcement of Courts' awards	Governed by national legislation. It is not clear how enforcement will work in practice. (i) Kazakhstan is a party to the Chisinau Convention, the Kiev Convention, and the Moscow Agreement, which provides for the mutual recognition and enforcement of judgments handed down by courts in CIS countries. (ii) Kazakhstan has bilateral legal assistance treaties with a range of countries, e.g., the People's Republic of China and the United Arab Emirates.	Governed by DIFC law. (i) In Dubai - enforced through the Dubai Courts. (ii) In the other Emirates - either through a Dubai execution judge or directly by the local "competent entity" within the UAE. (iii) In the region - under the GCC Convention and throughout the Arab world under the Riyadh Convention. (iv) Other countries*: according to the domestic laws governing the recognition and enforcement of foreign judgments.* Since January 2020, judgments rendered by the DIFC Courts are enforceable in the courts of India without a re-examination of the merits.
Enforcement of arbitral awards	Two options (i) through national courts; (ii) through the AIFC Courts. Enforcement is governed by national legislation.	DIFC Courts have the power to recognize any arbitral awards as well as enforce them onshore in the UAE.
Conduit jurisdiction for enforcement onshore	National legislation applies to enforcement.	DIFC Courts have been used as a conduit jurisdiction in the past but this will be more challenging in light of recent decisions.

Conclusion

The AIFC is no panacea for the concerns of foreign investors seeking to invest in Kazakhstan. It is, however, a positive step in the right direction – one with a lot of promise.

One of the issues typically faced by new stock exchanges is attracting business. The AIX, however, has been steadily working on solving this problem both by developing new technologies for ease of access to market data (with the *AIX Connect* application launched in July 2019) and, most importantly, by demonstrating the success of the pioneers listed on the AIX.

So far, nearly 50 companies have been listed on AIX, with around ten of them offering shares or notes. These include *Kazatomprom* (the national nuclear power company, which had an IPO on AIX in 2018 and a subsequent SPO both on AIX and the London Stock Exchange in September 2019); *Halyk Savings Bank of Kazakhstan* offering GDR since September 2019; and *KazakhstanTemirZholy* (the national railroad company) offering notes since June 2019.

While the AIFC is often compared with the DIFC, comparisons are difficult because the national legal systems and the corporate and tax regimes of Kazakhstan and the UAE are very different. For example, the DIFC is an independent jurisdiction within the UAE with a legal system based on the English common law system. The DIFC has no foreign ownership restrictions whereas there are such restrictions when incorporating a company outside of the free zones in the UAE. This is one of the key benefits of incorporating in a free zone, such as the DIFC, in the UAE.

The DIFC stock exchange has played a limited role in DIFC's success, whereas the AIFC's primary purpose is to provide a platform for the privatization of large state-owned companies. So far, the disclosure and regulatory requirements applicable to issuers on the AIX seem to be rather reasonable for international companies. Moreover, in May 2019, the AIX streamlined its Business Rules making its listing requirements broadly equivalent to those of the UK Listing Authority and the requirements of most European Union jurisdictions.

Interestingly, Nasdaq Dubai and the AIX signed an agreement last year to establish a close operational relationship between their central securities depositories (CSDs), aiming to make it easier to do business in both markets simultaneously. It is to be seen how the agreement will be implemented in practice. Finally, there are no currency controls in the UAE, whereas strict currency control restrictions remain in Kazakhstan, and the small carve-outs from the national regime do not seem to represent a sufficient incentive for companies to do business there.

Hopefully, the additional planned SPOs and IPOs on AIX will ensure that the legal system at the AIFC develops quickly and the ambiguities in the regulations are clarified. In our view, foreign investors will be particularly interested in the stability of the legal system and the ease of enforcing arbitration awards. In particular, the advantages include the applicability of exemptions to the currency control restrictions and clarity around the tax regulations and their enforcement. At this point, it is yet to be seen whether the AIFC will succeed in positioning itself as the “*Dubai of Central Asia*,” a global financial hub connecting Western Europe with Eastern Asia.



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RECENT TRENDS IN INTERNATIONAL TAXATION

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At present, more than 130 countries including Kazakhstan have participated in the OECD's G20 *Base Erosion and Profit Shifting Project (BEPS Project)*. By taking part, member countries collaborate to implement and develop their BEPS actions on an equal footing and in parallel with OECD and G20 members.

The result is a paradigm shift towards transparency, information exchange, and clear and fair taxation. National economies today are integrating to deal with tax avoidance and tax abuse and, given the magnitude of changes, Kazakhstani companies and foreign investors cannot carry on with 'business as usual'. Firms and investors must adopt tax approaches in line with global trends.

Since 2017 – when Kazakhstan joined the BEPS Project – Kazakhstan's tax legislation has evolved to reflect these global changes in international taxation. The article below focuses on issues that have been widely discussed in the global tax community and are progressively becoming part of Kazakhstan's tax routine.

Controlled Foreign Companies

In 2018, Kazakh tax legislation introduced new controlled foreign company (CFC) regulations. Accordingly, a Kazakh tax resident owning a CFC that meets certain criteria was required to include the financial profits of that CFC in his/her taxable income. A year later, these CFC rules were amended to exclude foreign companies registered in countries with which Kazakhstan has a tax treaty. However, these amendments were in force only from 1 January 2018 to 1 January 2020.

Although the CFC rules followed OECD guidelines, taxpayers faced difficulties in their application because they lacked clarity on some issues and required further development. Therefore, Kazakhstan's Parliament is currently reviewing a draft legislative act that will introduce changes to tax law, including the CFC rules. The changes propose to clarify taxation of CFC profits and to retain the provision that CFCs registered in countries with which Kazakhstan has a tax treaty are excluded from CFC taxation if the official corporate income tax rate in that treaty-partner exceeds 75% of Kazakhstan's corporate income tax rate (i.e. more than 15%).



Country-by-Country Reporting

In Kazakhstan, three-tiered reporting has been legally binding since 1 January 2018, including notification of membership in multinational enterprises (*Notification*), a Country-by-Country report (*CbC Report*), Local and Master files. The law made significant changes to local transfer pricing reporting procedures for multinational enterprises (*MNEs*) operating in Kazakhstan by introducing requirements for MNEs to file *CbC Reports*, *Notification*, and *Local and Master files*.

One of the documents, a CbC report, should be submitted if group revenue exceeds 750 mln Euros. A CbC report can be submitted by an ultimate parent company of a group in Kazakhstan, or by a MNE member firm authorized by an ultimate parent to file the report. The first reporting year for CbC reporting is 2016, and for Local File and Master files, 2019.

Beneficial Owner of Income

There was a common approach that unjustified application of treaty benefits primarily refers to benefits on passive income (dividends, interest, royalties). As such, a number of tax treaties requires that an entity claiming tax treaty benefits should be the beneficial owner of any income (dividends, interest, royalties). Kazakhstani tax law also stipulates that non-resident recipients of passive income from Kazakhstan sources are obliged to provide a rationale for why they are the beneficial owner of this income.

Since 1 January 2018 this requirement has been extended to other types of income, including business profits and leasing payments. However, it is expected that, starting from this year (2020), the beneficial owner requirement will apply only to transactions with related parties in accordance with the proposed changes to tax legislation.

Nonetheless, current tax law does not specify the documentation that the beneficial owner should provide to its Kazakh counterpart in order to support its status, or any confirmation procedures required to prove beneficial ownership status. Since the burden of proof of beneficial owner status is on Kazakhstani tax agents, they should be ready to provide necessary documentation if the Kazakhstan tax authorities challenge beneficial owner status. This creates additional complexity for Kazakhstani tax agents working with nonresidents.

Kazakhstan's tax authorities might undertake to refer to OECD recommendations and the experience of neighboring countries. Specifically, they might refer to Russian tax authorities, who have issued clarification letters with guidance on defining the beneficial owner of income, including reference to documents and other supporting information to justify nonresidents' beneficial owner status (financial statements, tax returns, lists of employees, etc.).

Multilateral Instrument

As for treaty abuse practices, the network of current tax treaties appeared to be ineffective. New challenges required changes and as such, the OECD developed a multifunctional “tool” to introduce these changes into existing bilateral tax treaties. The *Multilateral Instrument (MLI)* is a set of provisions – mandatory (“minimum standard”) and optional – that amend tax treaties in a synchronized and efficient manner. For a tax treaty to be modified by the MLI, both contracting states must be signatories to the MLI and must indicate that their tax treaty is a ‘*Covered Tax Agreement*’ (CTA).

The MLI ‘minimum standard’ is obligatory for every state that agrees to implement the MLI. The objective of the minimum standard is to prevent treaty abuse and improve dispute resolution procedures. The MLI stipulates two tests to determine whether an entity is eligible to claim tax treaty benefits: the *Principle Purpose Test (PPT)* and the *Simplified Limitation on Benefits Test (SLOB)*.

While the PPT focuses on the essence of the arrangement/transaction, SLOB provides a specific list of criteria for an entity applying for benefits under a CTA. To pass the PPT, the claiming party must provide a rationale showing that the primary purpose for using the CTA in the transaction is not to acquire CTA benefits. The SLOB test, when compared with the PPT, has considerably stricter criteria and the potential to hinder many cross-border arrangements.

The PPT is mandatory for all MLI signatories, while the SLOB is optional. The good news is that SLOB will apply to a tax treaty if both jurisdictions choose to apply it. As of today, there are 14 countries that have opted for the SLOB, including Kazakhstan, Armenia and Russia. The overwhelming majority of European countries have chosen PPT alone (minimum standards), limiting their exposure to the MLI.

There are also optional provisions to prevent treaty-shopping arrangements with respect to different categories of income, including dividends and capital gains. Additionally, the MLI provides a bundle of changes for creating and operating permanent establishments.

Kazakhstan has published its official reservations and MLI notifications, and in so doing confirmed its intention to implement not only the minimum standard, but a number of optional provisions. As of today, the MLI legislative act to be ratified in Kazakhstan is under review in the Senate. It is reasonable to assume that the MLI will be ratified in Kazakhstan in 2020 and will enter into effect in 2021.

Tax Treaty with Cyprus – New Opportunities

The position of Cyprus for tax purposes in Kazakhstan has taken a 180-degree turn in recent years. Although Cyprus was once regarded as a tax haven jurisdiction, it has now been removed from the “*black list*” and has become a tax treaty partner with Kazakhstan.

Kazakhstan ratified a tax treaty with Cyprus on 30 December 2019, and on 17 January 2020 the treaty came into force. For residents of Kazakhstan and Cyprus, the treaty benefits will be available for taxes on derived income beginning 1 January 2021.



Cyprus is known as a country providing a wide range of tax benefits for foreign investors. In comparison to countries in Western Europe, which also have business-friendly tax regimes, Cyprus has many comparative advantages - low setup and operational costs, as well as simple administrative procedures. In addition to these benefits, investors from Kazakhstan can now claim lower tax rates on dividends, interest and royalties payable from Kazakhstan to Cyprus as stipulated in the tax treaty, as well as exemption for active income (income from provision of services).

Conclusion

The modification of Kazakhstan’s tax legislation may have an impact on the tax strategies of Kazakhstani companies and foreign companies investing in Kazakhstan, and therefore the above changes should be carefully considered when structuring inbound or outbound investments.



THE EFFECTIVE DOUBLE TAXATION OF NON-RESIDENTS - THE DEVIL IN THE DETAIL OF ARTICLE 666

by Anthony Mahon

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One of the most fundamental principles of international taxation and the core function of Double Tax Treaties by nation states including Kazakhstan is to set out the bases upon which tax income should be determined. Tax treaties are intended to provide clarity of taxation and taxing rights for both taxpayers and the jurisdictions in which they reside and operate.

Kazakhstan constantly seeks to improve the attractiveness of its investment climate and one of the key factors any investor looks to is the predictability and transparency of a country's taxation regime, as well as the degree to which its tax regime applies, and is aligned with, internationally accepted principles of taxation. Running contrary to Kazakhstan's stated desire to create a favorable investment climate, a number of current Kazakhstan taxation initiatives have the completely opposite effect – creating unnecessary taxation risk, unfairly imposing incremental taxation costs of doing business in Kazakhstan, and contradicting the actual purpose of the Double Taxation Treaties to which Kazakhstan is a counterparty.

Local tax administration procedures and the tax authorities' position in interpreting legislative provisions in Kazakhstan give rise to major divergences from generally accepted international taxation principles. This issue acutely impacts the country's residents engaging non-resident service providers and the counterparties upon whom they rely to conduct their business.



Tax assessments are currently being levied upon residents with the objective of compelling these taxpayers to withhold taxes from payments to non-residents when, in line with generally accepted principles of taxation (and in line with the double tax treaties to which it is party) Kazakhstan should have no real right of taxation. These withheld taxes may only be recovered via refund application by the non-resident – in reality, an almost impossible task to undertake successfully with the Kazakhstan tax authorities.

Insofar as a tax refund should be due in line with the relevant double tax treaty, but no refund is obtained, then these taxes cannot be credited against the non-resident's "home country" tax liabilities. The end result is thus double taxation of the income in question.



The most contentious tax code provisions presently giving rise to double taxation of non-residents (as well as the imposition of tax assessments upon residents who have not withheld tax and are therefore deemed by the Kazakhstan tax authorities to be in breach of their tax obligations) relates to domestic procedures regulating a full tax exemption of a non-resident's income under the effective double tax treaty.

This procedure is stipulated by Article 666 of the Tax Code and contains multiple contradictory elements that in practice result in burdensome administration for domestic businesses, as well as actual double taxation of non-residents. This is precisely the outcome that a double taxation treaty is intended to avoid imposing on non-residents.

As a general rule, the Tax Code places an obligation upon Kazakhstan counterparties paying income to non-resident contractors ("tax agents"), to withhold and remit the tax from such payments to the country's budget. However, most double tax treaties fully exempt a non-resident's business income from taxation in Kazakhstan if this income is not attributable to a non-resident's "permanent establishment". In basic terms, this refers to a place of business from which operations are conducted in Kazakhstan.

Article 666 states that if a permanent establishment is created by a non-resident (within the framework of single or multiple connected projects) the tax agent is prohibited from applying the full tax exemption enshrined in the relevant double tax treaty.

In the table on the next page, we compare the provision in effect before and after 1 January 2018.

Before 2018	As of 2018
Article 212, p.4 4. If a nonresident renders services or performs work in the territory of Kazakhstan within the deadlines not leading to creation of a permanent establishment in Kazakhstan, for the purpose of applying the provisions of an international agreement, a non-resident legal person, along with the document indicated in paragraph 3 of this Article, shall submit to a tax agent the notarized copies of the foundation documents or extracts from the trade register (register of shareholders or other similar document provided for by the legislation of the state where the non-resident is registered) indicating the founders (participants) and majority shareholders of the non-resident legal person. <u>A tax agent on the basis of the submitted documents and an agreement (contract) for rendering services or performing work shall determine the fact of creation by a non-resident of a permanent establishment as a result of rendering services or performing work within the framework of such agreement (contract) and related projects, if any.</u> In the identification of the formation by a non-resident in Kazakhstan of a permanent establishment, the tax agent shall not have the right to apply the provisions of an international agreement in part of the exemption of the non-residents' income in Kazakhstan.	Article 666, p.2 2. If a non-resident receives income from providing services or performing work within the framework of one or related projects, for the purposes of this Article <u>the tax agent shall establish the fact of creation by a non-resident of a permanent establishment, including on the basis of an agreement (contract) for rendering services or performing work, and also on the basis of the documents specified in paragraph 5 of this Article.</u> In the identification of the formation by a non-resident in Kazakhstan of a permanent establishment, the tax agent shall have no right to apply the provisions of an international treaty in part of the exemption of the non-residents' income in Kazakhstan.

Article 666 of the Tax Code stipulates that tax agents are responsible for identifying and monitoring the creation and existence of any permanent establishment by non-resident counterparties. This provision obliges tax agents to keep track of non-residents' activities that go beyond the direct arrangements between non-residents and their local "tax agents", and this obligation extends to any "connected projects" conducted by the relevant non-residents.

Connected projects under the Tax Code include *inter-related* and *inter-dependent* contracts where:

- *inter-related contracts* are contracts under which the non-resident or its related party renders identical or similar services to the same tax agent or its related party; and the period of time between the date of completing the services under one contract and the date of another contract conclusion does not exceed twelve sequential months;
- *inter-dependent contracts* are contracts concluded between a non-resident or its related party and a tax agent or its related party, where failure to fulfill obligations under one contract has an impact upon fulfilling liability by the non-resident under the other.

Therefore, the obligation to consider connected projects imposes an unrealistic administrative burden upon tax agents (i) to assess any contracts concluded among the non-resident's and tax agent's group of companies and (ii) to analyze whether the services rendered under different contracts are similar or identical.

Neither Kazakhstan legislation, nor local tax practice sets out any definitive guidance on the concept of similar or identical services. This creates additional scope for ambiguity, subjective judgement and resultant challenges of the authorities in interpreting these provisions. At that, in our view the major ambiguity relates to situations where a non-resident delivering certain services to a Kazakhstani tax agent has already formed a permanent establishment (e.g. Kazakhstan-based branch) in the past and this permanent establishment in fact has no relation to the non-resident's current activity.

The crucial question is: whether a tax agent should be allowed to apply the double tax treaty exemption to a non-resident's service income if it is clear that such service (i) does not form a permanent establishment by itself and (ii) has not been delivered through an existing permanent establishment of the non-resident.

Analysis of Article 212.4 of the Tax Code effective until 2017 and Article 666.2 of the current Tax Code indicates that the assessment by a tax agent as to whether a permanent establishment of a non-resident service provider is created for the purposes of double tax treaty application shall be done with respect to a particular service contract which is considered to be a project. Moreover, it is obvious that an exemption shall not apply if the above analysis results in the conclusion that a permanent establishment is formed for such specific service contract, either in isolation or in conjunction with other services that qualify as connected projects.

The above idea clearly follows from Article 212.4 of the Tax Code in effect before 2018, whereas the wording of Article 666.2 of the 2018 Tax Code creates uncertainty leading to questionable interpretations, the worst of which could suggest that an exemption shall not apply if any permanent establishment does exist (even though it is not involved in providing the services in question).

In reality, current tax authority practice demonstrates that the authorities are routinely imposing additional withholding tax liabilities on tax agents if their non-resident contractors create permanent establishment under unconnected projects. This means that the tax agents should also monitor other engagements of non-resident counterparties with unrelated Kazakhstan companies. The practical implementation of this requirement is doubtful and not realistic, as non-resident counterparties do not always disclose the details of other arrangements to the tax agents.

The recent desktop audit practice shows that the Kazakhstani tax authorities endeavor to disallow application of tax treaty exemption and assess 20% withholding tax on any income paid to non-residents whose activities have led to creation of a permanent establishment, whether such income has any connection with the activities of the non-resident's permanent establishment or not.

At the end of 2019 dozens of taxpayers received relative notifications based on results of desktop audits performed by the State Revenue Committee of the Ministry of Finance. As we understand, the analysis performed by tax authorities for 2014-2018 was aimed at detecting cases in which tax agents applied double tax treaty exemption upon payment of income to non-residents, which within the 5-year statute of limitation had formed permanent establishments in Kazakhstan before or after application of double tax treaty exemption by tax agents.

The notifications requested correction of withholding tax returns by increasing tax on income paid to non-residents with permanent establishments in Kazakhstan. Such desktop audit notifications indicate the worst possible interpretation of Article 666.4 as set out earlier in this article.

