IV Investors' Voice

The American Chamber of Commerce in Kazakhstan

Kazakhstan's Leading International Business Association

February 2021

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#92

Finance. Tax. Law
Underpinning The Investment Climate



- Data Collection/ Data Privacy
- Green Finance in Kazakhstan
- Recent Changes in Pharmaceutical Legislation
- Kazakhstan's Double Taxation Treaties
- Islamic Finance in Kazakhstan
- Financial Technology - Efficiency and Progress
- More Secure Digital Technology
- Cross-Border Assignments/ Tax Issues
- Domestic Gas Market Regulatory Reform

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EDITOR'S NOTE



Dear Readers,

Each year in February, *Investors' Voice* is dedicated to an examination of financial, tax, and legal topics to begin the year in a very practical light after new legislation is introduced at the beginning of January. This year the update is timely and very necessary as it follows on the Government's economic recovery priority after the economic shocks and hardship resulting from the Covid-19 pandemic that began in 2020.

The strongest economic shock was unquestionably the collapse of oil prices in mid-2020 and their very slow recovery, which is still in progress. Kazakhstan's economy continues to rely on its abundant oil and gas resources, so any shock to the oil industry strikes hard at the country's economy and ability to provide for its citizens. This in turn can lead to social unrest, especially when combined with the inadequate performance of Kazakhstan's healthcare and medical system.

President Tokayev's *September 2020 Address to the Nation* announced the Government's intention to reform many areas of Kazakhstan's economic, legal, and investment climate that have long needed re-examination and fundamental change. As is often the case, the Government's intention is clear, but the results are still awaited. Nonetheless, new regulations and new laws do provide an indication of the Government's current direction, and AmCham strongly supports the Government's intention.

AmCham and its members have consistently advised the Government of Kazakhstan that to attract further foreign investment, an attractive investment climate must be created. T his means stable legislation – in particular, taxation, the regulatory system, fair competition, rule of law, and a judicial system that investors can turn to when disputes with either the Government itself or with other investors need a fair resolution.

The AmCham traditional February financial and legal update presents an ambitious collection of articles by leading financial specialists and prominent law firms among our membership. This year's *February Issue* contains 18 articles on topics as disparate as protecting data privacy in a digital world,a strategy for creating a viable green economy, the need for gas market regulatory reform, opportunities offered by the Islamic banking model, Kazakhstan's double tax treaties, tax challenges for newcomers on cross-border corporate secondments, and many more subjects that have affected Kazakhstan's regulatory and legislative landscape to date in 2021.

This month's *Investors' Voice* contains thought-provoking articles arising from the above considerations. We hope you will find reading material to spur your own reflections on Kazakhstan's investment climate - where it is going and where it needs to go further - to bring about a robust post-pandemic economic recovery.

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

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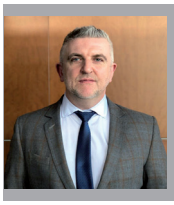
Gordon Haskins, CEO, Al Hilal Bank Kazakhstan

Gordon Haskins is CEO and Chairman of the Management Board of Al Hilal Bank Kazakhstan, having joined AHBK in November 2016. AHBK is now part of the UAE's 3rd largest banking group, which has operations in Europe, the Middle East and North Africa, Central Asia with China.

Gordon has over 28 years of experience in banking and law. He worked with RBS Group for over 13 years as Country Executive and Chairman RBS Kazakhstan for 3 years prior to its sale in 2016. And as CEO for the RBS capital markets and derivatives business for the EMEA region.

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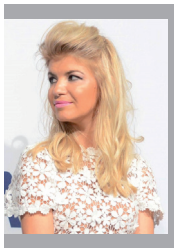


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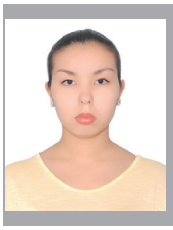
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Juan Carlos Escobar is originally from Spain and joined Philip Morris International in its Operating Center in Switzerland in 2004, following a career in strategy consulting in the UK and Australia. He has held numerous leadership positions in strategic planning, business development, fiscal affairs and international trade in Eastern Europe, Middle East, Africa, Latin America and Canada.

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Gani Uzbekov, Founder, S1LK

Gani Uzbekov is the S1LK founder and sole shareholder. With more than 17 years of experience in finance and international business, he serves as a vivid example of a new generation of regional leaders that flourished in the first decades of Kazakhstan's independence. As President of Capital Bank, the Bank significantly increased its assets, expanded its profile in Kazakhstan, and created and launched the Bank's concept and innovative services.

Gani Uzbekov was a recipient of two prestigious grants from the London School of Economics and Political Science (LSE) in 2000 and the Kennedy School of Public Administration of Harvard University in 2003. In 2016, he received the AmCham Executive of the Year Award.

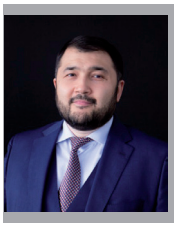
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DATA COLLECTION AND DATA PRIVACY FOR BUSINESS: THE NEED FOR A BALANCED REGULATORY FRAMEWORK

by Juan Carlos Escobar
Chair, AmCham Foreign Investment Working Group
Managing Director, Philip Morris Kazakhstan

The President of Kazakhstan has explicitly stated as a priority to develop the digital economy, including a dedicated Ministry of Digital Development, Innovation, and Aerospace. While this is commendable, significant economic transformation will require close collaboration between the private and public sectors.

Let us start with data, often referred to as the oil of the digital economy. The growth of the digital economy requires workable solutions to collect and manage data as well as a conscious approach to the thorny issue of data privacy when we talk about personal data. Regulatory frameworks should provide adequate guardrails to protect personal data, but not stifle innovation and entrepreneurial activity.



Kazakhstan's current legislation allows the collection of personal data through written consent for the collection and processing of personal data. This consent can be given in the form of signing a physical letter of consent, e-document, or through a personal data security service or protected media (that prevents falsification or unauthorized access). For example, obtaining consent to the collection and processing of personal data by transmitting a one-time password through a personal mobile number, including electronic, text, or multimedia messages.

Thus, the regulation provides convenient and safe options for consumers and business to record consent. The Ministry has also developed amendments to the "*Rules for measures to protect personal data by the owner (or) operator, as well as a third party* " *(Resolution of the Government of Kazakhstan, September 03, 2013)*.

This regulation contains a provision (*Clause 10*) according to which collection and processing of personal data must be done through IT infrastructure located in Kazakhstan, whereas storage and transfer of personal data must be performed in compliance with the existing national standard (*"Cryptographic information protection tools. General technical requirements"*).

The same *Clause 10* of the Rules allows an exception for cross-border data transfer. This creates confusion as to which requirement does not apply to cross-border transfer: the requirement for collection of personal data via IT infrastructure located in Kazakhstan (*Part 1 of Clause 10*), or for storage and transfer of personal data in compliance with the national standard (*Part 2 of Clause 10*).



Following an appeal by the *AmCham Foreign Investment Working Group*, the Ministry of Digital Development clarified that since Kazakhstan's requirement to use means of cryptographic protection of information does not apply to other countries, *Clause 10* does not apply to cross-border transfer of personal data. Unfortunately, this does not fully clarify the essence of the problem.