The approach implied in the desktop audit notification leads to taxation of all income of the non-residents received from Kazakhstani tax agents, running contrary to the protective

provisions of the majority of international double taxation treaties stipulating that Kazakhstan may tax only so much of profits as is attributable to a permanent establishment.

This is out of line with the widely accepted international tax guidance set out by the Organization of Economic Cooperation and Development (OECD) under which *"the State should not have source taxation rights on income derived from provision of services performed by a non-resident outside that State"*.

The approach in interpreting local tax administration rules provides limited opportunities for the tax agents and non-residents to dispute tax authorities' decisions and defend own position effectively. It is essentially an imposition of taxation that sits at the very borders of what should be permitted and definitively runs contrary to the spirit and purpose of international taxation conventions concluded by Kazakhstan.

The tax agents' explanations to notifications on "violations" issued by the tax authorities during the desktop tax audit may likely be refused and lead to suspension of the agents' bank account transactions. This administrative tool forces tax agents to fulfill an additional assessment of withholding taxes including payments of fines and penalties for retrospective obligations.

In an attempt to avoid excessive and unreasonable tax assessments, tax agents invariably are left with no realistic option but to ultimately withhold tax from payments made to the overseas counterparties. The fact that local companies feel they have no choice but to withhold tax (if they are to protect themselves against tax assessments, fines, penalties and administrative problems such as frozen bank accounts) sets in place a practice (and tax authority expectation of practice) contrary to internationally accepted principles in double taxation treaties to which Kazakhstan is party.

As set out above, insofar as (in line with the relevant double taxation treaty) Kazakhstan had no taxing rights over the income in question - that is, this income was not actually attributable to the non-resident's permanent establishment - then the non-resident's home country will not permit the offset of these taxes withheld in Kazakhstan against home country liabilities and the end result is double taxation.

Conclusion

As Kazakhstan seeks to both enhance the attractiveness of its investment climate and to align its standards and practices with those set out by organizations such as the OECD, legislation and tax administration practices such as these create negative investor sentiment and actively erode the positive impact of other reforms being driven by the government. Active re-alignment with international practice in taxation matters should be a priority. This should definitively include the active amendment of harmful provisions such as Article 666.

TRANSFER PRICING - TRENDS AND NEW REPORTING RULES

by Michael Ahern, Partner, Leader of Tax and Legal Services, PwC Kazakhstan

Nursultan Nurbayev, Senior Manager, Transfer Pricing, Dispute Resolution and Regulatory, PwC Kazakhstan

There is more and more news around the world concerning large tax disputes related to transfer pricing. Transfer pricing (also abbreviated as TP) is one of the most complex issues in international trade and taxation, and it refers to transactions between entities of the same multinational group that artificially manipulate the price of an object transferred to decrease the overall tax bill (for the group) across jurisdictions.



The United Nations (UN) Tax Committee and the Organization of Economic Cooperation and Development (OECD) proposed the “arm’s length” principle many years ago. Governments subsequently introduced it into tax treaties (DTAs) and domestic legislation. This principle proposes that the price in a transaction between related parties should be the same as those between unrelated parties negotiating under “normal” market conditions.

Kazakhstan introduced transfer pricing legislation in 2001, and it differs in several respects from UN and OECD principles. It applies to any cross-border (export and import operations) transactions between related and *unrelated* parties. Local legislation implies that (i) certain domestic transactions between related parties are *not* subject to transfer pricing control and (ii) *all* cross-border transactions between unrelated parties are subject to control.

Given the structure of Kazakhstan’s economy, export transactions on the sale of oil, gas, and metals were the main focus. This led to many disputes between the government and subsoil users. In some cases, this resulted in issuance of official rules on calculation of the market transfer price for specific products, for example, export of uranium, titanium, and, most recently, steel. These rules provide a special formula for calculating the transfer price and reflect specifics for each industry. Surprisingly, there are no official rules for calculating the transfer price of oil, although the first draft was prepared several years ago. Despite significant court practice, there remains considerable uncertainty and many disputes, for instance, ongoing litigation on calculation of the market price for oil exports to China.

Transfer Pricing trends

The Kazakhstan State Revenue Committee’s (SRC) plan is to increase tax collections from 16.9% of the country’s GDP in 2018 to 25% of the GDP by 2025. The SRC is also broadening their focus from subsoil users to other industries and types of transactions. This leads to the emergence of different types of transfer pricing disputes.

A topical issue is the allocation of income sourced from Kazakhstan between the non-resident company and its local branch. In general, DTAs provide that a branch’s taxable income should be treated in the same manner as the income of a separate legal entity. The legislation on this topic, however, is unclear.

Kazakhstani tax authorities claim that, in certain cases, income derived from Kazakhstan by a non-resident should be taxed in full in Kazakhstan. We see this approach to active (business profits) and passive (interests, royalties, dividends) income. These disputes mainly began in 2019 and are not yet resolved.

The SRC also started looking at imports. Recently, they challenged the prices of imported oil products. If the tax authorities make a transfer pricing adjustment, they can increase the income or decrease the deduction of the corporate tax rate (currently 20%). If the transaction is between related parties, the tax authorities also assess a withholding tax of 15% because the same transfer pricing adjustment is considered as income received by the non-resident in the form of a “constructive dividend.”

Thus, if the company is loss-making, while there may be no corporate income tax, the withholding tax would still apply. Typically, the tax assessment raised by the SRC as a result of a transfer pricing inspection is in the millions of dollars, but it’s not just about the money. A significant tax assessment immediately triggers a criminal case against the responsible company personnel.



New Reporting Rules

Based on the G20 countries' recommendations, the OECD developed a *Base Erosion and Profit Shifting (BEPS)* Action Plan to bring more transparency and clarity to transfer pricing. Specifically, this led to the introduction of "three-tiered TP documentation" and increased sharing of information between tax authorities. Accordingly, Kazakhstan adopted new reporting rules on 1 January 2019. The relevant amendments require multinational groups conducting business in Kazakhstan to file the following types of three-tiered TP documentation in Kazakhstan under certain conditions:

Country-by-Country Report (CbCR) and Master file (MF)

CbCR and MF provide high-level and detailed reports, respectively, on staff, assets, and taxes paid in every jurisdiction where the multinational group operates. These reports should be filed if the revenue in the consolidated financial statements exceeds 750 million euros. In most cases, the parent company submits them in the country of registration. The Kazakhstani tax authorities have the right to request both their reports and reports from the group's branch operating in Kazakhstan.

Local File (LF) and Notification

The LF applies to a company that is part of a multinational group with a stand-alone revenue (turnover) above approximately \$31 million that conducts transactions subject to TP control. The LF should be filed with the tax authorities annually, for instance, the LF for 2019 should be filed by 31 December 2020. The report itself requires full disclosure of the company's operations and justification of its arm's length principle in transactions. In addition, a member of a multinational group registered in Kazakhstan must file an annual "Notification" about the company's corporate structure to the SRC.

PwC expects the SRC will compare information from different groups in the same industry and use this information during tax audits. Transfer pricing disputes are not going away any time soon.



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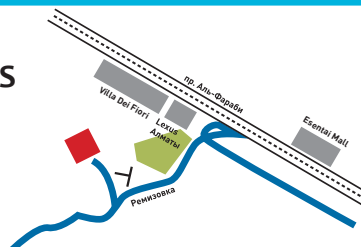
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DIFFICULT DIGITS: TAX CHALLENGES IN THE DIGITAL ECONOMY

by Inna Alkhimova

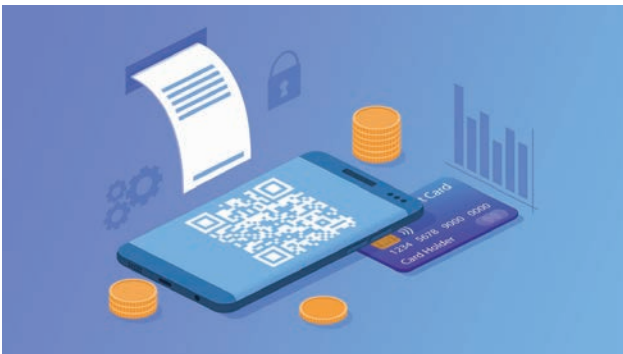
Partner, Head of Tax & Legal, KPMG Kazakhstan

Alexey Yan

Senior Consultant, Tax & Legal, KPMG Kazakhstan

From entertainment, media, and retail to communication, education, and even healthcare, the advent of the internet and the proliferation of information technologies has transformed almost every part of our lives. Thanks to digital tech giants such as Google, Amazon, Facebook, and Yandex (to name but a few), everyone today has better access to goods, easier travel, cheaper commutes, quicker bookings, and a myriad of opportunities for long-distance communication.

The digital economy is growing at an unprecedented rate. This is evident from the increase in e-commerce, as well as the growing number of non-cash transactions. In Kazakhstan alone, the number of online market participants has increased from 1.3 million to 2.3 million from 2017 to 2018. It is expected that this figure will reach a staggering 15 million by the year 2025. Meanwhile, the volume of non-cash transactions has doubled over the last two years, increasing from 5.1 trillion Kazakhstani tenge in 2018 to 13.3 trillion tenge in 2019.



The effect of the digital economy on daily life is only “one side of the coin.” The other side its impact on business. It enables all companies – ranging from startups to large multinational enterprises – to reduce costs and expand their offerings over greater distances. This omnipresence is due to the unique business models specific to the digital economy.

Although the digital economy is rapidly evolving into the economy in and of itself, its tax perspective has not been fully calculated. On average, companies engaged in digital businesses pay half the effective tax rate of traditional businesses – 9.5% versus 23.2% respectively. This is compared to an average annual revenue growth of 14% for large digital firms as opposed to 0.2% - 3% percent growth for more traditional companies.

Current tax principles were designed decades ago and were aimed at businesses with a physical presence. Their physical presence normally provided grounds for

governments to exercise their taxing rights. However, with the rise of new business models, digital businesses have access to customers in other countries without a physical presence. Since tax law relies heavily on physical presence, profits derived through digital activities are not subject to taxation in the market/country where the consumers reside.



On a global level, this creates an imbalance. On one hand, large companies make huge profits abroad without paying a proper level of taxation in the consuming countries, and those countries with a relatively low level of digitalization, like Kazakhstan, suffer from tax “leakage.” The following comparison of a traditional business model and a digital business model illustrates this problem.

The Traditional Model

Normally, if a company has long-term business activities in a foreign country it creates a so-called “permanent establishment.” As a non-resident entity that operates in a foreign jurisdiction on a regular basis, the entity should register its physical presence (i.e. the permanent establishment) in the form of a branch or a subsidiary to account for its income and pay the corresponding taxes. For instance, if a non-resident company engages in road construction in Kazakhstan, it normally has or rents an office, hires personnel, imports equipment, and ensures that all legal requirements, including license and permit requirements, are met.

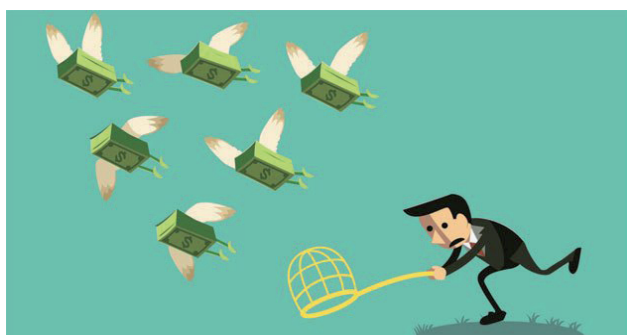
According to Kazakhstani tax legislation, the company's presence and activity in Kazakhstan will lead to creation of a “permanent establishment.” The company will hence be required to register its permanent establishment and pay taxes on income generated from construction activities in Kazakhstan.

The Digital Models

Digital business models, on the other hand, allow for income to be generated in foreign countries without a physical presence, hence with few or no tax liabilities. The following examples include some of the most common business models used to generate income in the digital economy.

- *First*, there are social networks and search engines. These platforms generate income from the fees that advertisers pay in exchange for unique information on user consumer behavior that allows advertisers to target their ads to specific user categories. Information on users' tastes, preferences, and spending patterns is accumulated based on the user data collected and analyzed by social networks and search engines.
- *Second*, there are e-commerce (online sales) platforms used to sell and purchase goods and services (or book a hotel/order a taxi) over computer networks by placing and receiving orders. E-commerce platforms generate income in the form of commissions that suppliers of goods and services pay in exchange for the opportunity to post orders.
- *Last*, there are gaming platforms. Currently, many online gaming platforms provide an opportunity for players to purchase certain game-related features. If you are familiar with the online game *World of Tanks*, you know that players spend real money to upgrade their virtual tanks. This trade in intangibles earns money for gaming platform operators.

These examples show just a few of the business models commonly used in the digital economy. Yet none of these models require a physical presence for income to be generated in a foreign country. With a population actively engaged in the digital economy and consuming digital services provided by non-resident companies, Kazakhstan, alongside many other countries, is witnessing a situation where revenue is flowing to foreign jurisdictions without taxation, thus without benefit to the country of origin.



The global community has expressed growing concern about the tax planning opportunities that the digital economy affords. Through various creative approaches, current tax systems may be used to artificially reduce taxable income and even shift profits to low-tax jurisdictions where little or no economic activity by the digital business occurs. In trying to find ways to make digital companies pay their fair share of taxes, foreign governments are asking questions to identify where economic activity in the digital economy is performed, where and how it should be taxed, and who should collect the revenue. All these concerns boil down to the main question: how does a country modify a decades-old tax framework to tax the digital economy?

In seeking to answer this question, governments have joined forces to share ideas for upgrades that would enable the current tax framework to be fit for the digital age. Endeavors to design a new tax system revolve around two allies: the OECD and the European Union.



The OECD aims to find a long-term solution to the problem with a uniform tax system that would fit the whole world. This grand solution, according to plans, will be presented to the public by the end of 2020, although some doubt the feasibility of the timeline. Considering that a viable long-term solution requires the consensus of roughly 130 countries, the timeframe is optimistic. While the OECD is aiming for a long-term consensus-based solution to taxing the digital economy, the European Union (EU) is pouring its efforts into two different streams simultaneously.

The first goal of the EU is to take stopgap measures to prevent at least some of the tax leakage associated with digital activity. To do that, the EU is proposing an interim tax that would apply to the following three types of digital activity: the *online placement of adverts*, the *sale of collected user data*, and *activity related to digital platforms facilitating user interaction*. Companies engaged in these activities will be subject to a 3% tax on income if their total annual revenues generated from digital activities in the EU exceed 50 million euros and total annual worldwide revenues exceed 750 million euros. The second goal of the EU is to design a new tax system for the Union that would line up with the system suggested by the OECD, but would also enable EU member states to establish a single digital market incorporating one taxation system in the long-term.

Given the urgency of the problem of taxation in the digital age, a growing number of countries have taken interim measures (similar to those proposed by the EU-) and introduced their own taxes on digital services without waiting for a consensus-based solution. So far, 19 countries have implemented direct taxation, and 66 countries have implemented indirect taxation on digital services, showing that the world is in the midst of a revolution as different countries develop varied and unique approaches to digital taxation.

France famously pioneered a digital services tax, introducing a direct tax on digital services with retroactive effect from 1 January 2019. Initially, the tax applied at 3% on gross revenues generated by non-resident companies providing a digital interface, targeting advertising and suppliers of user data collected for advertising purposes. The tax applied to companies whose total worldwide revenue and income from taxable services rendered to the French population exceeded 750 million euros and 25 million euros respectively in the preceding tax period (i.e. a year).



In late November 2019, however, French Finance Minister, Bruno Le Maire announced that France had agreed to suspend the digital services tax until December 2020 in exchange for the U.S. agreeing to hold off on retaliatory tariffs on French goods.

Belarus and Russia happen to be among the pioneers of indirect taxation for digital services in the CIS. Belarussian VAT on digital services came into effect on 1 January 2018 and required non-resident companies rendering electronic services to individuals in Belarus to register for VAT purposes and file corresponding tax returns in Belarus. VAT may be collected either by the non-resident or by an intermediary engaged in processing the corresponding payments for the electronic services. With a tax framework similar to the one used in Belarus, the Russian VAT imposed on B2C supplies of electronic services to Russian customers came into effect on 1 January 2017. The Russian government later introduced VAT on B2B supplies effective as of 1 January 2019.

Kazakhstan is also responding to the latest trends in the digital economy. A draft proposal submitted to the Prime Minister's Office in October 2019 intends to introduce amendments to the Kazakhstani Tax Code for digital services performed by non-resident entities in Kazakhstan. The amendments are expected to come into effect on 1 January 2021 and are aimed at imposing VAT liabilities on non-resident companies providing electronic services to individuals residing in Kazakhstan.

Non-residents with activities under the aforementioned conditions will be required to charge and collect VAT at 12% of the earnings of the corresponding digital services. In addition to the individual's residence, other factors such as the use of a Kazakhstani network (IP) address, a telephone number registered in Kazakhstan or an account registered

in a Kazakhstani bank to process payment for the digital services, may also trigger a non-resident's VAT liabilities in Kazakhstan.

Although the stopgap measures taken by countries on an individual level (such as those above) solve some of the problems related to taxing the digital economy, they result in an inconsistent approach to taxation on a global level. This, in turn, may lead to distorted measures of economic activity, unfavorable investment climates, and instances of multiple taxation. The ultimate effect of individual taxation efforts by countries acting on their own could defeat the overarching principles at the core of taxation.

Taxation is supposed to be equitable between types and forms of business activity, to be clear and simple to understand, to be dynamic enough to keep up with latest developments, and to provide the right amount of tax at the right point in time, avoiding both double taxation and non-taxation. In this light, the long-term solutions that the EU and the OECD are working on are paramount to the success of efforts to adjust the current tax system to meet the demands of the digital economy. Although the tax systems designed by the OECD and EU have much in common, there are considerable differences in the means that the two systems utilize to achieve those goals.



The EU model is based on the concept of a "*significant digital presence*." Unlike the traditional tax principle of physical presence, digital presence is assessed on the basis of the amount of revenue, the number of users, or the number of contracts that an entity may generate in each EU member state. Companies that meet the requirements of a "*significant digital presence*" in an EU member state will be subject to corporate tax in that state. In contrast, the OECD tax framework provides three alternative solutions. These three alternatives revolve around the concepts of "*significant economic presence*," *user participation*, and *marketing intangibles*.

The concept of "*significant economic presence*" has been proposed to determine the presence of a non-resident enterprise in a foreign country on the basis of factors that indicate long-term purposeful digital interactions within the "*market country*." This includes revenue generated in

the foreign country and is supposed to be considered in combination with other factors such as the number of users, the amount of associated user data input, the volume of digital content generated in the foreign country, billing activities conducted in the local currency of the foreign country, and after-sales support services or marketing activities in the foreign country (whether online or offline). With such a broad definition, the OECD has yet to decide which of these are most relevant to the concept of “*significant economic presence*” and to establish appropriate thresholds where necessary.

The second proposal on “*user participation*” focuses on the value created by an active user base. Business models, such as social media platforms, search engines, and online marketplaces, collect a plethora of data related to their users, customers, suppliers, and operations. Information on products or services used may provide a valuable input for the business, helping to improve existing products and services as well as aid providing products and services to a new group of customers. The value that digital businesses collect in a foreign country goes broadly unnoticed from a tax perspective. In order to better align value creation with profit allocation mechanisms, this proposal aims to account for the value created by active and engaged users in a foreign country.

The third OECD proposal, based on the concept of “*marketing intangibles*,” relates to a foreign market’s perception of an entity’s trade or brand name or to other marketing intangibles like customer relationships in that

foreign country. Since a non-resident entity can remotely access a jurisdiction and affect the way in which the customers in that market perceive the non-resident’s brand or how those foreign customers interact with each other and the brand’s products, a non-resident may ultimately create favorable conditions for its business in that market. The value created by forming a favorable climate via marketing intangibles is at the core of this proposed tax principle.

Conclusion

In summary, the evolution of the digital economy has resulted in new business models that the current tax system has yet to harness. Much of today’s business is conducted without any need for “*physical presence*”. The result is that many countries (like Kazakhstan) with populations consuming a large range of products offered by the digital economy, are suffering tax leakage. With multinational entities making huge profits without due taxation in their market jurisdictions, fair taxation in the digital economy is a world-wide concern.

Countries are currently in the midst of a paradigm shift when it comes to a “fit-for-purpose” taxation system, and – one thing is clear – the digital economy will continue to evolve into an ever-greater phenomenon regardless of whether the EU and OECD can reconcile their views on a viable tax framework. To ensure fair taxation policies that meet the demands of the digital age, countries need to develop a sustainable consensus-based solution that can be applied globally.

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DIGITALIZATION IN KAZAKHSTAN: WHAT TO EXPECT

by Ulan Stybayev
Associate, Signum Law Firm

If the 1990s were marked by the rapid development of the Internet and the 2000s by the development of social networks, the 2010s was defined by the integration of digital technologies into nearly every aspect of daily life. Its exponential growth and development became the main trend in the world economy.

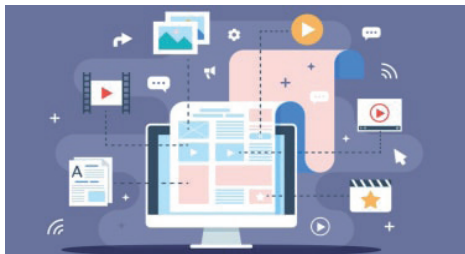
Digital technologies provide unlimited access to a vast amount of information and instantly perform various operations to assist, improve, and accelerate many processes. Digitalization is merely a transition to the digital method of communication, fixation, and data sharing through digital devices.

Kazakhstan, like many other countries, is open to the development of this industry, and in 2017, the government approved and began developing *Digital Kazakhstan* – a government program aimed to accelerate economic development, to transition to the digital economy, and to improve the quality of life through digital technologies.

The beginning of the new decade in Kazakhstan was marked by an active discussion of innovations in digital technology and digitalization. With this in mind, Signum would like to draw attention to the following anticipated legislative amendments in this field.

Digital Assets

The anticipated legislative amendments will introduce the new concept of a “*digital asset*” as a legally defined asset that has a certain value and can be traded electronically. These include such sensational developments such as *tokens*, *cryptocurrencies*, and *smart contracts*. Although these technologies are widely known, they are not widely understood.



Most importantly, all of the assets are created digitally. The introduction of digital assets as a concept into Kazakhstani legislation is driven by the need to eliminate ambiguous interpretation of laws for this new form of asset. With this, everyone will be given an opportunity to better understand their rights and responsibilities related to the use of digital assets, to challenge the ownership of such assets, and the rights of their use and transfer.

After adoption of the amendment, the digital asset will be recognized as legal property, but it cannot be used as a means of payment, and it will not create any personal non-property rights for its owner.

• Robotics

At the moment, there is no legislation regulating robotics (the industry and their usage) in Kazakhstan. This situation leads to many problems involving robots, bots, and other forms of autonomous technologies. Regulation will not only establish the definition of the term “*robot*”, but it will also govern the relationship between the developer, the owner of the robot, and third parties, as well as establish liabilities for issues that arise while using the robot. As more and more robots replace people for routine tasks, it is necessary to codify this relationship.

• Blockchain

Essentially, *blockchain* is a continuous chain of digital information that keeps a record of online transactions. Blockchain technology already exists and is used in Kazakhstan, but it is not being regulated as of yet. In accordance with the planned changes, the legal definition of “*blockchain*” as a technological platform integrates blockchain technology into the existing regulations and the definition of data objects.

Advocates for the usage of blockchain claim that it will help resolve pressing problems such as corruption and financial fraud. It should be noted that blockchain will have a large impact on optimization of business processes and service provision to the general public in Kazakhstan.

• Cryptocurrency

As of today, Kazakhstan is not ready to accept *cryptocurrency* as do many developed countries. Kazakhstan is currently discussing legislation that aims to prohibit issuance and circulation of cryptocurrency and other forms of private electronic currency with one notable exception. Cryptocurrency will be allowed to function in the *Astana International Financial Centre (AIFC)*. If found to be effective, cryptocurrencies may be gradually introduced and accepted throughout Kazakhstan.

Digitalization is a process imposed by the necessity to modernize along with the rest of the world. Its development requires coordinated step-by-step actions. We need to understand that digitalization calls for solid technical support and highly qualified specialists to protect data and ensure safety in cyberspace. With timely updates to regulations on the important aspects of digital technologies, Kazakhstan has a chance to accomplish its visionary mission of becoming a technologically advanced country.

AUDITS: QUALITY MATTERS

by Ashley Clarke, Chief Operating Officer,
Partner and Head of Audit Quality, KPMG CIS

Although the auditing profession can trace its roots back to ancient Persia, modern auditing evolved in 1844 when the British Parliament passed the Joint Stock Companies Act, introducing the concept of limited liability and setting the stage for a growth in capital markets, which would fuel the Industrial Revolution. In 1900, amendments to the British Companies Act required auditors to be independent of their clients, and organizations such as the Institute of Chartered Accountants in England and Wales were the pioneers in establishing auditing procedures for their members to follow. More recently, independent standard-setting organizations, such as the *International Auditing and Assurance Standards Board (IAASB)* founded in 1978, have steered the global development of Generally Accepted Auditing Standards.

Arguably, the financial market's broad expectations of auditors have changed little since the 1844 Act, which required auditors to report to the shareholders whether, in their opinion, the balance sheet and accounts were drawn up to exhibit a "true and correct view" of the state of the company's affairs. But, nowadays, global corporations are much larger and more complex than their predecessors of the 19th or 20th centuries, and the accounting requirements they must apply are far more voluminous.

To service modern multinational clients, audit firms have necessarily evolved from regional and national practices, in which the partners (the owners of the business) could manage their firm's affairs by making collective decisions around a board table, to global networks employing hundreds of thousands of professionals across many jurisdictions. Financial market regulators are also more coordinated across borders and expect the consistent application of professional standards by the audit firms they are responsible for monitoring, regardless of the country in which the audit work is performed.

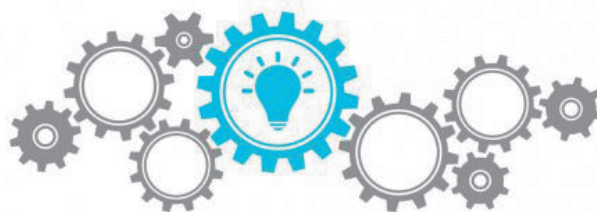


The ever-present role of auditors in maintaining public trust in global capital markets cannot be understated, although, unfortunately, this role sometimes receives little attention other than in the event of a corporate failure. It is therefore critical for the audit profession to continue to strive to maintain the utmost levels of integrity, objectivity, and compliance with professional standards.

In the context of our increasingly connected global environment, what steps are standard-setters and audit firms taking to ensure that the profession continues to maintain this public trust that is so critical regardless of whether the audit work is being performed in Chicago or Shymkent?

Ownership structures and control

Although the largest audit and accounting firms operate as global networks with a common brand, from a legal perspective they generally exist as networks of independent member firms that are privately owned by partners in a particular country or region. In certain cases, this local ownership structure may be due to legal or professional requirements. Such independent partnerships may vary significantly in size and resources, depending on the size of the market. This structure is very different from the ownership models employed by most multinational corporations, whereby international subsidiaries are owned and controlled by a corporate head office whose ultimate shareholders normally have no involvement in the day to day running of the business.



To support consistent quality and the consistent application of standards, global accounting networks continue to develop common policies and procedures, and decision-making structures that are increasingly centralized compared to more traditional partnership models. Over the last several years, there have also been moves by networked firms to consolidate their operations, which may provide greater opportunities to share resources across borders.

Network and firm monitoring

To supplement external regulatory reviews of audits, the consistent application of internal policies and professional standards by member firms within large networks is monitored through regular internal review programs that typically involve experienced partners from different jurisdictions. Such reviews are made both at the level of the firm and for individual audit engagements. Where there is non-compliance with professional standards, a root cause analysis is performed and action is taken to address the cause. There may also be financial sanctions against audit partners concerned or the firm itself. The effective operation of an internal monitoring system is key to ensuring engagement quality across different countries

and is of particular relevance for cross border engagements where reliance is placed by a group auditor on the work of a component team.

Increasing communication among international audit regulators – IFIAR

The *International Forum of Independent Audit Regulators (IFIAR)* was established in 2006 and currently includes audit regulators from 55 jurisdictions. Its mission is to serve the public interest and enhance investor protection by improving audit quality globally. Among other things, IFIAR provides a platform for external audit regulators from many different countries to share issues and best practices. Such an organization allows for the development of a more consistent approach to audit regulation globally and the transfer of knowledge and experience between regulators. This helps to address the potential risks of each regulator developing their approach and areas of focus in isolation.



Systems of quality management

External and internal regulatory inspections of audit firms often focus on whether a particular audit engagement was performed in accordance with all relevant professional standards. This is, of course, the key goal of any audit, but there is an increasing focus on the need to create an environment that supports audit quality at the level of the firm itself. Without such an environment in the firm, the delivery of audit quality at the individual engagement level may be compromised.

This is borne out by the IAASB's release of the proposed *International Standard on Quality Management 1*, which introduces requirements for audit firms to document and annually test a "System of Quality Management" (SOQM). The draft standard recognizes the importance of processes and controls that support quality objectives both at the network level and at the level of individual member firms. It requires audit firms to analyze the risks to audit quality and related responses (controls) to address risks across the following components of the firm's operations:

- *Governance and leadership*
- *The firm's risk assessment process*
- *Relevant ethical requirements*
- *Acceptance and continuance of client relationships and specific engagements*
- *Engagement performance*
- *Resources*
- *Information and communication*
- *Monitoring and remediation processes*

Certain aspects of the proposed standard are consistent with existing requirements, but the key requirements to assess and document risks to audit quality in the firm's particular environment, and to identify specific controls to address those risks, represent significant enhancements. These will likely place new demands on audit firms to ensure continued compliance with International Standards.

Conclusion

The audit profession has a long history, and certain aspects, such as its traditional partnership structure, can trace their roots back many years. The increasingly complex financial reporting requirements of global businesses require higher levels of expertise and cross-border cooperation amongst audit firms in order to ensure consistent and appropriate levels of compliance with professional standards. Maintaining public trust must remain the auditor's highest priority. Although the profession has seen many changes since 1844, trust remains the foundation on which it is built.



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THE LEASING OPTION: LESSOR AND LESSEE PERSPECTIVES

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Introduction

The following article discusses court practice in leasing cases and outlines the problems in resolving leasing disputes. These situations are not unique. The article contains our observations and subjective opinions.

Kazakhstan creates relatively favorable conditions for leasing at the legislative level. Leasing is regulated by the *Civil Code*, the *Law on Finance Lease*, the *Tax Code*, the *Customs Code*, the *Law on Rehabilitation and Bankruptcy*, and the *Law on Currency Regulation*.

Kazakhstan's legislation guarantees the lessor's ownership rights of the leased asset. It provides legal protection against seizures of the asset by customs and tax authorities, as well as protection against including the leased asset in the lessor's property if the lessor declares bankruptcy. In addition, lease payments can be recalculated to minimize currency fluctuation risks for the lessor (for example, significant fluctuation in the tenge exchange rates). The lessor also enjoys tax benefits such as exemption of interest from corporate income tax and VAT.

Separately, it should be noted that leasing operations are included in investment activities. This means that, in theory, the lessor can use the guarantees provided by bilateral and multilateral international agreements on promotion and protection of capital and investment such as most favorable treatment, protection against expropriation, and the opportunity for international arbitration in disputes with the government. However, in most cases the lessor is pursuing claims against private companies, not against the government.

From the point of view of legislative regulation, we believe the lessor benefits from favorable conditions. Nonetheless, despite these positive aspects, disputes between lessors and lessees make up a significant proportion of court cases.



Prerequisites for Disputes

The vast majority of disputes are initiated by the lessor due to lessee's failure to meet the required lease payments. The reasons for non-payment are generally the following:

- Instability of the tenge exchange rate (the lessor is protected from fluctuations in the national currency but the lessee is more vulnerable). The lease payments thus become unaffordable to the lessee if payments are calculated in foreign currency or are indexed.
- Lack of proper planning and business organization. For example, the government finances (partially or in full) many infrastructure projects that require significant quantities of heavy construction equipment. This is why entrepreneurs acquire expensive equipment on lease. However, in many cases, after advance payments and in the project's final stages, payments are delayed to correct shortcomings; construction deadlines are not met; certain types of equipment are needed at different stages of the project, the general contractor is dishonest, or for other reasons.
- Most lessees cannot afford a competent financial advisor to plan and manage cash flows correctly, and to prevent accumulation of debt.
- The low level of legal expertise of the lessees. Unfortunately, most lessees do not pay proper attention to the legal aspects of the leasing agreements (very often due to economic savings). As a result, failure to understand contract obligations such as penalties, early termination of the contract, and returning the leased asset is not evaluated properly and claims are brought to court.
- Bankruptcy and rehabilitation of the lessees is also possible. In the worst-case scenario, the lessee becomes insolvent. Naturally, the lessor will try to collect the debt and reclaim the leased asset. However, the lessor's claims are at the end of the debt repayment queue. Therefore, lessors who properly monitor their customers turn to the courts at the first sign of the lessee's potential insolvency.

A lessor encounters the following problems in recovering the debt and reclaiming the leased asset.

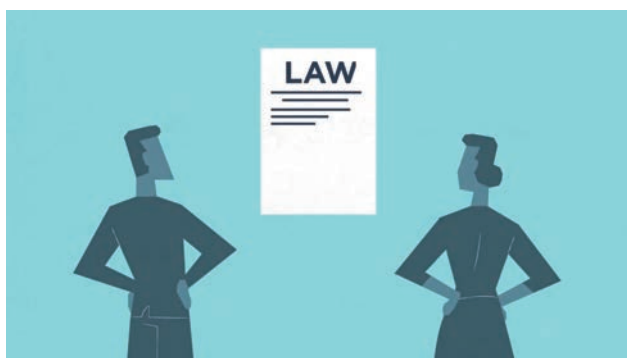
Penalty Reduction

Generally, courts do not question the amount of principal debt, indexation of payments, losses related to the lessor's tax payments, and even debt collection in foreign currency. However, courts increasingly tend to reduce the penalty by up to 10% of the claim. In our opinion, the motivation of the courts is not entirely justified.

The courts reason that if the lessor turns to the judicial system to collect a penalty accumulated over more than 2 years, the lessor has failed to seek redress in reasonable time to justify increasing the penalty. The courts also argue that the penalty should be reduced because the debtor made the payment even if it was late. Factors that prevent lessors from going to court may include their wish to keep the client (even if the client is not always reliable), not wanting to litigate over insignificant amounts, or other reasons.

From the legal point of view, however, a penalty is the legal way to ensure proper execution of civil obligations. The lessee voluntarily assumed obligations and agreed to a penalty if the obligations were not met: the lessee's fulfillment of his obligations therefore depends entirely on him, not on the lessor. The size of the penalty is thus determined by the actions of the lessee.

Taking the lessee to the court as soon as he is late with the payments should not be a reason to reduce the penalty. The legislation establishes a statute of limitations during which it is possible to seek judicial redress. However, the courts ignore the fact that a delay in meeting financial obligations is essentially fraudulent use of money. The lessor finances the lessor's business activity, but the court forgives the debt, reasoning that the debtor paid back his loan even if it was late. This is unfair and does not comply with the law.



Kazakhstan is making tremendous efforts to increase the use of pre-trial and out-of-court dispute resolution. Penalties are one of the most effective ways to secure obligations under civil law contracts, which impose discipline on the debtor. If the courts without good reason reduce the penalty stipulated by the contracts, debtors will be motivated to bring all disputes to court in the hope of significantly reducing the penalty. In turn, lenders will be motivated to bring their claims to court as soon as possible, without attempting pre-trial dispute resolution, to avoid penalty reduction entailed by a late appeal to the court.

Considering that lessors often borrow funds to purchase lease assets, losses from untimely lease payments can be significant. Consequently, penalty reduction increases the lessor's financial risks. Accordingly, lessors are forced to

increase their interest rates, thus transferring their risks to the lessees. The lessees' irresponsible behavior, supported by the courts, therefore bounces back onto the lessees themselves.

Leased Asset Seizure

Upon termination of the leasing agreement, the lessees do not hasten to return the asset, and the lessors are forced to initiate court-ordered seizure of the asset. However, although the legislation provides for a procedure to reclaim the asset (judicial order proceedings), in practice this order can be easily cancelled and the lessor must initiate seizure through a regular court application.

The lessor may face problems at the very beginning of the trial if the court decides on a preliminary injunction. Usually, the lessor seeks the return of the asset in addition to seizure of the debtor's property, along with prohibiting transfer of the asset to third parties. In the vast majority of cases, the court refuses to grant these actions without a good reason.

This judicial refusal allows the lessee to continue using the asset for the full period of the trial (it may take as long as four months for the court's decision to come into force) and to generate income without payment. This leads to wear and tear of the equipment and allows the lessee to receive illegal benefits. Although the lessor has a right to recover all losses from the lessee, he must apply to the court again with a separate claim or amend the initial claim.

In many cases, the situation is aggravated by the fact that the lessee intentionally ignores the trial and forces the court to hold the trial *in absentia*. Then the decision *in absentia* is appealed on procedural grounds, and the whole process begins anew. In some cases, an unscrupulous lessee may continue to use the asset for up to 5-6 months from the beginning of the trial.

In the worst case, when reclaiming the asset is denied, the unscrupulous lessee has an opportunity to sell the asset, which will be discussed below. Transferring the asset to the lessor by a preliminary injunction could resolve this particular problem.



Transfer of Leased Assets to Third Parties

There are cases when lessees sell the asset to third parties even though such transfers are prohibited both by law and a preliminary injunction during the trial, or even by a court decision allowing seizure of the asset. Often the lessor learns about the third-party transfer only when it comes time to seize the asset. Unable to execute the seizure, the lessor must turn to the court to void the third-party transaction. The buyer, of course, does not want to return the asset and demands recognition as a *bona fide* purchaser.

In most cases, the courts resolve such disputes and decide in the lessor's favor. In this case, the court justifiably indicates that ownership of the asset cannot be transferred to the lessee until certain conditions are met, that legislation and an agreement prohibit the transfer of the asset's ownership, and that the buyer should make a claim against the lessee.

However, in some cases, the court's approach is very formal and allows the lessee and buyer to delay reclaiming the asset. For example, the actions of a bailiff could be appealed on the grounds that the reclaimed property does not belong to the debtor. Territoriality of the enforcement action may also be violated if the lessee or the buyer moves the asset to another jurisdiction.

Conclusion and Recommendations

More effective approaches to protect the lessor's ownership and to implement the preliminary injunction and final court decisions are needed - for example, to prohibit registration of the asset to third parties without the lessor's consent, to synchronize prohibiting the debtor from re-registering or transferring the asset with a prohibition to the registration authorities' to re-register the asset, and to strengthen the lessee's responsibility to obey court decisions.