Moreover, *Article 16* of the *Law on Personal Data and Its Protection* stipulates that the cross-border transfer of personal data to foreign states may take place only if these states ensure the protection of personal data.

In practical terms, we have to assume that the exception in Clause 10 means that if a company needs to transfer personal data abroad, its collection and storage can be managed through IT infrastructure located outside of Kazakhstan if the foreign jurisdiction ensures the protection of personal data. For international companies, any other interpretation would imply an unnecessary and disruptive change in operations to the detriment of the business environment, requiring 18 months to implement.

Beyond the issue of personal data privacy and data management, the timing is perfect to develop a comprehensive regulatory framework in Kazakhstan that would take into consideration the implications of the digital economy on taxation, consumers' rights, and labor issues. Although this is a relatively new area of legislation, there are examples and learnings from other jurisdictions that the members of AmCham can contribute within their legal and business expertise.

Philip Morris International is also grappling with these issues. As one of the advanced production and commercial companies in Kazakhstan, digitalization is a core enabling strategy, particularly as we transition to smoke-free, technologically advanced reduced-risk products. PMI's extensive experience, knowledge and resources in production, retailing, and logistics allow it us work on issues such as digital marking for the flow of goods, labor and accounting e-documents, and other IT solutions for business operations.

Conclusion

In summary, the interests of policy makers and business are aligned on the need to exploit the benefits of digitalization for consumers, society, the economy, and government and commercial operations. This should not mean digitalization for the sake of digitalization; it is the responsibility of both government and business to always take a critical view of the regulatory and technical solutions being proposed and ensure that common sense is not being sacrificed on the altar of digitalization.

For example, the recent introduction of electronic invoicing and digital labeling for tobacco and alcohol products have generated significant disruption for retailers at a time when retailers did not really need more disruption. The logic behind these initiatives is solid and PMI has made significant investments to make them a success but, just as is the case for business proposals, regulatory initiatives should be carefully evaluated on their merits and potential pitfalls and, for complex projects, should be thoroughly tested in a controlled environment.

The lessons learned from the tests should then be objectively evaluated to pivot or drop the initiative before roll-out if the results are not positive. Unfortunately, by the time an initiative is tested there are often too many vested interests, commitments, and a fear of 'losing face' which make it difficult to pull the plug. There is room to improve on this even if we all realize that progress requires disruption.

Digitalization is here to stay and is the future. Business or governments who resist it will fall behind in competitiveness, but the path forward is not necessarily clear. First and foremost, this requires very close collaboration between the private and public sectors to ensure that the existing regulation and solutions on data collection, data management and data privacy continue to evolve as the environment and practice evolve.



ISLAMIC FINANCE IN KAZAKHSTAN

by Gordon Haskins
Chief Executive Officer
Al-Hilal Bank Kazakhstan

History and Development

The contemporary history of Islamic finance around the world can be divided into three stages: (per Sagiyeva and Kuanova in "*Analysis of Islamic Finance development in Kazakhstan: overview and prospects"):* a founding period during the 1960s, a formative period from the establishment of the first Islamic bank (*Dubai Islamic Bank*) in the 1970s, and a development period from 1990 onward.

The history of Islamic finance in Kazakhstan, on the other hand, is somewhat shorter and corresponds with this so-called development period and with the country's own period of independence. It began in the 1990's with initiatives by the government of Kazakhstan and the First President to foster an Islamic finance industry in the country.

The first steps included Kazakhstan becoming a member of the *Islamic Development Bank* in November 1995 and the establishment of IDB's regional office in Almaty in 1998. Serious steps toward establishment of an Islamic finance framework only began in the late 2000's when the government passed a law in February 2009 to amend various other pieces of legislation.

The key amendments were to the *Law on Banking* (to create a legal and supervisory framework for Islamic banking), the Law on the Securities Market (to permit issuance of Islamic securities), and the Law on Investment Funds (to include the possibility of creating Islamic investment funds).

Importantly, the Tax Code also needed some specific amendments to put Islamic finance products on an equal footing with conventional finance. Further work is still required to better facilitate other Islamic finance products, which are disadvantaged versus similar conventional finance products owing, for example, to VAT treatment, property tax issues, and some uncertainty around accounting for Islamic finance transactions.

Most recently, the *Astana International Finance Center ("AIFC")* has included Islamic finance as one of its key areas for development and recently published its *Islamic Finance Master Plan for Kazakhstan 2020-2025*. The AIFC has also taken significant steps to promote and foster training and education in the Islamic finance sector.

Establishment of Islamic Financial Institutions

Although some of the conventional banks in Kazakhstan accessed the international capital markets via various Islamic products in the mid- to late-2000s, there was by that time still no Islamic financial institution operating in the country. *Al Hilal Islamic Bank*, a subsidiary of *Abu Dhabi-based Al Hilal Bank* and now part of the *Abu Dhabi Commercial Bank Group*, started operations in Kazakhstan in March 2010.

Al Hilal was the first Islamic bank in Kazakhstan and the entire CIS region. During its first seven years of operation, Al Hilal Bank focused on corporate banking. In 2017, it launched a retail business for individual customers with branches in Almaty, Nur-Sultan, and Shymkent. It offers a full suite of Sharia-compliant banking products to its corporate and individual customers.

In 2017, the second Islamic bank began operations in Kazakhstan. At that time, *Zaman Islamic Bank*, first established as a conventional bank in the early 1990s, converted its banking license to an Islamic banking license. It also now offers services and products to both corporate and individual customers from branches in Nur-Sultan, Almaty, and Ekibastuz. Like Al Hilal Bank, *Zaman Bank* is a Tier 2 bank, regulated by the *National Bank of Kazakhstan ("NBK")* and *The Agency for Regulation and Development of the Financial Market ("FinReg").*

Meanwhile, a number of Islamic leasing, finance, and insurance companies also began operating in Kazakhstan, including *Kazakhstan Ijara Company, Al Saqr Finance*, and *Mutual Insurance Company Takaful*.

Islamic Banking Products in Kazakhstan

While Islamic banking has become much more common in countries around the world, many people are still not familiar with the specifics of Islamic banking products. This is true in Kazakhstan too, despite more than a decade of active Islamic banking operations in the country. To help overcome this lack of knowledge, the remainder of this article contains an overview of some key products that are available to corporate and individual banking customers and how they work.

Products for Retail /Individual Customers

Islamic banks in Kazakhstan offer current accounts and card accounts that operate in much the same way as those of conventional banks. Islamic deposit products, on the other hand, are structured differently. They are based on the principle of partnership and risk sharing, which is agreed by the bank and the depositor.

Unlike a conventional bank, an Islamic bank offers to invest on a partnership basis. The client provides the bank with funds for management, and the bank, using its knowledge and investment experience, invests those funds in creditworthy customers or projects with the subsequent sharing of profits with the client. Thus, bank depositors become not just deposit holders but investors in the underlying businesses or projects.