Proper regulation at the legislative level alone is not enough to develop and regulate leasing effectively in Kazakhstan, yet the development of leasing is needed to accelerate Kazakhstan's industrial-innovative development programs and important infrastructure projects.



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KAZAKHSTAN'S IMMIGRATION LAWS ARE TIGHTENING IN 2020

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In 2019, the general prosecutors and labor authorities began a joint campaign to fight against violations of immigration and labor legislation. Since August 2019, 95 companies have been found to have a headcount of expatriate workers exceeding 30. Additionally, there were 930 cases of immigration and labor law violations and 474 cases of wage discrimination. All in all, labor inspections have led to the recall of 631 work permits and the deportation of 393 foreign employees.



Based on PwC's experience, the authorities paid special attention to the following criteria:

- whether educational documents match the positions' requirements outlined in work permits;
- whether the actual work activity corresponds with the one indicated in the work permit;
- whether the employer fulfills its obligations stipulated in the labor contract signed with the expatriate individual;
- whether the employer maintains proper HR compliance; and
- whether there is wage discrimination between local and foreign workers.

When work permits are recalled, the company is free to appeal, but in the meantime the business may experience significant disruptions as the foreign employees in question will not be able to physically remain in Kazakhstan. This is particularly true for foreigners who occupy highly skilled and irreplaceable positions such as engineers, technical specialists, or controllers required in the field.

Preparing for an inspection

If a company has not yet been inspected, PwC has two recommendations.

Firstly, PwC strongly recommends running an independent labor and immigration review to identify and eliminate any discrepancies that may arise when an inspection occurs. In general, it is recommended that companies conduct such reviews annually to minimize labor risks associated with high staff turnover, bad-leavers, and any labor disputes.

Secondly, PwC recommends that companies ensure an expatriate's assignments are properly planned to meet the local legal requirements. For example, companies might consider implementing a secondment agreement. Some regional labor authorities, however, do not have experience with this form of employment and reject these types of documents if the expatriate is not a direct employee of the company in this arrangement.

What to do after the inspection

If a company has already been inspected and there is a disagreement with the results, as mentioned previously the company has the right to appeal the decision. In these scenarios, PwC has the following recommendations.

Firstly, a company should review the Completion act and the Order with the detected violations to check the legitimacy of the arguments behind the inspector's decisions. This will be important in the appeal process. The appeal against the actions and decisions of the government inspector will go to a higher inspector and/or directly to the courts. During this process, the Order still stands, so the deemed violator must leave the country.

Secondly, the timing of the appeal is important. Unfortunately, the Labor Code does not specify or otherwise provide clear guidance on the appeal's terms. In the case of any violations, the authorities can recall the work permits and, regrettably, this can happen before the company manages to file an appeal to the higher inspector or court. PwC recommends that companies file an appeal before the work permits are recalled. Otherwise, there is no clear procedure for how and if these work permits may be reinstated once they have been canceled.

Trends for 2020

2020 began with two main amendments to legislation that demonstrate a tightening of Kazakhstan's immigration laws.

Firstly, the 2020 work quota for foreign personnel in Kazakhstan was reduced by 40%, from 48,794 in 2019 to 28,361 this year. As a result, PwC faced cases of work permit rejections when companies did not submit their annual quota application or submitted it for the incorrect type of business activity.



Secondly, Kazakhstan's entry and re-entry rules for the visa-free regime have been tightened. The visa-free regime now limits the number of times a foreigner is allowed to enter Kazakhstan. The total duration of stay in Kazakhstan now allowed must not exceed 90 days within a period of 180 days. The duration of stay can be extended up to one year by obtaining a temporary residence permit.

Although passport registration with immigration authorities was cancelled, the requirement for notifying the authorities upon arrival remains unchanged. Moreover, penalties for violations have increased and, in the case of repeated violations within one year, the company involved will be blacklisted without the right to invite foreign personnel for a period of one year.

The Ministry of Labor and Social Protection is currently working on an amendment requiring annual labor inspections for companies with a total minimum headcount of 250, of which there are at least 30 expatriate employees. The number of inspections will be increased by 2.5 times during the year, and inspectors will be able to conduct inspections at any time.

Conclusion

In 2020 companies that hire foreign workers can expect inspections with these new strict regulations. The inspections will gravitate towards larger companies that hire at least 30 expatriates. These inspections can come at any time and will increase in frequency based on the new immigration law.

While the new legislation poses new challenges, companies can prepare for the inspection by executing an annual independent labor and immigration review to eliminate inconsistencies that an inspector may single out. Even if a company is seen to be in violation, the company must be ready to appeal the decision as soon as possible. The strategy for managing this situation should be considered immediately once the inspection is completed to avoid unmanageable consequences.

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by Joel Benjamin, Managing Partner, Kinstellar Law Firm
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Kazakhstan's Minister of Finance, Alikhan Smailov, has described the state of bankruptcy in Kazakhstan today as follows: "In today's Kazakhstan there are approximately 4,000 businesses in the process of bankruptcy, and roughly 400 enterprises in the rehabilitation stage. These numbers are tremendous and might not even be the whole picture. The actual numbers may be even higher".

To quickly assist unsuccessful businesses undergoing liquidation proceedings, the *Law on Rehabilitation Procedure and Bankruptcy* dated 7 March 2014 No. 176-V (the "Old Law") and related legal acts were amended by the New Law dated 27 December 2019 No. 290-VI (the Old Law as amended, the **Amended Law**). The main features of the **Amended Law** are:

- **Conclusion on financial stability by a temporary manager/administrator**

Insolvency is now determined by a court on the basis of a conclusion on financial stability prepared by a temporary administrator or manager with guidelines to be developed by the authorized body (the *State Tax Committee*). From now on, the **Amended Law** recognizes I, II, and III **Classes** of financial stability to which a debtor might belong:

- (a) **Class I** are financially stable debtors, therefore there is no basis for recognizing such companies as bankrupt.
- (b) **Class II** are debtors with financial risk, but with the potential to restore financial stability, therefore the rehabilitation procedure is possible.
- (c) **Class III** refers to financially unstable debtors, thus leading to a debtor's recognition as bankrupt.

Under the **Old Law**, the courts themselves were burdened with analyzing financial statements; by shifting the analysis to insolvency managers/ administrators, it is hoped the courts can be more effective.

- **Amended insolvency tests**

The previous "inability to pay debts" test has now been amended. The **Amended Law** introduces two different insolvency tests: a 'temporary inability to pay debts' (*vremennaya neplatezhеспособность*) applies to rehabilitation and debt restructuring, while 'persistent inability to pay debts' (*ustoichevaya neplatezhеспособность*) is the basis for bankruptcy.

- ▶ **Temporary inability to pay debts**

Inability is temporary when the debtor has not fulfilled one or more obligations to *first priority creditors* (generally, employees) within 3 months from the due date or, for other priority creditors, if the obligations are not fulfilled within 4 months from the due date.

- ▶ **Persistent inability to pay debts**

Inability is persistent if the debtor's liabilities exceed the value of its property as of (i) the date of application and (ii) the beginning of the year of filing an application (or the preceding year if the application is filed in the first quarter).

Under the **Old Law**, the insolvency test was the same for rehabilitation and bankruptcy, that is, non-payment of an obligation when due for certain periods of time for an amount exceeding certain thresholds (both periods and thresholds depended on the creditor's priority). There was no 'negative capital test' of the type currently introduced for bankruptcy.

Simplification of insolvency tests by eliminating thresholds and introducing a negative capital test is used worldwide and should decrease the number of documents presented to a court to initiate insolvency proceedings. This will better identify potential bankrupts and streamline the insolvency process.



- **Removal of the accelerated rehabilitation procedure**

The **Amended Law** excluded the accelerated rehabilitation procedure from available insolvency options. This procedure was intended to cover only part of the debtor's outstanding liabilities. The liabilities eligible for accelerated rehabilitation should form one or more groups of homogenous liabilities, and the procedure could be initiated only by a debtor who secured approval from creditors with more than 50 percent of claims within each group.

The intention of accelerated rehabilitation was to simplify insolvency procedures; however, this option was not widely used and in practice its implementation was mixed. The accelerated rehabilitation procedure partially prevented minority creditors from putting forward claims to the debtor.

The removal of the accelerated rehabilitation procedure may help minority creditors to adequately proceed with the rehabilitation procedure.



• **Removal of state support measures**

Under the **Old Law**, government support measures to a debtor in rehabilitation led to substantial limitations and carve-outs from the general rehabilitation regime. For example, rehabilitation plans (both in regular or accelerated rehabilitation) had to comply with government support measures, there were certain limitations on a debtor's activities in accelerated rehabilitation, and importantly, the debtor, with consent of the creditors' committee, was entitled to apply for suspension of regular rehabilitation until government support measures were provided. Government support could include refinancing of the debtor's existing liabilities, direct finance aid, capital injection, temporary management over the debtor's affairs, and other forms of support.

The **Amended Law** has removed all references to state support measures. The removal of state support measures should help create a regime with equal treatment for all business entities in rehabilitation.

• **New collateral takeover rules**

Pursuant to the **Amended Law**, secured creditors may now choose whether to agree to accept collateral in-kind. The following conditions should be complied with if a secured creditor decides to accept collateral:

► An appraiser determines the price of the collateral. If valuation of collateral minus paid salaries exceeds the amount of secured obligations, the difference should be paid by the secured creditor to the bankruptcy estate. If vice versa, then the difference should be paid in the fourth priority line; in other words, the secured creditor becomes an unsecured creditor for the difference.

► Prior to obtaining title over the collateral, the secured creditor should repay all administrative expenses related to the collateral and its valuation.

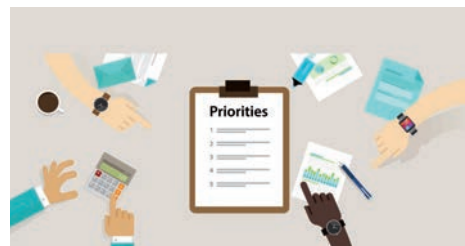
► If the debtor has no other property to pay these claims, then prior to obtaining title over the collateral, the secured creditor should repay salaries within the minimal salary amount stipulated in the legislation for the year in question (currently, KZT 42 500 or approximately US\$112) for a period of not more than three months, in total not exceeding 15 percent of the collateral's valuation.

We see this as a positive development that can be useful for secured creditors. Since adoption of the **Old Law** in 2014, this is the third time the rules on secured creditors have been amended. Hopefully, this time the amendments hit the target. For example, under one of the previous amendments, the secured creditors were required to repay all first line creditors without any cap in order to take the collateral.

• **Changes in bankruptcy priorities**

The **Amended Law** introduced a new (sixth) category of claims - late claims which come after all other priority lines and before distributions to the shareholders. The period for submitting all claims is one month following publication of the announcement concerning the claims submission procedure. Late claims for all priority lines except the first line currently go to the sixth line. Late first priority claims (salaries, salary-related claims and certain other payments) may still be repaid ahead of other creditors if filed before final settlement with all other creditors.

Introduction of the sixth line is a positive step toward clarifying the legal position of late claims.



DIRECTORS' AND OFFICERS' LIABILITY IN KAZAKHSTAN

by Aset Shyngyssov, Managing Partner, Morgan Lewis
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Directors and officers of private companies are responsible for managing and running business. This responsibility is not limited to disciplinary liability (such as termination of employment), but also involves civil law liability (such as payment of damages) as well as administrative and even criminal liability. In some cases, the liability may be broad and contain no reasonable exceptions that might be available in other jurisdictions. In general, Kazakhstan legislation regulating issues of directors' and officers' liability is still under development.

This article summarizes the extent of liability that company directors and officers could face under Kazakhstan law.



Officers in a Joint Stock Company (JSC) and Limited Liability Partnership (LLP)

According to the JSC Law, an officer is:

- a member of the board of directors;
- a member of the executive body;
- a person solely performing functions of the executive body (CEO).

According to the LLP Law, an officer is

- a member of the supervisory board;
- a member of the executive body;
- a person solely performing functions of the executive body (CEO).

In other words, in the context of respective laws on JSC and LLP, definitions of officers are limited. This approach to officers under Kazakhstan law differs from that of other jurisdictions. For instance, under Russian corporate law, there is no such term as an "officer." Members of governing bodies (members of executive bodies, board of directors (supervisory boards)) may face civil law liability. The concept of "officer," in the sense used in Kazakhstan law, is not used in Russian administrative law.

Criminal law contains the concept of "a person exercising management functions in a commercial or other organization." The Criminal Code also contains the term "officer," but it is used in a different meaning. Russian law does not separate administrative and criminal liability of officers depending on the legal form of the company.

Similar to Russian law, a broader definition of officers is given in the *Law of Bankruptcy*, and in the Code of Administrative Offences and Criminal Code. Therefore, in the context of bankruptcy or administrative or criminal liability, other persons may also be held liable as officers.

Officers' JSC Liability

Officers' JSC liability is set out in the JSC Law, as below:

Liability for Losses

Officers are held liable for losses suffered by the JSC. Losses for which officers are liable include, but are not limited to, those incurred as a result of:

- 1) providing deliberately false or misleading information;
- 2) violating the procedure for providing information as required in the JSC Law;
- 3) *offering to enter* into major transactions and/or interested-party transactions that cause losses to the JSC due to negligent actions and/or omissions, including with the intention of profiting by them or their affiliates as a result of these transactions with the JSC. A resolution to enter into a major transaction and/or interested-party transaction taken at a general meeting does not release the officer who proposed the resolution from liability if —as a result of the transactions—the JSC suffers losses;
- 4) *a resolution on entering* into major transactions and/or interested-party transactions which cause losses to the JSC due to negligent actions and/or omissions, including with the intention of profiting (deriving income) by them or their affiliates as a result of these transactions with the JSC. A resolution to enter into a major transaction and/or interested-party transaction adopted at a general meeting does not release from liability the officer who acted negligently (in bad faith) and/or failed to act at the meeting of the JSC body of which he/she was a member, including with the intention of profiting by them or their affiliates, as a result of which the JSC suffered losses from the transaction.

Characteristics of Certain Categories of Transactions

- 1) The JSC may go to court with a claim of liability against an officer for the damage caused as a result of *an interested-party transaction* through which the JSC acquired or disposed of property valued at 10% or more of the total book value of its assets, or if it is proven that, at the time of the decision to enter into the transaction, the value of the property was disproportionate to its appraised market value under Kazakhstan's *Law On Appraisal Activity*.

2) The JSC may go to court with a claim against an officer for reimbursement of damages caused by him/her to the JSC, and to return the profit resulting from the decision to undertake *major transactions and/or interested-party transactions* that caused losses to the JSC by the officer and/or his/her affiliates or profit received as a result of the decision to undertake (offer to undertake) transactions if the officer acted in bad faith and/or failed to act.

3) The JSC may go to court with a claim against an officer of the company and/or any third party for reimbursement of losses *resulting from a transaction* by the JSC with the third party, if — at the time of the transaction — the officer acted by agreement with the third party in violation of the JSC legislation, charter, and internal documents, or his/her employment contract. In this case, the third party and JSC officer act as joint and several debtors to the JSC for reimbursement of such losses.

4) If the JSC financial statements distort the JSC financial position, the officers who signed these financial statements are held liable to third parties suffering material damage.



Release of JSC Officers from Liability

1) JSC officers are released from liability if they voted *against* the decision of the JSC body that resulted in JSC or shareholder losses, or didn't participate in the voting *with a reasonable excuse* (release does not apply to the officer who had an interest in the transaction and proposed the transaction resulting in losses to the JSC);

2) An officer is released from reimbursement of damages occurring as a result of a business (entrepreneurial) decision, if it is proven that the officer acted prudently and in compliance with the principles of JSC officers' activity according to the JSC Law, on the basis of up-to-date (appropriate) information at the time of the decision, and reasonably believed that the decision was in the best interests of the JSC.

Officers bear liability for losses incurred by JSC. According to the Civil Code, "losses" means:

- expenses that have been or should have been incurred by a person whose right has been violated, loss of or damage to the property (real damage); and
- non-derived income, which a person would have received in normal turnover if his/her right had not been violated (lost profit).

In other words, as a general rule, officers are held liable for both real damage and lost profit. Officers' liability can result from not only for active acts (for example, decision-making) but also for passive acts (such as an omitted act or even a proposal for certain categories of transactions).

In order to establish officers' liability, the JSC Law refers to "in bad faith" and "omission":

- "*acting in bad faith (negligently)*" means making a decision on entering (offer to enter) into major transactions and/or interested-party transactions adverse to the JSC interests, in violation of the principles of officers' activity in the JSC Law, as a result of which the JSC suffers losses not covered by *inherent business risk* (although the JSC Law contains no definition of "*inherent business risk*"); and
- "*omission*" means that the company's officer *abstained* while making a decision on entering into major transactions and/or interested-party transactions, as a result of which the JSC suffers losses not covered by the inherent business risk, or did not participate in the voting *without a reasonable excuse* (in other words, simply missing a management body meeting may be insufficient grounds for releasing an officer from liability). Accordingly, JSC officers are released from liability if they voted *against* the decision adopted by the JSC body resulting in JSC or shareholder losses or did not participate in voting *with a reasonable excuse*.

An officer is released from reimbursing damages resulting from a business (entrepreneurial) decision (the term is not defined in the JSC Law), if it is proven that the officer:

- acted prudently, abiding by the principles of JSC officers' activity in the JSC Law;
- acted on the basis of up-to-date (proper) information at the time of decision-making; and
- reasonably believed that the decision was in the JSC's best interests.

Officers' LLP Liability

Officers' LLP liability is less regulated than liability for JSC officers. Thus, the LLP Law contains no reasonable grounds for release from liability (for example, business/entrepreneurial decision, inherent entrepreneurial risk, etc.), and it does not define the term "*in bad faith*."



The LLP Law contains general provisions for officers' liability:

- Officers may be held liable by any of the LLP participants (and the LLP itself) for reimbursement of damages the officers have caused to the LLP (they bear joint and several liability for the losses caused by joint negligent management of the LLP)
- Officers may be held to subsidiary LLP liability to third persons for losses suffered due to the LLP's insolvency (bankruptcy) resulting from negligent execution of duties by the LLP executive management body
- Further, members of the executive body may be held liable (reimbursement of losses) by LLP participants if they have breached conflict-of-interest guidelines, for example, if they have violated conflict-of-interest by entering into transactions aimed at receiving property benefits without consent of a general meeting
- In general, Kazakhstan law on civil liability of JSC and LLP officers are similar to Russian law on liability of persons on corporate governing bodies. Thus, as a general rule, there is liability for wrongful actions (inactions) if it is proven that, in the course of exercising his/her rights and duties, the officer acted in *bad faith* or *unreasonably*, including if his/her actions (inactions) were inconsistent with ordinary civil turnover or customary business risks.

The terms "*bad faith*" and "*unreasonable*" are not defined in Russian law, but were clarified in law enforcement.

Bankruptcy

The legislation provides for a number of specific cases regarding officers' liability. Thus, officers, found guilty for deliberate bankruptcy in administrative or criminal proceedings, bear subsidiary liability for *deliberate bankruptcy* of the legal entity, when the bankruptcy occurred because of the officers' action (omission to act).

Deliberate bankruptcy is an action by the founder (a participant), an officer, or an individual entrepreneur, committed in his/her own personal interests or in the interests of third parties, with the intention of evading from obligations to creditors by transferring ownership to, or concealing a property during three years before the legal entity or individual entrepreneur is declared bankrupt.