These investee businesses in which the bank directs the funds of investors must meet a number of strigent requirements of creditworthiness, profitability, reliability, and compliance with the principles and rules of Sharia. Islamic banks typically offer both *Mudaraba* deposits and *Wakala* deposits. Both are products involving effective investment in underlying customers or projects, with profits deriving from investment in real businesses of Kazakhstan's economy.

Islamic banks also offer both secured and unsecured financing products, which permit customers to purchase homes or consumer goods. These products are typically structured on a *Murabaha* basis, whereby the Islamic bank purchases the properties or goods and then sells them to the customer on an instalment basis over time. To compensate for its risk in the transaction, the Islamic bank charges a transparent mark-up on the total price, which the customer pays over the term of the transaction.

Products for Corporate /SME Customers

One of the most common products for corporate customers is *Commodity Murabaha* transaction. This is a financing transaction for the amount requested by the customer based on purchase and sale, whereby the Islamic bank purchases a commodity from a broker and sells it to the customer through a Murabaha agreement through a deferred purchase price arrangement, with an established, transparent mark-up.

The customer then sells the commodity to a third-party broker through the Islamic bank, which acts as the customer's messenger. After completing this second sale, the Bank credits the proceeds from the sale of the commodities to the Customer's account. The customer pays the deferred purchase price to the bank according to the agreed schedule.

Other common structures used by Islamic banks include *goods Murabaha* and *Ijara,* typically in connection with the acquisition of equipment or other fixed assets. The *goods Murabaha* is similar to the structures used in retail financing transactions described above – the Islamic bank purchases the particular equipment or good and then sells it over time on an instalment basis to the customer, including a mark-up for the bank's participation and risk in the transaction.

A *Ijara,* on the other hand, is akin to a conventional leasing transaction, under which the Islamic bank purchases the property and then leases it to the customer. During the term of lease, the bank retains full ownership of the property that is the subject of the lease and bears all risk associated with ownership. Usually, at the end of the leasing transaction, ownership of the property or equipment is transferred to the customer. Rental payments under the Ijara will include the cost of the asset (the fixed element) as well as the profit of the bank (the variable element) and other expenses (the supplementary element).

For a property which does not yet exist or is under construction, a forward *Ijara* can be used, with the specifications and description of the property being specified before ownership by the bank. Rental payments start when the property becomes available for use by the Customer.

In this case, the Islamic bank purchases the asset through an *Istisna* agreement. Often the bank may appoint the customer as its agent for inspection during the construction and manufacturing process, and during delivery, installation, and commissioning of the asset, in order to ensure the asset meets the specifications and description of the leased property under the lease agreement.

Islamic banks generally provide financing to most sectors of the economy, except for those sectors or products that do not comply with the principles and rules of Sharia, including tobacco and alcohol production, gambling, weapons and ammunition.

Busting Myths about Islamic Banking

Owing to the general lack of awareness of Islamic banking products in Kazakhstan, there are also some prevailing "myths" that are worth addressing.

"Zero interest means free"

An Islamic bank is a commercial entity that operates in accordance with the rules and principles of Sharia. It should be profitable and safe while working to increase the funds of depositors, shareholders, and investors. The absence of interest charged on an Islamic financing transaction does not mean that this financing is free. According to Sharia, usury and charging interest on loans are prohibited. Therefore, unlike conventional banks, Islamic banks do not offer loans but utilize trade, leasing, and partnership structures while avoiding speculative components.

"Only for Muslims"

Any person, regardless of religion, can become a client of an Islamic bank. Religion is not the only reason for using Islamic banking products. Many clients choose Islamic banks because of their reliability, especially in a period of instability in the economy, since they are careful and conservative in choosing financing projects, investing only in real sectors of the economy, and are not involved in speculative transactions. In this connection, they can be more reliable in the long term.

There is, of course, also a share of clients for whom it is important that the bank adheres to the principles of Islam. For such clients, an Islamic bank allows them to use the products of modern banking without violating their moral and ethical principles.



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GREEN FINANCE IN KAZAKHSTAN

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The concept of Green Finance is one of the most discussed topics among business issues. Kazakhstan, despite being new in this area has made substantial progress in regulatory reform in support of the Green Economy. Green financing refers to products and services, managing environmental risks, organizational strategies, organizations themselves, as well as investment sectors, industry initiatives and policy instruments.

The main aim is to provide environmental benefits in the broader context of environmentally sustainable development. These environmental benefits include, for example, reductions in air, water and land pollution, reductions in greenhouse gas (GHG) emissions, improved energy efficiency while utilizing existing natural resources, as well as mitigation of and adaptation to climate change and their co-benefits. The key moment of this whole initiative is to better manage environmental and social risks while benefit from greater accountability.



Why Green Finance is important

To begin, the development of Green Finance occupies a vital role among trends in business development. It advances and underpins the stream of financial instruments and related services aimed at improvement and execution of feasible commerce models, economic, investments, exchange, financial and social projects and arrangements.

Our planet and people suffer daily from pollution caused by manufacturing outcomes. Many business developments are used to prevent and reduce irreparable harm from pollution. Examples include promotion of renewable energies, water sanitation, environmental audits, reducing industrial pollution, deforestation, and the carbon footprint.

Green Finance represents the financial sector's future through innovative financial tools and by supporting the investments in projects with positive and sustainable externalities. It consists of all the initiatives undertaken by private and public companies in developing, promoting, implementing and supporting projects with green impact through financial instruments.

Strategy – Physical Modification of the Economy

The transition towards a Green Economy requires investment, adequate funding and Kazakhstan's readiness to implement and use green projects. Global pollution is a problem that can be improved at the country level. Therefore, some experts reasonably believe that in order to operate harmoniously, physical modifications of the current national economy should be introduced. Basic adjustments could include:

- environmentally friendly energy saving;
- an increase of energy efficiency;
- sustainable mobility;
- enhancement of material efficiency;
- the recycling economy;
- ecological sustainable water management;
- ecological sustainable agriculture.

These changes beside huge financing may require corresponding corrections in the economy itself. In addition, this initiative may require significant time, social promotion of the importance of ecology and its future development. Thus, the transition to the Green Economy can be a longstanding process, but a process that benefits future generations.

Green Finance in Kazakhstan: Overview

Kazakhstan has undertaken measures towards development of the Green Economy. For example, as Kazakhstan progresses towards a Green Future, in addition to many other legislative acts (*Environmental Code of 2007, New Environmental Code of 2021, Water and Forestry Code of 2003, Law on Support for Renewable Energy of 2009*), it is adopting the *Strategic Plan for Development by 2025* which includes Green Growth and environmental protection.



The *Strategic Plan* contains two indicators on the energy intensity of GDP (gross domestic product) and the share of renewable energy sources that relate specifically to the country's Green Economy and environmental protection agenda. Before that, in 2013, the *Concept on Transition to a Green Economy* was adopted (*'Green Economy Concept 2013'*). It provides an important foundation for how Kazakhstan should move forward with its Green Growth agenda and its action plan for 2013 - 2020.

Moreover, the country's government has ambitious goals to cut greenhouse gas emissions under the *Paris Agreement (COP21*), and to increase the proportion of renewable energy in its total production 3 per cent by 2020, then to raise it further to 30 per cent by 2030 and to 50 per cent by 2050.To help Kazakhstan achieve these goals, the *European Bank for Reconstruction and Development (EBRD),* as one of the largest investors in this sector, has earmarked €200 million for renewable energy projects in Kazakhstan, with signings of specific renewables projects expected in the near future.

The EBRD has already invested nearly €1.5 billion in green projects in Kazakhstan and cooperated extensively on regulatory reform and the country's innovative carbon-trading scheme. The *AIFC Green Finance Centre* was created especially for this purpose on 1 June 2018 with the aim of developing and promoting Green Finance in Kazakhstan and the Central Asian region. The Centre provides initial assistance to potential issuers, investors, and market players for preparations to issue green bonds on the *AIFC Exchange (Astana International Exchange).*

One significant event in the transition to a Green Economy is adoption of the new *Environmental Code* with its "*polluter pays*" principle: "… *the polluter should bear the expense for carrying out measures decided by the government to ensure that environment is in an acceptable state*." This implies pollution prevention and control measures, as well as responsibility for repairing damage caused to the environment. Polluters are required to use the best available technology (BAT). If the polluter rejects BAT, then the emissions payment becomes more costly: the payment will double, then increase four, even eight times over.

Kazakhstan and the Green Economy

However, Kazakhstan has yet to move in this direction. Due to the country's territory and climatic conditions, despite Kazakhstan's significant potential for the development and implementation of renewable energy projects, obstacles still exist to the introduction and development of RES, such as low prices for electricity produced by traditional methods. Power plants operating on traditional fossil fuel in Kazakhstan are more competitive in price compared to renewable energy sources.

For example, *Ekibastuz GRES-1*, a coal-fired thermal power plant, produces electricity at a price of 8.65 tenge, while the tariffs of the *Ereymentau* wind power plant amount to 22.68 tenge. Kazakhstan also has the largest recoverable coal reserves in Central Asia and is the second largest coal producer in the region. More than 70 % of Kazakhstan's electricity is currently produced in coal-fired plants served by cheap local coal in the north-east of the country, which also produces a huge volume of carbon emissions.

Another challenge is related to power transmission losses and inefficient technologies. Large heat losses occur in Kazakhstan's housing stock as a result of the fact that houses built in the 1950s and 1980s (one third of all residential housing) need repairs. At present the housing stock is losing over 30% of thermal energy. An audit of energy efficiency and measures to reduce heat loss are required back to the Soviet era. Nowadays, few small- and medium-scale hydropower plants are developed.



According to the *National Green Economy Report 2014-2016*, water-saving technologies have increased the productivity of water resources in agriculture by almost 1.5 times. But despite the measures taken, water costs for irrigation remain high. The widespread access to water resources, especially in rural areas, has not yet been established.

Waste recycling is another issue that may be resolved with adoption of the new *Environmental Code.* However, the annual volume of solid waste in the country is 5-6 million tons and only 3% is recycled, while the rest is disposed.

Taking into account the increasing demand for electricity, existing power facilities must be enhanced by construction of new eco-friendly power generation plants that will work effectively even in the cold and windy conditions of the country's north-east region.

Green Finance in Practice in Kazakhstan

Given Kazakhstan's geography, climate, and limited hydropower, solar and wind energy are the most promising renewable sources of energy. Kazakhstan already has several working renewable energy sources.

Currently Kazakhstan has about 90 renewable energy facilities with an installed capacity of more than 1,000 MW. Since the beginning of 2019, 21 renewable energy facilities with a capacity of 504.55 MW have been commissioned. The number of renewable energy sources is planned to increase from 90 to 108 projects in the near future.

Kazakhstan has a list of renewable energy facilities operating on diverse energy sources. The largest **Solar Power Plants (SPP)** in Kazakhstan are *Burnoye-1 SPP* (50 MW), *Burnoye-2 SPP* (50 MW), *Gulshat SPP* (40 MW), *Shollakorgan SPP* (50 MW), *Zadariya SPP* (14 MW), and *Saran SPP* (100 MW.

Kazakhstan has more than 30 **Hydropower Plants (HPP)**. The largest are *Shulbinskaya HPP* (702 MW), *Bukhtarma HPP* (675 MW), *Kapchagai HPP* (364 MW), *Ust-Kamenogorsk HPP* (355,6 MW) and *Moynak HPP* (300 MW).

Wind power plants (WPP) are *Yerementau WPP* (45 MW), *Kordai WPP* (21 MW), and *K-1 WPP* (1,6 MW). These projects have been driven by legislative changes funded by international financial institutions and the guaranteed purchase of the renewable energy by the state-owned operator. However, apart from development of renewable energy, there are no other green projects attractive to private investors.

With the adoption of the new *Environmental Code*, in addition to the development of renewable energy there are other green projects that might be attractive to private investors. For instance, the new Code provides the principle of waste hierarchy aimed at the stage-by-stage waste management, which includes waste minimization, recycling, reuse and disposal. Accordingly, there is potential for development of recycling and utilization projects. Favorable conditions will be created for investors wishing to implement such projects. Starting from 2021, pilot projects aimed at waste recycling will be conducted in six cities for conversion to electricity, and this energy will be sold through auctions to the country's general energy grid.

Conclusion

Kazakhstan has vast potential for development of a Green Economy that can drive sustainable and inclusive economic growth, providing affordable electricity to the most distant regions. Transition to a Green Economy is no longer an option, but a necessity.

It is crucial to understand that further development of the Green Economy in Kazakhstan requires investment of significant resources, both human and financial. This requires complex reform of the national economy and legislation, investment and environmental frameworks, and special tools to support business and individuals on the path towards a Green Future for Kazakhstan.



DOMESTIC GAS MARKET REGULATORY REFORM

by Shaimerden Chikanayev
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Introduction

On 26 January 2021 Kazakhstan's President, Kassym-Jomart Tokayev, held an Extended Session of the Government at which he stated that the domestic natural gas market is still over-regulated, which hinders increasing the resource base, investment in geological exploration, and construction of gas processing facilities.

By 2027, commercial gas consumption in Kazakhstan is expected to increase to 26 billion cubic meters (bcm). Therefore, the President highlighted the risk of a gas shortage for domestic consumption in the near future. He stressed the need to increase the efficiency of *KazTransGas (KTG)* as the national operator in the gas sector and to transfer the corresponding functions to *KTG* from *KazMunayGas (KMG).*

President Tokayev instructed the Government to develop comprehensive solutions for domestic gas market reforms, specifically for the Government and NWF Samruk-Kazyna to develop new approaches to regulating the gas market, as well as measures to increase its resource base.

The following article analyses why Kazakhstan should rely on gas, not on renewable energy, as its major fuel in the foreseeable future, and the problems the Government faces the President's instructions to reform the domestic gas market.

Gas or Renewable Energy - What to Choose?

There are obvious reasons why gas, not renewable energy, should become a major fuel and major source of electrical energy in Kazakhstan:

First, Kazakhstan has a lot of gas. Total proved reserves of natural gas at the end of 2019 was 2.7 trillion cubic metres, making Kazakhstan the world's 12th largest exporter of natural gas.