According to the *Bankruptcy Law*:

- The founder (a participant) and/or officer found guilty for deliberate bankruptcy in administrative or criminal proceedings bears subsidiary liability to creditors with their property;
- for violation of certain rules of the Bankruptcy Law (for example, not applying to the court for bankruptcy recognition), when the debtor's property is insufficient to fully satisfy creditor claims, the officers of the debtor (who are responsible for execution of this duty) bear subsidiary liability to creditors for the bankrupt company's outstanding liabilities as a result of bankruptcy proceedings.



The definition of officers covered by the Bankruptcy Law is much broader than the lists in the JSC Law and LLP Law. According to the Bankruptcy Law an officer is:

- a member of the board of directors;
- a director (deputy director) of the indebted legal entity;
- any other person who is a member of the collegial executive body of the legal entity with permanent or temporary responsibility to supervise the legal entity;
- the chief accountant of the indebted legal entity, or any other person temporarily fulfilling this function.

Administrative and Criminal Liability

In addition to civil law liability (and special liability under bankruptcy legislation), officers may also face administrative and criminal liability.

Under the Administrative Code, officers are defined as persons who are:

- permanently, temporarily, or under special power performing now or at the time of the administrative offence the functions of the public authority representative; or
- performing now or at the time of the administrative offence any organizational and management or administrative and economic functions in state institutions, quasi-public entities, local governments (in this context we note that a quasi-public entity is a very broad term comprising state enterprises, LLPs, JSCs, including national management holdings, national holdings, national companies where the state (government) is a founder, a participant, or a shareholder, including subsidiaries, dependent, or other affiliated legal entities in accordance with legislation).

A similar definition is given in the Criminal Code. An officer is a person who is:

- permanently, temporarily, or under special power performing the functions of the public authority representative; or
- performing any organizational and management or administrative and economic functions in government authorities, local governments, and Kazakhstan's armed forces, other military forces and troops.

An officer may be held liable for administrative and criminal offences and crimes for the following:

- Employment
- Tax
- Environmental
- State procurement
- Fire safety

An officer faces administrative liability if he/she has committed an administrative offence resulting from the failure to perform or improper performance of employment (office) duties. An officer guilty for the administrative offence is held liable on the regular equal basis. In judicial practice, failure to perform or improper performance of employment duties entails administrative liability for both members of the executive body. In some instances, heads of particular subdivisions in the legal entity, for example, the head of an economic department may face administrative liability.

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RECENT TRENDS IN TAX ADMINISTRATION

by Erlan Dosymbekov, Managing Partner, Kazakhstan and Central Asia, EY Kazakhstan

Dinara Tanasheva, Partner, Tax and Law Leader, Kazakhstan and Central Asia, EY Kazakhstan

This article discusses tax administrative issues that are becoming increasingly important when assessing your overall tax position in Kazakhstan. Some of these issues stem from the most recent amendments to the Tax Code that entered into force in January 2020. Others relate to interpretation of tax legislation that places increased pressure on taxpayers. This is despite Kazakhstan's continuous efforts to ease and "humanize the administrative and criminal legislation" in so far as the legislation applies to tax offences.



To this end, the January 2020 amendments were meant to simplify the Tax Code's administrative provisions in order to further enhance the country's investment climate. However, the tax authorities' most recent practices, together with their interpretation of some of the new amendments, indicate there is still room for improvement. For instance, their approach to one amendment makes it virtually inapplicable for the next three years. If it were applied correctly, it would be beneficial to taxpayers in 2020. This and other issues are discussed in greater detail below.

Timing and frequency of Tax Code amendments

One of the January 2020 amendments addresses the concern over the frequency of Tax Code changes along with other important issues.

Article 3 of the Tax Code now specifies when and how often changes to the tax legislation should be made. Substantive changes, such as introducing new taxes or adjusting tax objects, may only be adopted once per year, not later than 1 July of the current year. The effective date of these changes may not be earlier than 1 January of the following year. This serves to give taxpayers at least half a year to make necessary adjustments in preparation for the newly amended rules.

Administrative changes benefiting taxpayers may be adopted more than once per year, but not later than 1 December of the current year. It is further established that any changes to the Tax Code "may not be included in the body texts of laws with an independent subject of regulation". In other words, they should only be a part of a law specifically introducing changes to the Tax Code and not any other legislation.

Finally, new tax obligations and other provisions disadvantageous in nature to taxpayers may not be introduced retroactively.

The above changes should have a positive effect as they bring more structure to the process of amending the Tax Code.

Statute of limitations for tax purposes

The tax legislation defines the statute of limitations as a period within which the tax authorities have the right to calculate, assess (or reconsider earlier calculated, assessed) taxes and other obligatory payments to the national budget.

Starting from 1 January 2020, Tax Code Article 48 reduces the statute of limitations from five to three years. This applies to all taxpayers except subsurface users or taxpayers subject to tax monitoring. The original idea belongs to Parliament, which debated it in 2017. The reasoning was twofold: to bring the tax statute of limitations in line with the civil legislation and lessen the burden on taxpayers. This was considered within the tax amnesty initiative proposed by the President at that time.

The Government, on the other hand, was not ready to make the proposed change effective immediately. They needed time to further upgrade the tax administration system and to allow the tax authorities adequate lead time to prepare for this important change. As a result, the article's effective date was delayed to January 2020 while the statute of limitations continued to be five years.



Therefore, beginning in 2020, audits of qualifying taxpayers should only cover the last three years. For instance, an audit begun in January 2020 should only go back as far as 2017.

Contrary to this understanding, the tax authorities have issued several clarification letters claiming that the newly established three-year period only applied to **tax obligations arising from 1 January 2020**. Following this logic, the Article 48 amendments would only become effective in 2023. Until then the five-year statute of limitation would still apply meaning that in 2020, for example, the tax

auditors could go back as far as 2015. In their view, using the three-year period now would mean giving the change in question a retroactive effect. Hence, this would be in breach of Article 43.1. of the *Law on Legal Acts* establishing that laws may not apply retroactively.

Understandably, taxpayers disagree with such an unusual and what we believe to be incorrect interpretation. Under the *Law on Legal Acts*, newly adopted legislation comes into effect on the tenth day of its publication unless a different term is set in the relevant legal act or its enactment law. The *Law on the Enactment of the New Tax Code* provides that Article 48 comes into force on 1 January 2020. Hence, on the strictest and most logical reading, the three-year statute of limitations should take effect from the same date.

Moreover, when it comes to Article 43.1 of the *Law on Legal Acts*, this Article refers to the tax authorities' right "to calculate, assess or revise calculated, assessed taxes and other obligatory payments". This does not refer to when the actual tax obligations underlying a tax audit arose or should have arisen. As such, qualifying taxpayers to be audited starting from 1 January 2020 should fully enjoy the benefit of the three-year limitation period.



We understand that the tax authorities have recently retracted the above clarification letters. Instead, they are now planning to amend the Tax Code to state that the three-year period only applies to tax liabilities arising from 1 January 2020. We are also given to understand that this amendment will be retroactive, which will contradict the *Law on Legal Acts*. The latter specifically provides that legal acts imposing new obligations or worsening the overall position of individuals ("individuals" being used as an all-inclusive term here) may not be applied retroactively.

As mentioned in the preceding section of this article, a similar provision can now be found in the Tax Code Article 3.5. Therefore, even if the above clarification is introduced, it should only apply from its date of publication, not retroactively, as it will clearly disadvantage taxpayers.

It is possible that these amendments may be adopted and come into effect during 2020. Taxpayers audited thereafter could in theory claim that they were discriminated against relative to those who were still able to enjoy the three-year statute of limitation, i.e. before the law was changed. Also, what would happen if the law is changed in the middle of an audit? Would the tax auditors claim that the newly-established statute of limitations should apply?



It is unfortunate that a legislative change intended to improve the administration of tax audits has ended up having two completely different interpretations. One can only hope that the Tax Code will not be amended to align it with the tax authorities' approach. Otherwise, an amendment considered by the Parliament almost three years ago and setting a very positive trend will end up being delayed again, possibly for another three years.

In-house tax audits

We would like to draw your attention to the most recent practices of the tax authorities regarding their in-house audits. We will comment on how these practices may impact your tax compliance as well as overall business operations.

In-house audits are defined as the tax authorities' control over taxpayers/ tax agents through examining and analyzing relevant information. This includes tax reporting, data obtained from the authorized government bodies, and other documents and information on the taxpayers' activities. Overall, in-house audits are an important element in the State Revenue Committee's risk management system. Having said that, the main purpose of in-house audits is to give a taxpayer the right to independently correct violations detected by the tax authorities.

The consequences of an in-house tax audit depend on whether a high or medium level of risk is assigned to a detected violation. In the "high risk" scenario, a notification issued by the tax authorities must be fulfilled within thirty days of its issuance, as described below. If the risk rating is "medium", a notice is sent to the taxpayer within ten days for information purposes only.

Having received a notification, a taxpayer is able to voluntarily rectify the breach by performing (one of) the following actions, whichever is in point: (i) registering with the tax authorities; (ii) filing outstanding / adjusting tax reporting; (iii) paying outstanding/ understated amounts.



Those taxpayers disagreeing with the notification may provide a grounded response with relevant documents attached. The tax authorities' non-acceptance of the response will result in their decision that the notification has not been fulfilled. (In practice, many taxpayers end up being penalized.) In the meantime, the general understanding among taxpayers is that a targeted audit should be conducted to review the underlying issue in greater detail. As part of this process, the taxpayer may provide clarifications and documents to help the tax authorities make a balanced and informed decision. This is done within the targeted audit procedures set out by the legislation on tax audits.

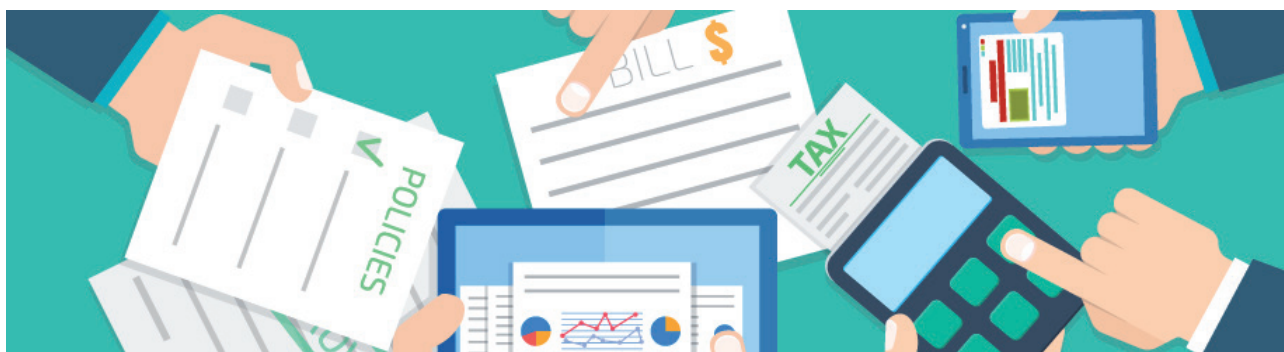
In practice, however, issues beyond taxpayers' control often arise, invariably leading to negative consequences. Some of the most common examples include:

- Instead of properly conducting a targeted audit, as described above, the tax authorities simply issue enquiries to gather further information;

- The tax authorities do not always initiate targeted audits on time;
- There have been technical failures with the tax authorities' systems leading to notifications taxpayers did not see in their "taxpayer's cabinets". As a result, the taxpayers are unable to comply with the notification in the thirty-day period;
- When filing a court appeal against the tax authorities' decisions, the taxpayer should make sure that the court actually accepts it. Otherwise the notification will still be viewed as a non-compliance. In addition, a taxpayer may face practical difficulties in the courts when appealing a notification on its merits.

One of the punitive actions allowed by the law is freezing the non-compliant taxpayer's bank accounts. Unfortunately, taxpayers are beginning to see this approach applied far too often, thus significantly hindering their business operations. The above Tax Code amendments were aimed to address some of these concerns. However, the only material improvement is that the bank accounts of those appealing the tax authorities' decisions should not be frozen. From all other aspects the legislation still appears to be unhelpful.

At the time of this article, there is growing concern that the current practices of the tax authorities defeat the main purpose of in-house audits by effectively turning them into forcible tax collection measures. That being so, the ban on freezing an appealing taxpayer's bank accounts is indeed an improvement. We hope more positive changes will come.



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HORIZONTAL MONITORING – IN SEARCH FOR THE BALANCE?

by Erlan Dosymbekov, Managing Partner, Kazakhstan and Central Asia, EY Kazakhstan

Gulnar Bokpayeva, Senior Manager, Tax and Law, EY Kazakhstan

It is common knowledge that an attractive tax regime stimulating investments is largely defined by how certain, stable and predictable its administration is. In this regard, a number of OECD countries have chosen to introduce what is referred to as “co-operative compliance programs” as a reliable and transparent way of administering taxes and creating a positive relationship with their taxpayers.

Kazakhstan is not a stranger to the notion of investment attractiveness. The Government has been making notable efforts to improve the country’s regulatory environment, of which tax administration is an important element. To this end, the best international practices, *co-operative compliance* being one of them, have been reviewed. Eventually, in January 2019, *horizontal monitoring*, effectively being the local equivalent of *co-operative compliance*, was introduced in Kazakhstan with respect to large taxpayers. It is expected that a pilot project will be run this year with a few taxpayers joining voluntarily.

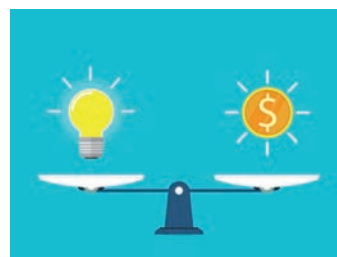
In the light of these developments, we would like comment on the advantages of horizontal monitoring as well the areas where we see potential challenges. It is important that Kazakhstan addresses in timely fashion any concerns over horizontal monitoring, whether real or perceived, to make it attractive for taxpayers. Below, we provide a generic description of the relevant international experience. We also share our thoughts on what the Government should focus on to increase the chances that the pilot project will be reasonably successful.



The idea to launch a pilot is consistent with what most countries have done when implementing their co-operative compliance programs. This allows a degree of flexibility for adjustments to be made to the design concept, if required, as the project develops. Thus, it would be wise to consider international experience to date on the adoption of similar co-operative compliance regimes at the design concept stage.

Overall, successful implementation of horizontal monitoring will depend on several key factors. These are its coherence as well as alignment of its expected benefits with the overall

State Revenue Committee's strategic approach to tax compliance and administration. Furthermore, it is important that the horizontal monitoring regime is sufficiently attractive to taxpayers. In many countries, co-operative compliance programs are voluntary, which is also envisaged at this stage in Kazakhstan. This highlights the need for the concept to address the break-even point for taxpayers. In other words, striking the balance between the expected benefits and investments required to comply with horizontal monitoring will be key.



One of the main global tax trends in recent years is the demand for a greater transparency. In this regard, many believe that co-operative compliance regimes affecting businesses with a large fiscal impact have proven valuable. These regimes are aimed at enhancing timely compliance, as well as tax administration effectiveness and efficiency, while establishing trust with taxpayers. Among the early adopters, starting from 2001, are Australia, the UK, the Netherlands, the US and some others. As of today, roughly thirty more countries have introduced or are planning to introduce similar regimes, primarily for large taxpayers. These include Italy, Belgium and Poland.

Historically, tax auditors in many jurisdictions have conducted “post-factum” tax audits entailing significant assessments for past reporting periods including fines and penalties. This is currently widely practiced in Kazakhstan. Tax control measures of this type imply a less trusted relationship between the tax authorities and businesses. The usual outcome is a resource-intensive and at times less than constructive dispute resolution process. Co-operative compliance regimes in many countries have been introduced to enhance tax control and tax compliance.

There is no single universal co-operative compliance model. That said, most existing approaches aim to achieve a more certain outcome of the tax authorities’ interaction with taxpayers in exchange for greater transparency. In summary, co-operative compliance can be described as a relationship between a tax authority and a taxpayer based upon mutual transparency, cooperation and collaboration. This, in turn, implies voluntary disclosure.

In other words, the taxpayer commits to actively notify the tax authorities of a possible or significant tax risk. All facts and circumstances should be disclosed without hesitation or reservation. This facilitates resolution of uncertain

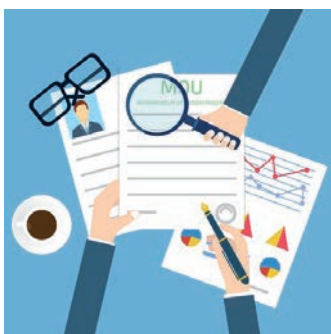
positions and ensures timely payment of the right amount of taxes. However, co-operative compliance is not only about voluntary disclosure. It requires a number of safeguards and enablers to be put in place. These include the tax control framework, the tax authorities' commercial awareness, and information systems for a real time exchange between the tax office and a taxpayer.

According to OECD, the tax control framework's focus is *"an internal control of all processes and transactions with possible tax consequences"*, enabling a taxpayer *"to detect, document and report any relevant tax risks to the revenue body in a timely way"*. As such, reliance on the effectiveness of taxpayers' internal controls is a pivotal attribute of various co-operative compliance regimes. The tax authorities must decide on the design for assessing tax control frameworks when introducing a co-operative compliance regime.

The main challenges for both the tax authorities and taxpayers observed by OECD's *Center for Tax Policy and Administration* are summarized below:

- Communicating the impact of the program on taxpayers;
- Addressing cultural issues: changes in the culture and behavior of the revenue bodies and businesses is required;
- Maintaining a required level of contact to successfully establish a relationship, creating an environment of openness and trust;
- Need for maturity regarding tax control frameworks, which requires investment;
- Establishing metrics to assess delivery of the expected benefit, which may not be straightforward.

In Kazakhstan, the overall concept of horizontal monitoring is established in the Tax Code. The procedure for joining, selection criteria and processes are outlined in Order № 1060 of the Minister of Finance dated December 7, 2018. The Order also sets the sample format for a memorandum to be concluded with a taxpayer on entering the horizontal monitoring regime.



Based on publicly available information, the tax authorities are yet to conclude a memorandum with a taxpayer. Over the past year, it has become clear that the current model requires improvements. Taxpayers are concerned that the main principle of any co-operative compliance regime

- *"transparency in exchange for certainty"* - will not be observed. This is a major roadblock preventing them from joining the initiative. On a practical level, businesses should be comfortable that the benefits of horizontal monitoring will outweigh the investment required to upgrade/ adapt their IT systems and otherwise enhance their tax functions.

The concern is that the tax authorities will be granted direct access to taxpayers' files under pressure to step up their tax collection efforts. Thus, in the case of an unclear tax treatment, they will be restricted in making reasoned decisions in the taxpayers' favor. This is despite the regime clearly providing an advance tax ruling mechanism. Some taxpayers are even worried that what is meant to be a balanced and fair co-operative compliance relationship may in fact turn into an 'ongoing audit'.

In addition, the current legislation does not separately envisage an efficient dispute resolution procedure for taxpayers under horizontal monitoring. The existing appeal process is a cumbersome and time-consuming exercise that will even further undermine the regime's 'natural attractiveness'. The existing practice of imposing criminal liability for tax evasion exacerbates this overall concern.