Secondly, gas is, unlike coal, a relatively "clean" source of energy. The major global trend, led by Europe and the US, is switching from coal to gas. Gas has already helped to reduce emissions in Europe and the US and to improve air quality in China. According to many experts, the future of gas in the medium term looks reasonably robust in the world. Interestingly, natural gas is the leading fuel in power generation in Russia, Kazakhstan's close neighbor and ally, where its share has reached almost 60%.

Despite an abundance of gas reserves, however, the share of natural gas in Kazakhstan's total final consumption (TFC) was only 13% in 2018. In 2019 just 20.2% of all electrical power in Kazakhstan was produced by gas-fired power plants, and the Government recently announced its new goal as a modest 30% share by 2050.

Thirdly, gas as a fuel is cheap, whereas renewable energy is still very expensive. According to the *IGU 2020 Report,* gas prices in Kazakhstan are one of the lowest in the world – in fact only Algeria, Turkmenistan and Venezuela have lower gas prices than Kazakhstan.

Finally, while Kazakhstan has a total surplus electricity production of up to 2,000 MW at certain hours, there is not enough maneuverable capacity. This leads to an imbalance in the energy system during peak loads. The rapid increase in the volume of renewable energy without first creating sufficient volume of maneuverable capacity at traditional power stations (i.e. gas power plants that are "cleaner" and safer than coal and nuclear power stations) to cover the net load will sooner or later lead to a disbalance in Kazakhstan's entire energy system.

Moreover, the wear and tear of electrical networks in Kazakhstan is from 60% to 80%, depending on the region. This will also inevitably will scale back Kazakhstan's official development plans for renewable energy.

Despite the above reasons, Kazakhstan seems to be placing its bet on renewable energy as it has pledged to increase the proportion of renewable energy in domestic electricity generation from the current 3% in 2021 to at least 50% by 2050. To move away the present fossil fuel to the renewable future, however, Kazakhstan needs to first move at least from coal to natural gas, to reduce emissions from coal, and to provide the population and industry with the energy it needs in the most cost-effective way.

It should be therefore be expected that the Government will change its official priorities in the near future to devote more attention to gas development instead of renewable energy power facilities.

Why Reform the Gas Market?

Natural gas production (gross extraction) has been slowly but steadily increasing in recent years in Kazakhstan from 19 billion cubic metres (bcm) in 2009 to 23.9 bcm in 2018.

Domestic consumption of natural gas increased significantly, from 10.1 bcm in 2009 to 19 bcm in 2018 and it is expected that Kazakhstan's apparent natural gas consumption will grow at about 1.9% per year on average by 2040. Kazakhstan's distribution pipelines reached a total length of 49,000 kilometers in 2019. As of 2021, out of 16 of regions in Kazakhstan, 12 are already gasified regions, with the 4 remaining regions in the north and center of Kazakhstan relying on coal and LPG. More than 3 million people have

gained access to piped gas in the past seven years, with connections expanding from 30% in 2013 to 51.47% in 2019. The new target is for 60% of the population to gain access to piped gas by 2025.

The contribution of the gas industry to the country's GDP has reached 1.8% in 2019 and is expected to double by 2030. Kazakhstan's export of gas reached a historical maximum of 9.5 bcm in 2019, of which 75% was exported to China. In 2019 China replaced Russia as the main export destination for Kazakh gas.

Despite all the above achievements and natural advantages, however, Kazakhstan's gas industry is in stagnation as it has been too long in the shadow of the Kazakhstan's oil industry. Long-term politics threaten Kazakhstan's long-overdue gas sector reforms. Kazakhstan's energy sector in general and gas sector in particular faces the following major problems:

- **Kazakhstan's heavily statised and monopolized (i.e. lack of market competition) economy**, including in the gas sector. Kazakhstan's gas upstream market is moderately consolidated, dominated by the "*Big 3*" (i.e. *Tengizchevroil LLP, Karachaganak Petroleum Operating* and *NCOC* that together control nearly 75% of Kazakhstan's total gas reserves). The wholesale market for the sale of commercial gas in Kazakhstan is effectively monopolized because the sole supplier of gas for retail sellers is *KTG*. The retail market in Kazakhstan is dominated (95% concentration) by *KazTransGas-Aimak*. One may argue, therefore, there is no real gas market at all in Kazakhstan.

- **Ever-increasing inefficiency and poor energy efficiency**, largely due to covert protectionism and cross-subsidization practices. *KTG* as a national operator executes the state's statutory preemptive right to purchase raw gas and commercial gas from subsoil use producers in Kazakhstan. This means most of the gas produced in Kazakhstan is associated gas and therefore gas production at a less-than-fair value price that disincentivizes production of commercial gas and discourages its efficient use by consumers, is not a major source of revenue for the subsoil gas producers.

- **Lack of transparency and lack of political will to proceed with long-overdue reforms and to introduce market competition**, because the energy sector (cheap gas) is used by the Government as an instrument for political purposes - a long-standing social contract between Kazakhstan's population and the Government).

In addition to above general problems applicable to the country's entire energy sector, the gas sector has its own specific shortcomings:

State regulation of the wholesale and retail gas prices and issue of cross-subsidization of local consumers at the expense of foreign consumers and of remote or poor regions of Kazakhstan at the expense of gas producing regions as well as Kazakh gas producers.

- **Lack of transparent and cost-reflective gas transportation tariffs**.

- **Undeveloped exchange (i.e. gas hubs) trading of natural gas**.

- **The state's preemptive right of KTG** and the need to liberalize gas exports.

- **Incomplete privatization and monopolist break-up** (**KMG** and **KTG**) by type of activity (ownership unbundling).

- **Unresolved non-discriminatory third-party access** (TPA) to trunk and distribution gas pipelines.

Kazakhstan also urgently needs to reform its domestic gas market to be ready for the official launch on 1 January 2025 of the common gas market of the Eurasian Economic Union (EAEU). Failure to reform in time may lead to uncontrolled and rapid growth of the gas prices and even a gas deficit for domestic consumption, as the EAEU member states are expected to achieve equal netback pricing across their common territory.

The "new reality" of the COVID-19 pandemic (i.e., disappearing demand for gas in Europe and China and rock-bottom prices) also require urgent gas market reforms.

The status quo in the gas sector is therefore no longer possible because in a "new reality", **KTG** will not be able to expect the same super-profits from its export/transit of gas. Therefore, **KTG** will soon be unable to play its current role of "instrument" and to bear its social burden of cross-subsidizing both the local population and industries. If the Government fails to reform the domestic gas market soon, no new foreign direct investment, no exploration and development of new gas fields, no further expansion of the gas networks should be expected, while a decline in gas production and domestic consumption after 2025 together with the gas sector's inefficiency and stagnation will be inevitable for Kazakhstan.

How to Reform the Gas Market?

As stated at the outset, President Tokayev recently instructed the Government to develop comprehensive solutions for domestic gas market reforms. However, this is easier said than done. It appears the Government still needs a clear understanding of the new target model for the country's domestic gas market and the reforms needed.

Based on international experience, the Government has two options:

- The *European Union single gas market or the American gas market* based on textbook liberalization and privatization; or
- *"Middle East-style"* or *"Russian style"* selective reforms.

Unlike "liberalisation", selective reforms of the gas market do not require all measures, including TPA and ownership unbundling, to be implemented in sequential order. Moreover, the objectives for "liberalization" and "reformation" of the gas market are different. The main objective of gas market reformation by way of liberalization is to increase the industry's efficiency and to reduce gas prices as a result of increased competition.

The main objective of the gas market reformation by way of selective reforms is a reduction of cross-subsidization and improved efficiency of public administration. It would seem that selective reforms, not full-fledged liberalization, is the natural choice for Kazakhstan.

Conclusion

Lack of political will threatens long-overdue gas sector reforms in Kazakhstan. Unlike Russia, Kazakhstan lacks a comprehensive and up-to-date national energy strategy to clearly formulate the main parameters, aims, and directions of the country's energy policy, including deregulation of wholesale gas prices.

Like the *Federal Antimonopoly Service (FAS)* in Russia, Kazakhstan's new *Agency for the Protection and Development of Competition* should be given explicit authority, in conjunction with the Ministry of Energy, to develop a national energy strategy and to reform the gas sector through fair competition.

To date, however, the new Agency has only been instructed to develop a *National Project for Promotion of Competition*, including in the gas sector. Lack of coordination between different Government agencies may prevent the proper development of much-needed and long-overdue gas market reform in Kazakhstan.



KAZAKHSTAN'S DOUBLE TAXATION TREATIES AND TAX CODE ARTICLE 666 – RESOLVING A WEB OF COMPLEXITIES

by Anthony Mahon
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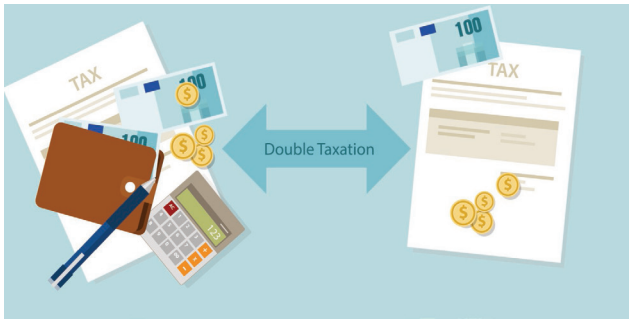
By virtue of the nature of its economy, Kazakhstan's prosperity depends in large measure upon its ability to effectively do business with other nations and for trade to be able to pass as smoothly as possible across the country's frontiers. As overseas investors evaluate the attractiveness of doing business with Kazakhstan, one of the primary factors considered is the level of certainty and transparency around how profits generated from trade with Kazakhstan are taxed both "in country" but also – critically – how cash payments are remitted from Kazakhstan to the investor's trading counterparty jurisdiction.



Many factors contribute towards the "risk premium" involved in trading with a maturing jurisdiction like Kazakhstan. These include rule of law, exchange rate stability, and political climate as well as unfavourable tax and other state regulations – issues all discussed at length in previous issues of this publication. Stability, predictability, equity and transparency of taxation, however, are probably factors that have the most immediate and significant impact upon investors and can determine whether trade with Kazakhstan is profitable, successful and attractive on the one hand or, conversely, an experience that investors have no wish to go through again.

Like most countries, Kazakhstan has signed a wide network of *Double Taxation Conventions* intended to provide a framework of clarity concerning the taxation rights of (respectively) Kazakhstan and its overseas trading partners. These conventions set out the bases upon which each country can tax both the trading profits generated by trade between the relevant nation states, as well as the remittances of cashflows from Kazakhstan to these overseas jurisdictions.

Alongside the codified principles enshrined in these double taxation treaties is a widely accepted international principle of taxpayer good faith that taxpayers are required to demonstrate: their entitlement to benefits under the relevant double taxation treaty (usually in the form of an obligation to provide a certificate of tax residency from the counterparty jurisdiction) and self-assess their obligations to taxation of profits and/or remittances of funds in line with the treaty.



This self-assessment of obligations does not in any way violate or erode the rights of each treaty jurisdiction to perform audits, inspections and/or make supplementary assessments (and collections of taxation) insofar as any of the relevant commercial counterparties are suspected to have or found to have not properly recognized their taxation obligations in line with the provisions of the relevant treaties.

Notwithstanding the fact that these rights always remain, Kazakhstan has also historically seen fit to embed multiple provisions in its local tax legislation that impose a series of onerous obligations upon taxpayers (resident and non-resident) in order for such taxpayers to be able to avail themselves of the relieving provisions of the relevant double taxation conventions.

These provisions exist to increase the levels of taxation collection in Kazakhstan – *prima facie* a good thing for the State Budget in these turbulent economic times. However, as they fundamentally conflict with prevailing international practice and the long-established and widely accepted norms of cross-border taxation, they have a terrible impact upon both the international reputation of Kazakhstan as being "open for business to international investors" and Kazakhstan's attractiveness for foreign investment.

One of the most worrying developments in the last year in the sphere of Kazakhstan's international taxation relates to the provisions of Article 666 of the Tax Code. Article 666 sets out the obligations of local tax agents when remitting income to non-residents who have the right to receive such income free from withholding tax (on the condition that such non-residents are the final recipient of income and are residents of a country with which Kazakhstan has a double tax treaty in force).

The vast majority of international double tax treaties confer the right for signatory jurisdictions to assess taxation upon "permanent establishments" of non-residents insofar as profits of a non-resident are attributable to such permanent establishments (in broad terms, where the permanent establishment plays an active role in the generation of such profits).

However, Article 666 employs a much blunter instrument in this regard that runs contrary to international taxation principles governing this technical issue. Article 666 dictates that if a tax agent concludes that a permanent establishment has been created by the non-resident, the tax agent is not entitled to apply the provisions of any double tax treaty to exempt income paid to the non-resident from withholding tax. Instead, income paid to the relevant non-resident should be subjected to withholding tax regardless of whether or not this permanent establishment has any role whatsoever in the generation of the profits in question.

This position significantly contrasts with the previous approach that allowed certain decision- making authority to the tax agent to determine the existence of a connection (or lack thereof) between the paid income and the non-resident's permanent establishment, and to independently apply an exemption under the treaty where relevant.

To implement the new approach, the Kazakhstan tax authorities launched a series of desk-top audits in the course of the past two years. Those tax agents who received desk-top audit notifications are required to self-assess withholding taxes for all past periods where they remitted income to non-residents that have permanent establishments in Kazakhstan.

If notifications are not executed and taxes are not paid, the taxpayers risk having their bank accounts closed until taxes are paid or an appeal is filed. Many companies do not want to paralyze their operations due to closed bank accounts and feel that the only course of action to maintain continuity of business operations is for them to pay the tax assessed.

Those who appeal the notifications hoping for a fair consideration by the higher tax authority almost in all cases fail, as the new approach originates from the central tax office and is cascaded down to regional tax offices.

The Kazakhstan position is that this provision (and accompanying administration practice) does not violate any obligations under the Double Tax Treaties to which Kazakhstan is a party because non-residents have the right to obtain treaty relief via an application to have tax refunded. This requires demonstrating that the permanent establishment in question ought to have had none of the relevant profits attributed to it and thus treaty relief was due.