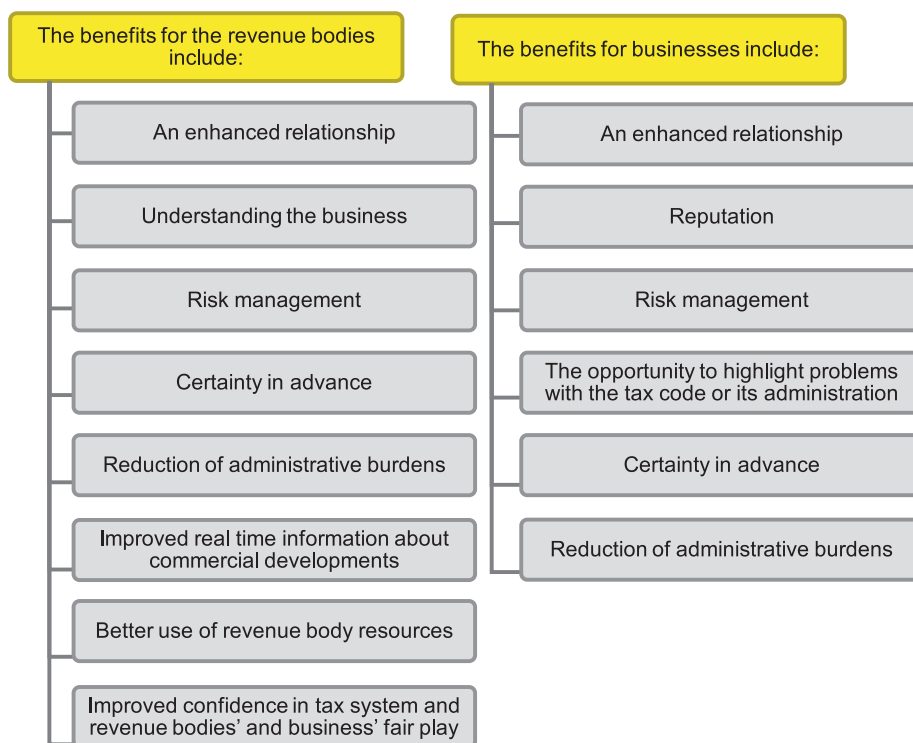
In many taxpayers' view, tax officials should be more empowered to exercise their judgement without risking a reprimand. This is particularly important in cases without clear guidance in law. Tax legislation is not always black and white. Experience and commercial awareness are required for balanced and informed decisions. To this end, the entire system should enable full cooperation between tax authorities and taxpayers in the search for solutions to complex tax cases.

Other integral parts of the horizontal monitoring design concept should be further enhanced before or during the pilot stage. These include admission requirements and procedures (e.g. introduction of a 'clean slate' principle), the information exchange protocol, and so forth.

The State Revenue Committee's recent actions indicate that that they are serious about making horizontal monitoring in Kazakhstan a success. They have taken a number of steps in this direction, including a potential restructuring conducted by a dedicated team assigned to the initiative. There has been ongoing engagement with taxpayers to discuss areas for improvement and to search for mutually acceptable solutions. Furthermore, the tax authorities have travelled to other countries with co-operative compliance regimes to learn about their experience.

We hope that on the back of these efforts, Kazakhstan will be able to properly address the current deficiencies in its horizontal monitoring model. This would eventually help taxpayers to appreciate the benefits of this regime, summarized in the OECD chart on the following page.

OECD Horizontal Monitoring Benefits Chart



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APPLICATION OF THE MULTILATERAL INSTRUMENT IN KAZAKHSTAN

by Kaisar Yegizbayev
Senior Lawyer, Tax and Customs, GRATA International

On February 6, 2020, the Parliament of Kazakhstan ratified the *Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (MLI)*. Assuming the President of Kazakhstan signs the law on ratification in 2020, it is expected the MLI's provisions on withholding tax will become effective from January 1, 2021. MLI was developed by the OECD Tax Committee and is intended to modify existing International Double Tax Treaties in order to tackle international businesses' aggressive tax avoidance strategies.

The extreme globalization of the economy and the global financial crisis has placed aggressive tax avoidance on the main agenda of the business community. Loopholes in international tax rules resulted in a shift of nearly 660 billion USD in 2012, which is equivalent 0,9 of world GDP. Abuse of inconsistencies in international tax legislation led to final recommendations on fifteen *Base Erosion and Profit Shifting (BEPS)* released by OECD in October 2015. Even though Kazakhstan is not an OECD member, Kazakhstan aims to reach OECD taxation standards in order to be recognized as a country with a favorable investment climate.



Kazakhstan has already adopted OECD recommendations on BEPS Action 3 by including a new provision to the country's Tax Code on *Controlled Foreign Company Rules*. Recommendations on Action 13 about transfer pricing documentation and country-by-country reporting were also incorporated into Kazakhstan's law on transfer pricing.

By ratifying *MLI*, Kazakhstan is also going to adopt another two *BEPS* actions: Action 6: *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances* and Action 7: *Preventing the Artificial Avoidance of Permanent Establishment Status*.

The above BEPS actions are reflected in the following MLI articles:

- I. *Article 7 – Prevention of Treaty Abuse*, which includes:
 - *Limitation of Benefits (LOB)*;
 - *Principle Purpose Test (PPT)*.
- II. *Article 8 – Dividend Transfer Transactions*
- III. *Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies*.

Meanwhile, according to *MLI*, the given amendments to the Double Tax Treaty must be applied only if both jurisdictions are agreed to implement these amendments to the existing Double Tax Treaties and only after notifying OECD as a depositary of such amendments.



Therefore, under each article of the law on ratification, Kazakhstan directly indicates the list of Double Tax Treaties and the *MLI* provisions that must be applied to these treaties.

The following is a brief review of the most essential *MLI* provisions that will be adopted by Kazakhstan with a possible impact on the country's taxation of international business.

I. Prevention of Treaty Abuse

According to *MLI*, application of benefits under the Double Tax Treaty must be determined by analysis under either LOB or PPT, or by their combination. In order to apply LOB and PPT to the existing Double Tax Treaties, both jurisdictions must have an agreement to apply them.

• Simple Limitation of Benefits

According to the current law on ratification, all the existing Double Tax Treaties must be applied considering the provisions of *Simple Limitation of Benefits (SLOB)*. However, application of *SLOB* by Kazakhstan does not mean that *SLOB* will automatically be applied to all the Double Tax Treaties concluded by Kazakhstan. This is determined by each jurisdiction that has agreed to apply *SLOB* to the Double Tax Treaty with Kazakhstan.

If both Kazakhstan and other corresponding jurisdictions agree to apply *SLOB* and have notified the OECD, taxation of the residents of these states will be governed by the *MLI* provisions on *SLOB*.

Under *SLOB*, Double Tax Treaty benefits are provided only for “qualified persons”, who are defined as:

- *Individuals;*
- *State authorities;*
- *Companies whose shares are traded on a recognized stock exchange;*
- *Non-commercial organizations with status regulated on the international level;*
- *Pension funds.*

Meanwhile, even if the taxpayer is not a qualified person, it is still possible to apply Double Tax Treaty benefits if the taxpayer can prove a main involvement in “*active business activity*”. Active business activity is defined as activity not including activities of holding companies, administration of group of companies, group financing, or making and managing investments.

For instance, an LLP registered in Russia (**RuCo**) performs engineering services for a Kazakh LLP (**KzCo**). KzCo pays RuCo fees for services. RuCo does not have a permanent establishment in Kazakhstan. The services are performed in Russia.

According to Kazakhstan's Tax Code, the income from the engineering services is recognized as income derived from Kazakh sources even if performed outside of Kazakhstan. However, under Article 7 of the Double Tax Treaty between Kazakhstan and Russia, RuCo's income must be exempted from taxation in Kazakhstan. After enforcement of *MLI*, it will be necessary to analyze international taxation taking into account *MLI*, aside from the Double Tax Treaty and the Tax Code.

Both Russia and Kazakhstan have notified OECD that the Double Tax Treaty between Russia and Kazakhstan must be applied, taking into account the *SLOB* provisions of *MLI*. Taxation of RuCo's income must therefore be determined on the basis of *SLOB*.

Under *SLOB*, however, RuCo is obviously not a qualified person since it is not an individual, state authority or non-commercial organization. But *SLOB* still allows RuCo to apply the Double Tax Treaty exemption, provided that RuCo can prove its main activity involves “active business activity”. This means RuCo must prove it is not involved in a holding company, managing a group of companies, group financing or investment activity.

It is not clear how the Kazakh tax authorities will determine foreign companies' main activity. Therefore, the country's tax authorities should improve their cooperation with foreign tax authorities to avoid incorrectly implementing *MLI*. The tax authorities should also study the *BEPS Final Report* on Action 6 to understand the purpose of adopting *SLOB* and to formulate a clear approach on applying *MLI* in Kazakhstan.

• **Principle Purpose Test (PPT)**

Under *PPT*, the Double Tax Treaty exemptions cannot be applied if it is reasonable to conclude that one of the principal purposes of the transaction is to obtain Double Tax Treaty benefits. In other words, if the parties entered into a transaction with the main intention being to exempt the income from taxation or to apply a reduced tax rate under the Treaty, the exemption will be disallowed.

The *Final BEPS Report* on Action 6 envisages that *PPT* is a subjective test that must be applied on a case-by-case basis by analyzing each transaction. Therefore, in deciding the tax treatment of a given transaction, the tax authorities must pay close attention to the substance of the transaction and its economic purpose. If the transaction's purpose is not a bonafide exchange of goods and services, but to obtain Double Tax Treaty benefits, the benefits can be denied.

In the *Final BEPS Report* on Action 6, OECD provides 10 examples of applying *PPT*. However, the examples describe straightforward and simple transactions, in which it is easy to spot the *PPT* violations. Moreover, some of these examples are already governed by the Kazakh tax legislation.

One of the examples describes a case in which RCo, a tax resident of state R, wins a tender for construction of a powerplant in state S. Construction work is intended to take about 22 months, so RCo splits the project into two contracts for 11 months each. One contract is for RCo itself, and the other is for SUBCo, a new RCo subsidiary.

The OECD holds that the second contract is solely for the purpose of obtaining exemptions under Article 5 of the Double Tax Treaty, which envisages a term of 12 months for creation of a permanent establishment. The transaction does not pass the *PPT* test and the Double Tax Treaty benefit for a 12-month period required to create a permanent establishment cannot apply to RCo.

It is worth noting that Kazakhstan's Tax Code already prevents splitting contracts between related parties to avoid permanent establishment. The tax authorities are therefore generally able to tackle permanent establishment strategies without *MLI* involvement.

II. Dividend Transfer Transactions

Kazakhstan's Double Tax Treaties allow foreign companies to reduce tax on dividends distributed by Kazakh companies from 15%, as provided by the Kazakh Tax Code, to 10% or 5%. Under *MLI*, dividend benefits apply only if the foreign company holds the Kazakh company shares for at least 365 days. Otherwise, the foreign company cannot benefit from the reduced tax rate on dividends and the Kazakh company will be obliged to withhold 15% income tax, as a tax agent.

As an example, a Company from the Netherlands (**DutchCo**) purchases shares of a Kazakh company (**KzCo**) on 31 December 2021. As the sole shareholder, *DutchCo* decides to distribute dividends from *KzCo*. The dividends are paid on 30 December 2022. As a result, only 365 days pass since the share purchase. Under Kazakhstan's Tax Code, the dividends are taxed at 15%.

However, the Double Tax Treaty between the Netherlands and Kazakhstan provides a reduced tax rate on dividends down to 5%. Considering that *DutchCo* holds the *KzCo* shares for less than 365 days, the Double Tax Treaty's reduced tax rate does not apply to the *DutchCo* dividends.

III. Artificial Avoidance of Permanent Establishment Status Through Commissionaire Arrangements

Generally, Double Tax Treaties define the dependent agent as a person with the right to conclude a contract in the name of the foreign company. This activity by the dependent agent leads to the foreign legal entity's permanent establishment, as represented by the dependent agent.

The *BEPS Final Report* on Action 7 recommends broadening the definition of a dependent agent to include

not only concluding contracts in the company's name, but also actions in the agent's name and on behalf of the foreign company. As such, a person can be recognized as a dependent agent even without a power of attorney from the foreign company. It is therefore sufficient to establish that the person acts in his own name, but on behalf of the foreign company, to recognize permanent establishment for the foreign company.

Conclusion

It is expected that the main *MLI* provisions will become effective from January 1, 2021. During 2020, companies with businesses involving international transactions in Kazakhstan should carefully consider taxation of their income derived from Kazakhstan sources. Due to the complexity of *MLI* rules and lack of clear understanding of how *MLI* provisions may be implemented in Kazakhstan, it is possible that international businesses may have an additional tax burden on profits derived in Kazakhstan.

The State Revenue Committee should therefore adopt a joint approach to interpretation of *MLI* provisions and communicate this single interpretation to the local tax authorities to ensure proper observance of taxpayer rights.

Fund/Benchmark*	1 YEAR	3 YEARS	5 YEARS	10 YEARS	SINCE BEGINNING
Treasury» open and unit investment trust	25,8%	18,8%	37,9%	35,1%	53,5%
Deposit	10,6%	13,6%	14,3%	17,1%	24,7%
«Centras-Global Markets» open-ended mutual fund	39,3%	18,6%	40,3%	26,2%	43,5%
MSCI World Index*	25,9%	13,4%	26,5%	30,5%	38,8%
«Eurobond» open-ended mutual fund	18,2%	14,8%	37,1%	37,8%	43,7%
JP Morgan EM Bonds	15,0%	12,3%	36,1%	38,9%	44,5%



«Treasury» investment trust

The first open mutual fund in Kazakhstan, was registered on 5 January 2005 y. by the National Bank

FUND BENEFITS:

- * **Balanced strategy** between currencies and assets, as well as among dividend shares, bonds and shares of fast growing companies;
- * high investment performance over 10 years;
- * Reliable credit quality of portfolio components.



Global Markets

«Centras-Global Markets» open-ended mutual fund was registered on 5 January 2005 y. by the National Bank

FUND BENEFITS:

- * **Brave strategy**, attention on developed markets – combination of stable and fast growing stocks;
- * high currency component >90%.
- * risks and potential above average;
- * opportunity to buy or sell fund's units on KASE.



«Eurobond» fund

«Eurobond» open-ended mutual fund was registered on 31 march 2009 y. by the National Bank

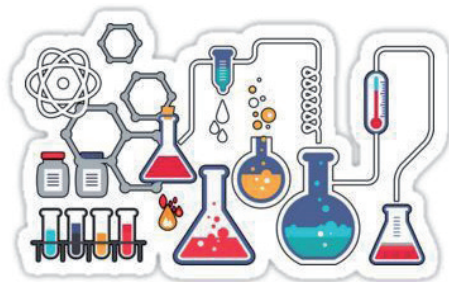
FUND BENEFITS:

- * **Balanced strategy**, with the main focus on eurobonds of Republic of Kazakhstan and states with high credit rating;
- * very high currency component > 95%;
- * opportunity to buy or sell fund's units on KASE.

CHEMICAL REGULATION AND INDUSTRIAL SAFETY STANDARDS

by Olga Voronova
Country Director, Procter & Gamble Kazakhstan

The Eurasian Economic Union¹ (EAEU) adopted the **Regulation on Safety of Chemical Products** in 2017 with implementation scheduled for 2021. The Regulation aims to ensure high standards of chemical products safety across EAEU member states. Kazakhstan leads on this topic within the EAEU and has had a major role in shaping the legislation.



While the Regulation is well-intended, its proposed format and mechanisms are very likely to have a major impact on the lead time and cost of bringing raw and pack materials, and thus finished products, to the Kazakhstan and EAEU markets. **It will affect every business (small, medium, big, international, local), involved in production.** The Regulation has unprecedentedly complex requirements that do not exist anywhere else in the world. Procter and Gamble and other Fast-Moving Consumer Goods (FMCG) companies regard this as a serious business risk.

Regulation Content and Business Risk

The Regulation includes new safety requirements that entail difficult and time-consuming compliance, *inter-alia* stipulating **mandatory state registration of every new substance or mixture of chemical ingredients** being brought into the EAEU countries. As industry in its constant search for better formulations actively replaces raw and pack materials with local sources (*localization*) **household chemical products are numerous and regularly change formulation.** The Regulation could significantly impact speed and cost for companies introducing new technologies and better formulations, localizing raw and pack materials (changing product suppliers), and depriving consumers of modern products.

If implemented in its current form, the Technical Regulation will undermine the Kazakhstan Government's efforts to promote production localization in the area of chemical manufacturing and other sectors of economy. It could also negatively impact EAEU overall investment attractiveness.

Current Status and Planned Next Steps

Industry has stressed the serious negative impact of the anticipated Regulation and encourages the Government to engage with business to shape the Regulation in a way that will not create additional barriers for investors, but without compromising safety standards.

After several years of intensive work Kazakhstan business achieved major progress in 2019: the EAEU has been convinced to reopen the published (primary) legislation to make it more proportional and workable. Several industry working groups have been created to work with Government on the Regulation.

The current recommendation to the Kazakhstan Government on the Chemical Regulation law is that implementation of the Technical Regulations should be delayed, allowing for simplification of the regulations by removing the requirement for registration of mixtures of chemical ingredients.

Procter and Gamble and other companies have been and continue to be actively involved on this topic. AmCham member companies are encouraged to understand the Regulation, to assess the impact on their businesses, and to engage with working groups, thus enabling more businesses to express their perspective and to modify the legislation.



Procter and Gamble is confident that working with the Government of Kazakhstan to revise the Regulation (2017 version) is a first, very important step towards shaping a better business and investors-focused law, together with major improvements in the area of safety standards.

¹ An economic union of Russia, Belarus, Kazakhstan, Armenia and Kyrgyzia, providing free movement of goods/capital/labor among the member-states. The EAEU also pursues a coordinated, harmonized and single policy in the area of technical regulations.



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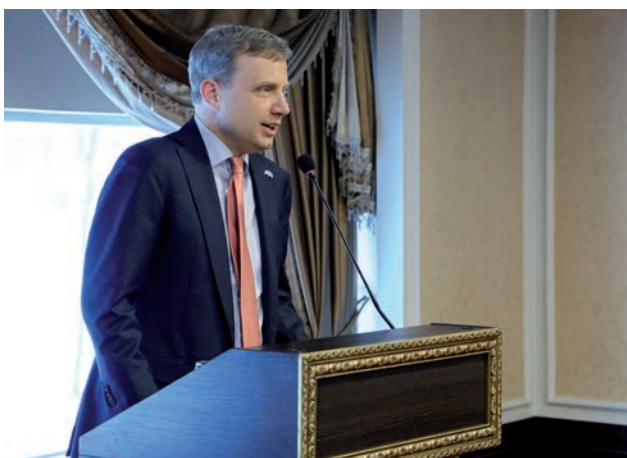
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JANUARY BUSINESS ROUNDTABLE WITH U.S. CONSUL-GENERAL ERIC MEYER

The January Business Roundtable Luncheon was held on Friday, January 24 in the Rixos Hotel Lotus Restaurant with a full crowd of AmCham members, guests, and Board Members to hear U.S. Consul-General Eric Meyer speak about '*Supporting Connectivity in Central Asia*'. Prior to joining the U.S. Department of State, Eric Meyer worked in the private sector in the airline industry and at the White House. Since joining the State Department, he has served in Argentina, Egypt, Finland, Cambodia, and as an advisor in the Bureau of Oceans and International Environment and Scientific Affairs during the U.S. Chairmanship of the Arctic Council. He arrived in Almaty as U.S. Consul-General in September 2018.



Eric Meyer began by noting the historic first visit of the U.S. Secretary of Commerce to Kazakhstan in 2018. Bilateral trade that year topped \$2 billion, and total U.S. FDI reached over \$30 billion. In 2019, the U.S. Consulate and Embassy worked with AmCham to help Kazakhstan defend against cyberthreats and further improve its business climate. 2020 began with signing the *U.S.-Kazakhstan Open Skies Agreement*, which lays the foundation for greater bilateral cooperation in civil aviation, transportation, and logistics, and creates opportunities for airlines and other businesses. *Open Skies* comes at an opportune moment as Almaty aims to upgrade its airport and cement itself as an aviation hub.