However, obtaining a tax refund in Kazakhstan is an extremely burdensome, lengthy and difficult task due to lack of transparent mechanisms for determining income attributable to the non-resident's PE. This leaves a significant degree of subjectivity and latitude in interpretation of Tax Code provisions by tax authorities and frequently leads to double taxation on non-residents.



Given that many tax agents have significant volumes of transactions with non-residents, the application of the refund procedure can lead to an ongoing tax audit of both the tax agent and the non-resident's branch, which may have nothing to do with the services being taxed.

At the same time, non-residents report this income in their home country and bear the burden of double taxation. Taxes withheld in Kazakhstan cannot be offset by them in their country of residence due to the fact that withheld taxes are not taxes on the income of their PE in Kazakhstan and should not be withheld in line with the provisions of double tax treaties in force.

Overall this approach to the taxation of non-residents is one which may have short term benefits to the State Budget but has negative impact from the perspective of the attractiveness of Kazakhstan's investment climate. The combination of poor law (the drafting of Article 666 itself) which is out of line with internationally accepted principles of taxation combined with aggressive tax authority actions and poor, unclear, inconsistently applied administration (ineffective and ambiguous tax refund processes) leads to a situation where non-residents are routinely subjected to double taxation. The result is not just bad for business but detrimental to Kazakhstan's economic prosperity.

President Tokayev has publicly stated that the Kazakhstan's international taxation framework must be improved to enhance the country's investment climate. The issues surrounding Article 666 would be a good place to begin.

CROSS-BORDER ASSIGNMENTS – TAX ISSUES

by Assel Nizamiyeva
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Nowadays, many companies use cross-border assignments to enable their employees to gain international experience, access new markets, share knowledge, motivate employees, as well as for a number of other reasons. In the case of most companies, sending employees on cross-border assignments involves a range of responsibilities and complex challenges, such as the need to address the issues of migration, country-specific statutory reporting, the handling of home and host country payroll, including shadow payroll and the taxation of income. It would be fair to say that taxation is arguably one of the most complex issues in cross-border assignments.



As tax rules vary widely in different countries, respective tax considerations should be borne in mind both during planning and throughout the period of such assignments. This is particularly true for personal income tax (PIT), as individuals are often most concerned about taxes in their host country and may even be unaware of tax filing obligations in their home country, and vice-versa.

Under Kazakhstan's tax legislation, the tax treatment of individuals depends on their tax residence status. Tax residents of Kazakhstan are required to pay PIT on their worldwide income, while KZ tax non-residents only pay PIT on their Kazakh-source income. Income that an individual (both resident and non-resident) earns from employment in Kazakhstan is treated as Kazakh-source income, regardless of where this income is paid or who pays it.

Therefore, when moving from country to country, it is essential that the individual determine his/her tax residence status for a certain period, as this status plays a key role when determining the individual's personal income tax obligations in his/her home country and host country. In general, when there is a conflict between the domestic laws of two countries and both countries claim that the individual concerned is a resident of a specific country, the individual is entitled to refer to the respective double tax treaty to determine his/her tax position in each country

Determination of tax residence status

Under Kazakhstan's Tax Code , an individual's residence status is determined by his/her physical presence in Kazakhstan for any consecutive twelve-month period in a specific tax year and by the center of vital interests (CVI) of the individual. In particular, an individual can be regarded as a KZ tax resident if he/she spends 183 days or more in Kazakhstan for any consecutive twelve-month period in a specific tax year **or** if Kazakhstan is his/her CVI. An individual is deemed to have a CVI in Kazakhstan if the following three criteria are met simultaneously:

- The individual is a Kazakh citizen or has a permanent residence permit in Kazakhstan;
- The spouse and/or close relatives of the individual lives/live in Kazakhstan;
- The individual and/or the spouse/close relatives of the individual owns/own or possesses/possess immovable property in Kazakhstan which is permanently available for the accommodation of the individual's spouse and/or close relatives.

If the above residence criteria are not met, the individual is regarded as a KZ tax non-resident and is not required to report his/her worldwide income in Kazakhstan.

Moreover, a foreign citizen can be regarded as a KZ tax non-resident based on the provisions of a respective double tax treaty. Most of the double tax treaties signed by Kazakhstan stipulate 'less stringent' tax residence rules, which might actually enable foreign citizens assigned for long-term work in Kazakhstan to continue to be regarded as tax residents of their home countries even if the above criteria stipulated by Kazakh tax legislation for a KZ tax resident are met.

However, in order to confirm their status as tax residents of their home countries and be eligible for the double tax treaty benefits in Kazakhstan, such individuals are required to submit tax residence certificates issued by the competent authorities of their home countries to the tax authorities in Kazakhstan. If such documented proof is not submitted, foreign citizens will be unable to leverage the double tax treaty benefits in Kazakhstan and will not be entitled to automatic release from the obligation to file a personal income tax return in Kazakhstan.

In view of the above, for cross-border assignments it is critical to determine correctly the residence status of an individual because the individual may in certain instances continue to be a resident of his/her home country based on the CVI or other criteria of the respective double tax treaty even if he/she spends most of the time in the host country.

Personal income tax return filing obligations

KZ tax residents are required to file an annual PIT return if during a tax year:

- They earn income that is not subject to withholding in Kazakhstan (for example, property income or foreign-source income), or
- They have property (real estate, securities, equity interests) outside Kazakhstan (this is applicable only to Kazakh citizens and foreign citizens who have a permanent residence permit).

Non-resident individuals are required to file annual PIT returns if they earn Kazakh-source income that is not taxed at the source of payment in Kazakhstan.

In addition to the above and as a response to the most common question "How will the authorities find out about my income?", it is worth mentioning here standard practice involving the automatic exchange of information provided by a number of countries.

In 2018 Kazakhstan signed the *Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information* developed and approved by the *Council of the Organisation for Economic Co-operation and Development (OECD),* but has not started exchanging financial account information, as some procedures on the assessment of privacy and data protection measures still need to be resolved. However, at present Kazakhstan can still request information on a case-by-case basis.

It is also worth noting the following administrative and criminal penalties for the failure to file PIT returns:

- The first time an individual fails to file an annual PIT return with the Kazakh tax authorities by the deadline results in the issue of a Notification by the tax authorities, while any repeated violation during the year is subject to an administrative fine in the amount of 15 times the monthly calculation index (MCI) (approximately USD 100).
- Understatement of PIT amounts in the tax return results in a fine of 10 times MCI (or approximately USD 70).
- Concealment of a taxable item gives rise to a fine of 200% of the concealed tax amount, while a similar violation repeated during the year is subject to a fine of 300% of the concealed tax amount.
- The Concealment of property outside Kazakhstan results in a fine 100 times MCI (or approximately USD 690) for each concealed reportable item, while a similar violation repeated during the year is subject to a fine 200 times MCI (or approximately US$1,400).

A criminal fine is stipulated for large-scale tax evasion, in other words, if the amount exceeds 20,000 MCI (approximately US$140,000). Furthermore, administrative and criminal fines may adversely affect not only the reputation of the individual, but also the company or even group of companies employing this individual. Moreover, it is not widely known that Kazakh legislation may prohibit foreign citizens from entering Kazakhstan if they failed to submit a PIT return during their previous stay when the filing was mandatory.