Almaty lies at the heart of the U.S. growing trade and investment ties not only with Kazakhstan, but with the whole region. That is one of the reasons the United States is committed to a long-term diplomatic presence in Almaty, which is the only U.S. General Consulate in Central Asia. The Consul-General works with many U.S. agencies across Central Asia operating from their hub in Almaty: USAID, the U.S. Centers for Disease Control, Drug Enforcement Agency, the Foreign Commercial Service, and the President's Emergency Program for AIDS Relief. Discussions are underway with the city to secure a plot of land for a new Consulate compound that can accommodate these operations.

The United States needs a strong diplomatic presence here because of its growing ties with Central Asia. It is a momentous time for the region. From Kazakhstan's political transition to Uzbekistan's economic opening, changing dynamics have led to a renewed focus on intraregional cooperation. There has not only been a flurry of meetings among the five Central Asian countries and partners such as the United States, the European Union, and Japan; the Central Asian republics are gathering on their own to discuss issues of collective concern.

This growing regional and bilateral engagement reflects the objectives and priorities embedded in the Trump administration's new Central Asia strategy, which will be released in early February.

This heightened dynamism and trend to discuss Central Asian issues of collective concern also represents a huge opportunity for the Central Asian states to tackle one of the region's biggest challenges – connectivity.

A thousand years ago, Central Asia and the Silk Road were at the center of the world economy. Due to history, geography and other circumstances, however, that is no longer the case. Trading across borders in Central Asia is the regions' weakest indicator in the World Bank's *Doing Business Report*. In the 2019 report, Kazakhstan ranked 102nd out of 212 countries; Uzbekistan - 165th; Tajikistan - 148th; and Kyrgyzstan - 70th.

Helping Central Asia do more business across borders is critical to ensuring the prosperity, sovereignty, and independence of the Central Asian states – which is the United States' top objective here. The United States is committed to working closely with its partners to re-connect Central Asia to the world economy. Through the C5+1 diplomatic platform, the United States is working to increase economic connectivity and trade, mitigate environmental challenges, and jointly address security threats.

This past September on the sidelines of the UN General Assembly, Secretary of State Mike Pompeo met with the foreign ministers of Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan, and the Ambassador of Turkmenistan to discuss security cooperation, support for Afghanistan, and ways to deepen economic cooperation. Those conversations touched on the repatriation of foreign terrorist fighters and their family members from Syria and Iraq. Through the C5+1 platform, the United States is helping its partners strengthen their regional security by supporting efforts to counter violent extremism and, hopefully in the near future, border security issues. Through C5+1, the United States and countries of Central Asia also work to support peace in Afghanistan.

Although Secretary Pompeo had to postpone his planned visit to Kazakhstan and Uzbekistan in January, a trip that was meant to include another C5+1 ministerial meeting to further advance the cooperation agenda, Secretary Pompeo looks forward to visiting the region soon and pushing for a better connected, more prosperous, and more secure Central Asia.

Beyond security, there are other elements in how the United States is helping to expand regional connectivity. Under the C5+1 initiative, the State Department and USAID are supporting greater integration among the countries of Central Asia, including Afghanistan.

U.S. Ambassador William Moser and Consul General Eric Meyer joined USAID Deputy Assistant Administrator Javier Piedra and U.S. Ambassador to Uzbekistan Dan Rosenblum for the 9th annual *Central Asian Trade Forum* in Shymkent last year, focused on horticulture, innovation, and investment. Over the past nine years, the Trade Forum has helped build regional trade connectivity by offering business-to-business networking opportunities for entrepreneurs and helping officials discuss cross-border trade issues. The 2019 Forum saw over 650 attendees from 17 countries and over \$1.6 million in contracts signed during the concurrent *AgriTek Exhibition*.

AgriTek demonstrated the growing interest from U.S. companies in Kazakhstan's agriculture sector. Tyson Foods and Valmont demonstrated their commitment to the potential for livestock and irrigation equipment, as well as machinery. The U.S. Consulate will offer whatever support is needed to help U.S. companies enter the Kazakhstani market and support the market-based reforms that will help Kazakhstan realize its agricultural potential.

Regional energy cooperation is another area for US-Central Asian cooperation. USAID is providing technical assistance to the governments in the Central Asian countries to modernize their energy sectors, focused on market reforms, attracting private investment in low-cost renewable energy, and establishing regional power markets. In Kazakhstan for example, USAID has assisted the government with policy and regulatory reforms resulting in new competitive auctions that have attracted private investment for over 1,200 megawatts of new renewable energy projects.

USAID is also leading the efforts to establish the *Central Asia Regional Electricity Market*, or CAREM. Kazakhstan recently signed on to CAREM, which is envisioned to become a commercially viable and market-based power system that will ensure low-cost power across the region.

The United States is also working with the five Central Asian republics to foster cooperation on connectivity under our *Trade and Investment Framework Agreement* - or *TIFA*. Our work in *TIFA* fosters cross-border cooperation

on customs, standards, intellectual property enforcement, and women's entrepreneurship. Through *TIFA*, we are also encouraging WTO members such as Kazakhstan to meet their WTO commitments and become more integrated into the global economy. This is especially important with the upcoming WTO Ministerial in Nur-Sultan this June.

U.S. Consulate General Almaty is also a hub for efforts to build people-to-people ties across Central Asia. The annual *Go Viral Festival* and the *Go Viral Network* create, facilitate, and sustain connections among innovators, influencers, and creative communities throughout the region to share ideas and help participants achieve their goals and solve problems important to them and their communities. This year's Festival is planned for June 12 to 14.

One of the most popular and widespread storytelling projects is the *48 Hour Film Race*. This program supports the growth and development of emerging independent filmmakers across Central Asia and inspires videographers and filmmakers to learn, network, and create. The signature event is a two-day film race, challenging participants of all abilities – from novice to professional – to create a four-minute movie in just 48 hours.



The U.S. Consulate is also supporting connectivity and business development through cultural exchange programs. The U.S. Mission sends more than 150 Kazakhstanis to the United States each year on academic and professional exchanges, providing them best practices and valuable contacts in their respective industries. One of our first programs, the *Special American Business Internship Training*, known as the *SABIT* program, has sent over 450 participants since 1993 and trained nine Kazakhstani entrepreneurs last year. Exchange participants report afterwards that their experience in the United States is life changing and inspiring. They return to Kazakhstan with a stronger command of the English language and an increased appreciation for the friendship between our two countries.

English language education is a top priority in Kazakhstan. The U.S. Mission offers a wide range of programs to strengthen Kazakhstan's English teaching and to improve Kazakhstanis' English skills. For example, a cohort of

Fulbright English Teaching Assistants (or ETAs) are placed in various cities across Kazakhstan to promote English language learning and forge lasting connections between the United States and Central Asia. Another program is English for Journalists, now in its second cohort and delivering high quality language learning to more than 300 journalists.

The Consulate has a range of media development programs focused on cutting-edge trends to support the development of ethical, professional news media, because freedom of speech and information is a fundamental principal essential to any society. The Mission is providing grants to strengthen Kazakhstan's media market, expand media and digital literacy, financial sustainability of media outlets, and media legislation. Media grants also go to organizations that help support journalists and the important work that they do. For example, training on mobile journalism brought U.S. expertise to Turkistan, Aktau, and Taldykorgan, where journalists learned how to use mobile phones to conduct reporting.

One of the pillars of the U.S. cultural engagement in Kazakhstan is the *American Spaces* network. There are 11 Spaces across Kazakhstan and in 142 countries around the world. *American Spaces* are U.S. Department of State-supported cultural and educational centers that help people better understand U.S. society, values, and foreign policy, and build bridges between the United States and other countries.

2020 will mark six years of a very successful public-private partnership between the U.S. Consulate General and Chevron in promoting education, cultural exchange, and social responsibility in Kazakhstan. Chevron has provided continued collaboration, particularly for their sponsorship of our *Makerspace* and *STEM* programs in *American Space Almaty* and the *American Corner in Nur-Sultan*.

Through a wide range of programs, Chevron and the U.S. Mission are promoting girls' education in science, technology, and engineering, and math (or STEM). Through the *Girls in STEM* summer camp, girls build skills and pursue STEM careers. As a testament to the impact of these programs, the *Makerspace Almaty Girls Tech Team* won the grand prize at *Technovation's World Pitch Summit* in Silicon Valley in 2017, grabbing headlines in Kazakhstan and across the globe.

AmCham is encouraged to explore possible connections with the 11 *American Spaces* throughout Kazakhstan. *American Spaces* collaborations can help expand brand recognition, tap into new social and business networks, and provide an easy path to social impact. Reliable local partners have been identified and high-quality, known venues established.

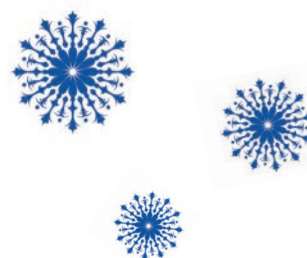
Underpinning all U.S. work on connectivity and economic development in Central Asia is the rule of law – sanctity of contracts, regulatory transparency, and fair, efficient, and impartial courts. These are exactly the things companies look at when analyzing the attractiveness of foreign markets. The U.S. Mission is proud of its strong partnership with the Supreme Court of Kazakhstan to build the capacity of Kazakhstan's courts through USAID's *Kazakhstan Judicial Independence Program*.

The United States is doing a lot to help Central Asia connect to the global economy. Cooperation makes it easier to do business across borders in Central Asia and creates more opportunities for U.S. companies.

In January, President Trump signed a landmark and fully enforceable *Phase One Trade Agreement* with China, delivering fairer trade for the United States. This historic agreement will begin to rebalance the U.S. vital trade partnership with China and provide new opportunities for U.S. businesses and farmers. China has agreed to make significant structural reforms and to increase imports of U.S. goods and services by at least \$200 billion. This is Phase One, and the Administration is continuing its strong push to resolve remaining trade concerns in future negotiations.

Last week, Secretary Pompeo went to Silicon Valley to work with our leading tech companies to confront the hard questions and unique challenges posed by doing business in China. He laid out his vision for how U.S. companies can do business successfully in China – to grow their companies and support U.S. workers – while at the same time upholding American values, protecting our innovation, and ensuring our national security. He stressed that “American firms operate according to values proven to produce good deals and quality work, the work that we do in democracies, things like transparent contracts, the respect for the rule of law, and honest, straightforward accounting practices.”

Working together with AmCham, the U.S. Embassy and U.S. Consulate aim to cooperate to identify new commercial opportunities and new lines of effort to improve the business climate in Kazakhstan. The U.S. business community is the cornerstone of the U.S. strategic partnership with Kazakhstan. As President Calvin Coolidge famously declared, “The business of America is business.”



AMCHAM ANNUAL GENERAL MEETING 2019 ANNUAL REPORT TO MEMBERS

The AmCham Annual General Meeting (AGM) at which Board Members report each year on AmCham's achievements of the previous year was held at the Rixos Almaty Hotel on Friday evening, 31 January 2020. Speaking to a capacity audience in the Lotus Restaurant, U.S. Consul-General Eric Meyer, a strong AmCham supporter in the international diplomatic community and a constant presence at AmCham events in Almaty, welcomed AmCham members and spoke about AmCham's advocacy work with the Government of Kazakhstan and AmCham's development in Kazakhstan over the past decade.



U.S. Consul-General Eric Meyer

2019 AmCham Advocacy: AmCham Executive Director Doris Bradbury took the podium to report on AmCham advocacy over the past year, as well as outlining the history of the AmCham dialogue platform with the Government of Kazakhstan, the *Council to Improve the Investment Climate*. The Council, which was created ten years ago exclusively for AmCham and its members, is chaired each month by the Prime Minister and a panel of Cabinet Ministers responsible for the country's economy and justice system.

2019 was marked by the stepping down in March of President Nazarbayev, Kazakhstan's leader for over thirty years, both in the Soviet period and since the country's independence. Although his successor was soon appointed and then confirmed in nation-wide elections in June, the transition period was marked by some turbulence and a sense of disquiet lasting through the summer. The long-term transition is still sensed to be incomplete.

AmCham therefore declared a hiatus in Council meetings to allow the new Government to take shape. After several Council sessions early in the year, the Council resumed in the autumn after meeting with the new Prime Minister to reconfirm the Government's commitment to the Council.

Over the past decade, advocacy has become the overriding theme in virtually every form of AmCham activity, the thread binding together the Chamber's twenty-four Working

Groups, Publications (first and foremost, the flagship publication, *Investors' Voice*), Investment White Papers for the Government, Conferences on topics such as *Economic Diversification* and *Cybersecurity*, Speaker Luncheons with the *National Bank Governor*, *WTO Ambassadors*, *International Financial Institutions*, even the *Annual Award Gala* with its many awards for advocacy activity.

Cybersecurity and Cybercrime was an important topic at the Council in 2019, with the new Prime Minister convening virtually the entire Cabinet to report on their own actions to enhance government cybersecurity. A new Ministry was formed this year for the express purpose of implementing the Government's *Digitalization Kazakhstan Program*, entailing the need to strengthen protection of cyberspace across the country.

AmCham expanded the Council speaker list to a full-day *Cybersecurity Conference*. The Conference was opened by the *Justice* and *Digitalization/ Innovation Ministers*, partnering with the *U.S.* and *Canadian Ambassadors* as Keynote Speakers. Technology companies, the Big Four, law firms, the diplomatic corps, and industry all gathered their best experts, bringing many speakers from abroad to participate in the four conference panels:

- *Cybercrime: A Growth Industry*
- *Critical Infrastructure Vulnerabilities*
- *Defensive Strategies: Protecting Government, Industry, and the Individual*
- *Digitalization and the Cloud: Benefits and Risks.*



AmCham Executive Director Doris Bradbury

Several Council sessions also stressed the importance of levelling the playing field for investors and strengthening *Fair Competition* practices, a significant challenge applying to procurement, taxation, and the judicial system. The OECD played an important role in the *Fair Competition* discussion and, upon request from the Prime Minister, designed a short-term training program for the Competition Committee. It is planned to revisit this topic in 2020.

Looking ahead into 2020, AmCham will focus in the early part of the year on the *World Trade Organization Ministerials* to be hosted by Kazakhstan in early June. When Kazakhstan acceded to WTO five years ago after two decades of negotiations, the accession was greeted with great fanfare. Since then, however, the *Eurasian Economic Union* (Russia, Kazakhstan, Belarus) has overshadowed the country's WTO commitments, in some respects conflicting with WTO labor and intellectual property regulations, among other critical areas of international trade.



AmCham Board Member John Baltz
Managing Director, Chevron Eurasia Business Unit

For foreign investors in Kazakhstan, the WTO Ministerials offer an opportunity to remind the Government of its WTO commitments and the obstacles still obstructing Kazakhstan's adherence to the principles of international trade.

AmCham continues to develop its relationship with the international organizations that are closely cooperating with Kazakhstan: the *OECD*, *IMF*, *WTO*, *WHO*, *World Bank*, *IFC*, *EBRD*, *ADB*, *IsDB*, and the many global rating agencies that visit Kazakhstan regularly to assess its economic progress and investment climate.

2019 AmCham Spring Awards Gala: John Baltz, Chevron Managing Director of the Eurasia Business Unit, delivered the report on the *Spring Awards Gala*. The Gala was held in Nur-Sultan in 2019, at the *Ritz-Carlton Astana Hotel*, to enable Government leaders to attend along with the AmCham CEOs at corporate tables that filled the Ritz Ballroom. *Karachaganak Petroleum (KPO) General Director Edwin Blom* served as the evening's Master of Ceremonies. The Gala presents 13 Awards for a variety of corporate and individual achievement.

A major diplomatic presence was a prominent feature of the evening with fifteen Ambassadors and their wives filling three conjoined Head Tables with the Prime Minister.

The Gala always begins with the three most important Awards – the *U.S. Ambassador's Award for the Best Contribution to U.S.-Kazakhstan Relations*, the *AmCham Award for Outstanding Public Service*, and the *CEO of the Year Award*. This year the Award sequence was changed so that the *AmCham Public Service Award* could be presented at the outset to *Prime Minister Bakhytzhon Sagintayev*, a strong AmCham supporter who chaired Council sessions for three years before stepping down in the spring. The Prime Minister graciously attended the Gala, remaining throughout the evening, speaking at length at the podium about AmCham advocacy and listening with great interest to presentation of the twelve following Awards.

Over the twelve years of the Gala's existence, more than one hundred awards have been presented to AmCham companies and corporate leaders for outstanding achievements, as well as to Government leaders for their support for AmCham advocacy. AmCham is fortunate to have always received support from the Prime Ministers over this period of time. Although AmCham cannot realistically hope to transform Kazakhstan in the course of a decade, together with its members and international partners, AmCham has made a difference in many areas of importance to investors.



Andrey Kurilin
CEO, Citibank Kazakhstan

2019 AmCham Regional Strategy: Citibank CEO Andrey Kurilin took the podium to discuss the *AmCham Regional Strategy*. Beyond Almaty, AmCham has a solid presence in Kazakhstan's major regional cities: Atyrau and Aktau in the Caspian region, Shymkent, the burgeoning southern city, and the country's capital, newly anointed as Nur-Sultan. Each city has an AmCham representative who ensures that AmCham remains well-informed about events, trends, and member issues in each region. The Resident Representatives are CEOs of leading AmCham member companies who perform representative functions for AmCham whenever necessary.

AmCham Working Groups are spread across all five cities and are chaired by AmCham corporate leaders in each city. AmCham organizes events in the regional cities, as well as in Almaty, effectively remaining in touch with the local membership and bringing members together in force, including with the diplomatic community during large international events in each location during the year.



AmCham Board Secretary Ashley Clarke
Chief Operation Officer, KPMG Kazakhstan and Central Asia

2019 AmCham Working Groups: AmCham has 24 Working Groups divided into two types fulfilling somewhat different functions, but all contributing strongly to advocacy.

- The 20 *AmCham Classic Working Groups* are divided among the five major cities, and serve to bring members together to discuss new challenges and new legislation for their particular area of enquiry – *Foreign Investment* (the original AmCham WG), *Tax* (by far the most largest and most active WG), *Corporate Social Responsibility*, *Customs and Trade*, *Human Resources*, *Healthcare*, and others. These Groups are discussion forums that often draft petitions to the Government and contribute to AmCham White Papers, as well as to the monthly AmCham Council meetings in Nur-Sultan.
- The 4 *AmCham InterMinisterial Working Groups* focus on specific topics to discuss directly with Ministers and Deputy Ministers at each meeting. These Groups operate via Government video-conference facilities connected to regional cities so that members can participate in discussions of, for instance, tax legislation, from their own locations via direct link to the State Revenue Committee in Nur-Sultan.

Over a period of five years, the InterMinisterial Groups have achieved significant change in tax legislation and licensing regulations. Intellectual property discussions have presented a greater challenge, but this is one of the most critical areas in which AmCham persists.

2019 AmCham Financial Report/ 2020 Board Election Results: The Annual General Meeting concluded with the *2019 Financial Report* and *2020 Board Election Results* delivered by *Ashley Clarke, KPMG Kazakhstan and Central Asia Chief Operating Officer* and *AmCham Board Secretary*. The Financial Report showed a balanced and healthy budget with judicious use of AmCham funds from membership fees, advertising revenue, and sponsorships.

The 2020 Board Elections resulted in three re-elected Board Members and one new Board Member:

- *Kenneth Mack, AmCham Board President and Principal, Mack Law, Washington D.C.*
- *Ashley Clarke, Board Executive Committee Secretary and Chief Operating Officer, KPMG Kazakhstan and Central Asia*
- *Gani Uzbekov, AmCham Board Member, Founder and CEO of S1LK*
- *Gordon Haskins, President, Al-Hilal Bank Kazakhstan (New Board Member)*



New AmCham Board Member Gordon Haskins
President, Al-Hilal Bank Kazakhstan

AGM SUNDOWNER SPONSORED BY CHEVRON AT THE RIXOS ALMATY HOTEL

Following the AmCham Annual General Meeting, Chevron generously sponsored the AGM Sundowner with an outstanding buffet dinner and drinks on the spacious Mezzanine outside the Lotus Restaurant. John Baltz, Chevron Managing Director of the Eurasia Business Unit and an AmCham Board Member, delivered a heartfelt Welcome to the large crowd of members and guests and spoke about Chevron's new exploration and production projects at Tengizchevroil, that will increase production by 12 million tonnes per year, as well as the company's support for corporate social responsibility such as its promotion and efforts to maintain traditional Kazakhstani crafts and trades.

Chevron has been one of the rare companies over many years to recognize the priceless value of Kazakhstan's traditional, but endangered crafts. In addition to training in the techniques of crafts, Chevron has also sponsored publications about Kazakhstan's artistic heritage and contemporary art in the country's museums. John Baltz delivered his presentation backed up by PowerPoint slides visually illustrating work on the new projects at TCO and craftsmen and women engaged in their work.

Chevron has been a leader in this respect, lending its support to ensure that Kazakhstan artistic and historical heritage is not forgotten through publications, exhibitions, and maintaining the crafts and artistic culture itself.

Sundowner guests enjoyed meeting the Board Members, both those who were re-elected and new Board Member Gordon Haskins, CEO of Al-Hilal Bank.



MEMBER NEWS



Asiamoney names Citi 'Best International Bank in Kazakhstan'



Citi first entered the market in 1993, following US oil firm Chevron. Citi's strategy today is still not drastically different from its original rationale: banking for multinational corporations keen to invest in the country. This is an important role for a market that relies on foreign capital in crucial industries, including oil production.

Citi makes up about 25% of foreign exchange trading on the Kazakhstan Stock Exchange, has worked on all of the country's offshore sovereign bonds, and won an eye-catching mandate on Kaspi's pending London Stock Exchange IPO, although that has since been postponed. It has launched an all-in-one digital treasury solution, CitiConnect, in Kazakhstan, as well as rolling out InstantFX, a platform to help companies manage currency risk.

Headed by Chief Executive Officer Andrey Kurilin, Citi Kazakhstan has navigated the country expertly. Domestic bankers widely applaud the bank's understanding of the country; Andrey Kurilin also wins kudos from non-banking executives. Citi has few rivals for this award, and it shows no signs of giving up its position any time soon, stated *Asiamoney*.

The *Asiamoney 2019 Awards Committee*, consisting of the magazine's editor and senior journalists, made their decisions based on detailed submissions from market participants, banking and capital markets research, and client and competitor feedback.



INTERCONTINENTAL
HOTELS & RESORTS

InterContinental Almaty Hotel Announces Appointment of Mehmet Birgen Kaya as General Manager



Mehmet Birgen Kaya was born in 1971 in Ankara, Turkey and graduated from Bilkent University Tourism and Hotel Management School in 1993. He began his hospitality career in 1994 at the Ankara Merit Altinel Hotel and moved to the Crowne Plaza Istanbul hotel after 3 years. After gaining managerial experience in the Front Office and Rooms Division at the Crowne Plaza, he transferred to open the first Holiday Inn property in Almaty as Deputy General Manager in 2007.

After the successful opening of Holiday Inn, he moved to the InterContinental Almaty in the same position, where he worked successfully for 8 years. At the beginning of 2018, Mehmet Birgen Kaya was appointed General Manager of the Holiday Inn Almaty. The following year he returned to Istanbul as General Manager of the Hilton Garden Inn Istanbul at Ataturk Airport.

In early 2020 he returned to Almaty as General Manager of the InterContinental Almaty, where he feels at home. He will doubtless be very successful in his new and exciting assignment, and will take the InterContinental Hotel forward with his strong network and with his many years of hospitality experience in Kazakhstan.



Mateo Lecocq is Appointed General Director of Avon Kazakhstan

In January 2020, AVON announced the appointment of Mateo Lecocq as General Director of Avon Kazakhstan, Kyrgyzstan, and Export markets. Mateo Lecocq has over 16 years of global experience in Avon. Previously he worked at L'ORÉAL (Madrid) and GROUPE BEL (Madrid). After joining Avon in 2003, he was responsible for Avon's Marketing in North Africa, Turkey, the Middle East, and Eastern Europe. In March 2016 he was appointed Executive Director for Avon Marketing in Eastern Europe, where he led a team of more than 130 people with seven Direct Reports in Russia and two outside Russia.

Mateo Lecocq received his MBA in Business Administration and Management from the IESE Business School, University of Navarra, Spain (2012) and a Master's Degree in Marketing and Sales Management, ESIC Business & Marketing School, Spain (2003).

AVON is an American business and cosmetics icon founded 130 years ago, a leader in the global Direct Sales industry, and one of AmCham's first members twenty years ago. The company is well-known not only for its cosmetics brand, but for its support for women's healthcare, particularly for promoting awareness of and treatment for breast cancer. AVON supports women's empowerment, entrepreneurship, and well-being and has contributed over \$1 billion to women's causes through the Avon Foundation for Women. Avon has organized and sponsored many women's healthcare events in Kazakhstan and received the *AmCham Health Protection Award* in 2019.



Global reach
Local knowledge

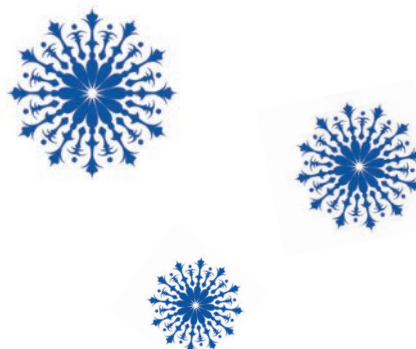
TMF Group Kazakhstan Announces Appointment of Madi Mashakov as Chairman of the Board



Madi Mashakov was recently appointed Chairman of the Board in TMF Kazakhstan, a subsidiary of one of the world's major outsourcing firms, TMF Group. TMF is the leading global provider of high-value business services, and has operated in Kazakhstan since 2008.

Mr. Mashakov has over 12 years of experience in the outsourcing business: accounting and tax compliance, human resources and payroll administration and legal services. He joined TMF almost immediately after foundation of the subsidiary and played a strategic role in business development and expansion.

Madi Mashakov holds an MBA degree from KIMEP and currently is completing his Doctoral degree (DBA). His research is focused on corporate governance, management, and the oil and gas industry in Russia and Kazakhstan.





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8-10 April 2020

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www.oil-gas.kz





AMERICAN CHAMBER OF COMMERCE IN KAZAKHSTAN

MEMBERSHIP APPLICATION

ABOUT AMCHAM

Registered in Kazakhstan as a non-profit organization in March of 1999 with 36 charter members, the American Chamber of Commerce in Kazakhstan currently represents over 200 member companies including US, multinational, and local businesses in 30 industry sectors. Their collective investment in Kazakhstan's economy is several billion USD. The American Chamber in Kazakhstan is a member of the US American Chamber of Commerce in Washington D.C. and has working relationships with many regional business associations.

BENEFITS OF MEMBERSHIP

- ✓ AmCham members participate in an organization existing solely to serve members
- ✓ AmCham actively advocates for reform of the business environment with Kazakhstan Government at senior levels
- ✓ AmCham Members may attend 19 Working Groups in 5 cities plus Inter-Ministerial Working Groups
- ✓ Monthly speaker luncheons with senior government and business leaders are reserved for AmCham members
- ✓ Seminars, conferences, and monthly social networking events are organized for AmCham members
- ✓ AmCham membership contact lists are available exclusively to AmCham members
- ✓ Economic, political, legal, social, and business development information is distributed to members
- ✓ Member companies provide exclusive discounts on products and services to other AmCham members
- ✓ Access to the Members' Only section on the AmCham Website
- ✓ Publishing opportunities are available in *Investors' Voice*, the *Annual Membership Directory*, and *Special Publications*

MEMBERSHIP APPLICATION

Company Name:

Industry Area:

CEO Name, Signature, Email:

Contact Individual:

Title(s):

Address:

Tel.: Fax: E-mail:

Please include us in the following Working Groups:

Almaty (7)

- | | |
|--|--|
| ☐ Foreign Investment | ☐ Healthcare Reform |
| ☐ Human Resources | ☐ Trade and Customs |
| ☐ Tax | |
| ☐ Technology and Innovation | |
| ☐ Corporate Social Responsibility | |

Atyrau (4)

- | |
|--|
| ☐ Tax |
| ☐ Human Resources |
| ☐ Trade and Customs |
| ☐ Corporate Social Responsibility |

Aktau (3)

- | |
|--|
| ☐ Human Resources |
| ☐ Tax |
| ☐ Trade and Customs |

Nur-Sultan (4)

- | |
|---|
| ☐ Foreign Investment |
| ☐ Tax |
| ☐ Trade and Customs |
| ☐ Human Resources |

Shymkent (1)

- | |
|---|
| ☐ Foreign Investment |
|---|

AMCHAM WORKING GROUPS

Working Groups made up of representatives from Amcham member companies provide comment, discussion and submission of positions and represent the united interests of the business community in Kazakhstan by identifying challenges faced by investors and proactively addressing them. Each group meets regularly, providing a forum for networking and the exchange of information. Groups are formed on an as-needed basis at the request of the AmCham membership.

GOVERNANCE

The AmCham is governed by a Board of Directors elected annually from and by the membership. Directors currently and in the past have included individuals from the following company members:

AES	HSBC
AIG Insurance	Hyatt Hotel
Baker & McKenzie	Honeywell
BASF Central Asia	Intercontinental Hotel
BG Group	KIMEP
Bracewell and Giuliani	KPMG
Capital Bank	LeBoeuf, Lamb, Greene
Chevron	Nestle
Citibank	Philip Morris Kazakhstan
Conoco Phillips	Philips Kazakhstan
Coca-Cola	PricewaterhouseCoopers
Dechert	Procter & Gamble
Deloitte	Raytheon
EBRD	Scot Holland CBRE
Ernst & Young	Tengizchevroil
GE International	Visor Capital
Halliburton	White & Case

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Togzhan Smagulova
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Aigul Sauranova
Accountant
Aigul.Sauranova@amcham.kz

Berik Ismailov
Receptionist / Assistant
Info@amcham.kz

REGIONAL REPRESENTATIVES

Bela Ferenczi
CEO General Electric
Resident Representative, Astana
Bela.Ferenczi@ge.com

Dorin Baru
CEO OMV Petrom
Resident Representative, Aktau
Dorin.Baru@omv.com

Wojciech Halat
CEO HeidelbergCement
Resident Representative, Shymkent
Wojciech.Halat@heidelbergcement.kz

MEMBERSHIP CATEGORIES AND ANNUAL FEES

Corporate A	(Worldwide revenues in excess of 100 million USD)	\$5,000 USD
Corporate B	(Worldwide revenues between 2-100 million USD)	\$3,800 USD
Corporate C	(Worldwide revenues not exceeding 2 million USD)	\$2,700 USD
Non-Profit		\$1,500 USD
Individual**		\$500 USD

***Individual memberships are available only under special circumstances for persons not associated with a company.*

Corporate membership entitles a company to delegate 3 individuals as AmCham voting members. The number of persons from each company participating in working groups, forums, and business roundtables is usually not limited.

All applications for membership must be approved by the Board of Directors of the American Chamber of Commerce in Kazakhstan. For further information about membership benefits, the application process, or Investors' Voice magazine, please contact: info@amcham.kz

MEMBER COMPANIES

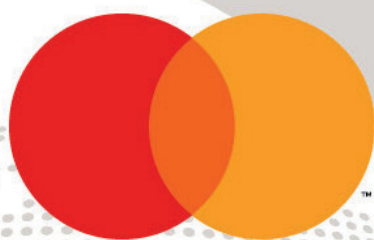
OIL & GAS • BAKER HUGHES • BG KAZAKHSTAN • CATERING INTERNATIONAL & SERVICES • CHEVRON • ERSAL • EXXONMOBIL • FLUOR • HALLIBURTON • INPEX NORTH CASPIAN SEA • KARACHAGANAK PETROLEUM OPERATING (KPO) • KAZAKH OIL AKTOBE • KAMAL OIL • KELLOG BROWN & ROOT • LLOYD'S REGISTER • MAERSK OIL • MOL (FED) KAZAKHSTAN • NCOC • NOSTRUM • OMV PETROM • PARKER DRILLING • SCHLUMBERGER • SHELL • TENGIZCHEVROIL • WEATHERFORD • WORLEY PARSONS • **MINING & ENERGY** • ARCELORMITTAL TEMIRTAU • ARCELOR MITTAL AKTAU • CAMECO • CENTRAL ASIA METALS • EPIROC CENTRAL ASIA • FREEPORT-MCMORAN • KAZ MINERALS MANAGEMENT • RIO TINTO • SCHNEIDER ELECTRIC • YILMADEN HOLDING • **ENGINEERING & INDUSTRIAL EQUIPMENT** • BASF • BORUSAN MAKINA • CENTRAL ASIA METALS • DOW EUROPE • DUPONT KAZAKHSTAN • EMERSON ELECTRIC • EURASIA GROUP KAZAKHSTAN • FLUOR • GE INTERNATIONAL • HONEYWELL • ILF • KAZAKHSTAN KAGAZY • KB ENTERPRISES • SCHNEIDER ELECTRIC • SEWON VERTEX HEAVY INDUSTRY • WORLEYPARSONS • **CONSUMER PRODUCTS** • 3M • ALD AUTOMOTIVE • AMERICANA GROUP • AMWAY • AVON COSMETICS • BEIERSDORF • BRITISH AMERICAN TOBACCO • CARLSBERG • CASPIAN MOTORS • COCA-COLA • COLGATE-PALMOLIVE • DANONE BERKUT • EFES • HERBALIFE • KIMBERLY-CLARK • JOTUN KAZAKHSTAN • MARS • METRO CASH AND CARRY • NESTLE • PEPSICO • PHILIPS KAZAKHSTAN • PHILIP MORRIS • PROCTER & GAMBLE • SAMSUNG • RAMSTORE • STARBUCKS • WRIGLEY • **BANKING & FINANCE** • AL-HILAL ISLAMIC BANK • CENTRAS SECURITIES • CITIBANK • MASTERCARD • SOCIÉTÉ GÉNÉRALE • VISA • VISOR KAZAKHSTAN • ISLAMIC CORPORATION FOR THE DEVELOPMENT OF THE PRIVATE SECTOR • **ACCOUNTING & TAX** • CROWE HORWATH • DELOITTE • EY • KPMG • PRICEWATERHOUSECOOPERS • TMF GROUP • **INSURANCE** • CENTRAS SECURITIES • EUROPEAN INSURANCE COMPANY • KAZAKHINSTRAKH • KAZKOMMERTS-POLICY • NOMAD INSURANCE • OIL INSURANCE COMPANY • **LAW FIRMS** • AEQUITAS • BAKER & MCKENZIE • CENTIL LAW FIRM • DECHERT • DENTONS • GRATA LAW FIRM • INTEGRITES • KINSELLAR • LINKAGE & MIND • MACK LAW • MORGAN LEWIS • SIGNUM LAW FIRM • WHITE & CASE • **COMMUNICATIONS TECHNOLOGY & INFORMATION** • BEELINE • CISCO • DICOSTA TECHNOLOGIES • ERICSSON KAZAKHSTAN • HEWLETT PACKARD ENTERPRISE • GANTEK • IBM • K'CELL • MICROSOFT • RBC GROUP • S1LK • TELE2 • XEROX • **FREIGHT FORWARDING & LOGISTICS & STORAGE** • ARKAS LOGISTICS • BERTLING LOGISTICS • EMEX/FEDEX • GLOBALINK LOGISTICS GROUP • ICT LOGISTICS • IFC COLOS • IPL KAZAKHSTAN • M AIR CARGO • OSG RECORDS MANAGEMENT • UPS (UNITED PARCEL SERVICE) • **TOURISM & HOSPITALITY & TRAVEL** • AIR ASTANA • ALD AUTOMOTIVE • AVIS RENT A CAR • CHC HELICOPTERS • HILTON ASTANA • NTERCONTINENTAL ALMATY HOTEL • KLM • LUFTHANSA • MARRIOTT ASTANA HOTEL • PRIME AVIATION • RADISSON ASTANA • RADISSON PARK INN ASTANA • RAMADA ALMATY HOTEL • RENAISSANCE AKTAU HOTEL • RENAISSANCE ATYRAU HOTEL • RITZ CARLTON ALMATY • RITZ CARLTON ASTANA • RIXOS ALMATY HOTEL • RIXOS BOROVOE HOTEL • RIXOS KHADISHA SHYMKENT • RIXOS PRESIDENT ASTANA • ROYAL TULIP HOTEL • WYNDHAM GARDEN HOTEL • **CONSTRUCTION & REAL ESTATE** • AECOM CAPITAL PARTNERS • ESTATE MANAGEMENT COMPANY • GLOBAL DEVELOPMENT • HEIDELBERG CEMENT • NEGAL • OFFICE SOLUTIONS KAZAKHSTAN • STEPPE CEMENT • TURKUAZ • TURNER INTERNATIONAL • **HEALTH PRODUCTS & SERVICES** • ABBOTT LABORATORIES • ABBVIE BIOPHARMACEUTICALS • ABDI IBRAHIM GLOBAL PHARM • DR. REDDY'S • ELI LILLY • GLAXOSMITHKLINE • MEDTRONIC • MERCK • NOVARTIS • OCTAPharma • PFIZER • INTERNATIONAL SOS • SANTO • SANOFI • **CONSULTING & TRAINING & RECRUITMENT** • BOOZ ALLEN HAMILTON • BOSTON CONSULTING GROUP • BUREAU VERITAS KAZAKHSTAN • CAREER HOLDINGS • CHECKPOINT TALENT SOLUTIONS • FIRCREFT • NEOTECH GLOBAL • PBN HILL KNOWLTON • SHNEIDER GROUP • SMART SOLUTIONS PERSONNEL • QUALITY MANAGEMENT CENTER • WE PARTNERS • **EDUCATION** • ALMATY INTERNATIONAL SCHOOL • AMERICAN COUNCILS • COLUMBIA SCHOOL OF SOCIAL WORK • HAILEYBURY SCHOOL ALMATY • KIMEP UNIVERSITY • **INTERNATIONAL ORGANIZATIONS & IFIS** • AMERICAN RED CROSS • ASIAN DEVELOPMENT BANK • EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT • INTERNATIONAL FINANCE CORPORATION • INTERNATIONAL SCIENCE AND TECHNOLOGY CENTER • ITIC • ICD • RED CRESCENT • UNHCR • USAID • UN WOMEN • **FOUNDATIONS & FUNDS & GOVERNMENT PROJECTS** • ARGO CIVIL SOCIETY DEVELOPMENT ASSOCIATION • US-KAZAKHSTAN BUSINESS ASSOCIATION • **MASS MEDIA & PUBLISHING** • KAZAKHSTAN PRESS CLUB • POLYGON INTERNATIONAL • **INDIVIDUALS** • AINUR KAPPAROVA • ALEXANDER THOMAS



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