Impact of the COVID-19 outbreak

It is clear that the COVID-19 pandemic has not only affected the private lives of individuals, but also triggered a multitude of tax residence issues for individuals and businesses. Due to the travel restrictions imposed by countries globally, many cross-border workers:

- have relocated to their home countries (and work from home);
- have stayed in their host countries and work from their home/accommodation in their respective host country;
- have relocated to third countries (and work from a temporary accommodation); or
- have been dismissed.

All the above factors indicate a change in regular work patterns and routines, which raises several tax-related issues for cross-border workers and companies. In particular, companies are concerned about changes in the tax residence status of their employees and changes in the working patterns of cross-border workers, which might trigger a "permanent establishment" and thereby create new filing requirements and tax obligations for the companies.

Tax Residence for cross-border workers

The OECD has examined the implications of these changes against the backdrop of the current global pandemic and developed guidance. According to the guidance, in a number of circumstances it is highly unlikely that the COVID-19 pandemic will result in a change in the tax residence of employees.

Several countries are formally overlooking or "forgiving" sudden changes in the duration of cross-border assignments and residence status. Some countries (for example, the UK, Australia, Ireland) issued guidance to disregard the days spent in these countries for tax purposes in exceptional circumstances such as COVID-19. However, in some instances, the period for forgiveness is limited or is not stipulated in local tax law, as is the case with Kazakhstan.

Accordingly, there is a still a risk that cross-border non-resident employees of Kazakhstan staying in Kazakhstan and unable to leave the country owing to the closure of international borders might be regarded as Kazakh residents under local tax law even if the individual is stranded in Kazakhstan (for more than 183 calendar days) due to travel restrictions and lockdown measures.

Permanent Establishment (PE)

According to the Tax Code, a PE is a fixed place of business through which a non-resident legal entity engages in entrepreneurial (i.e., income-generating) activities in Kazakhstan. Such a fixed place of business includes any place of management, branch, division, or representative office in Kazakhstan, regardless of the duration of the activity carried out through the fixed place of business. Moreover, non-resident legal entities are deemed to have a PE in Kazakhstan when they provide services/do business through employees or other hired personnel in Kazakhstan for more than 183 calendar days in any period for 12 consecutive months. In some circumstances the Tax Code also regards a dependent agent as a PE of its principal.

The national/local threshold for presence in the country that necessitates tax registration is generally lower than the one applicable under a respective double tax treaty. If services are provided in Kazakhstan through employees or other personnel (for the same projects or connected projects), the threshold under most tax treaties is limited to a period of more than 12 months. In general, in each case the employee's presence and the nature of their work duties should be analyzed from the perspective of compliance with the above criteria in order to mitigate the tax consequences

In the opinion of the OECD, changes in the work patterns of employees due to the COVID-19 pandemic will not result in any changes to the determination of a PE. To qualify as a PE, the activity carried out by an individual must involve a certain degree of permanency and must not be temporary or transitory. Based on the assumption that remote work is a temporary development and does not become a permanent arrangement over time, working from home during the pandemic should not create a PE for the company.

In addition, anyone working from home temporarily for a non-resident legal entity can give rise to a dependent agent PE if the respective employee habitually concludes contracts on behalf of the legal entity. The key word in this context is "habitually." If work from home is attributable to government directives issued during the COVID-19 pandemic, then such work would not be treated as "habitual." However, if the employee had habitually concluded contracts on behalf of the legal entity in the home country before the pandemic, then the work from home required by the pandemic would not change the assessment.

National tax administrations are encouraged to provide relevant guidance, given that the changes caused by COVID-19 might trigger registration requirements for corporate income tax purposes. For example, the *Office of the Revenue Commissioners of Ireland* has issued guidance, stipulating that the presence of an individual in Ireland or any other jurisdiction as a result of the COVID-19 travel restrictions is disregarded during the COVID-19 pandemic for corporate income tax purposes.

As in the case of the tax residence of individuals, the *State Revenue Committee in Kazakhstan* has not issued any official guidance on how to determine a PE in the context of COVID-19. The country's formal position is still based on local tax rules and remains unchanged: there is no specific tax procedure which takes account of the current global pandemic.

Owing to the lack of specific guidance during the COVID-19 pandemic, there are risks that cross-border non-resident employees might be treated as KZ residents and that it might be held that PEs have been created in Kazakhstan for foreign legal entities which sent employees on such cross-border assignments. Many tax professionals are aware of these risks. However, as they tend to concern a limited number of employees, they assume the risks to be manageable. In the case of a number of companies, however, the current situation could affect a far higher proportion of employees, which is leading them to prioritize this issue.

In summary, Kazakh tax law adheres in general to international tax principles on the taxation of individuals employed by global companies. However, even though international double tax treaties ratified by Kazakhstan take precedence over its domestic tax law and are implemented directly, there are still a number of situations where a conflict between domestic law and double tax treaties may arise. In practice, each case is considered on its merits. At the same time, however, in most cases domestic tax rules take precedence.

SHOULD THE AIFC INTERNATIONAL ARBITRATION CENTRE BE A DISPUTE RESOLUTION FORUM?

by David Waldron
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What is Arbitration?

There are a number of platforms and mechanisms for the resolution of disputes in commercial transactions. *International Commercial Arbitration* is one of them. Arbitration is a consensual process to resolve disputes outside of the conventional (statutory, state-run) court systems. There are limits to what may be subject to commercial arbitration, for instance, a dispute between state bodies cannot be brought to arbitration, but generally it can be used in many contracts for the purposes of resolution of commercial disputes.

Our recent article published in the *October 2020 Issue of Investor's Voice (IV)* "*What You Need to Note for Arbitration*" (*October 2020 IV article*) gives additional information on arbitration agreements, arbitration costs, arbitrators and evidence. Since that article appeared, there has been a Supreme Court case in England which - in some agreements – is leading parties to introduce additional wording into the arbitration clause, for instance, "This Agreement, including this Clause [X] (*Governing law and arbitration*), shall be governed by and construed in accordance with [Z] law…."

International Commercial Arbitration has its *pros* and *cons*. While this article does not purport to provide a comprehensive comparison between dispute resolution in court and in International Arbitration, below are some practical *pros* and *cons* worth keeping in mind.

One of the major selling points is that *Institutional International Arbitration* (that is, regulated by one of the main arbitration institutes) is widely considered independent, whereas unbiased resolution is secured via, *inter alia*, institutional supervision. The parties may agree on the method for selecting arbitrators. Those arbitrators (however selected) are required to be independent and certify themselves as being such. International corporations tend to prefer International Arbitration in particular when dealing with state or quasi-state companies (to avoid what they may perceive as a disadvantage in courts of the same state).

Arbitral awards are (save in limited circumstances) not appealable and are enforced in many parts of the world through the *1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.*

In many cases, confidentiality is also a concern, and so confidentiality in the *Institutional Commercial Arbitration* process (whether by agreement or enshrined in the rules) may be preferable compared to [conventional] courts. Disadvantages of *International Arbitration* include high cost, especially if the parties and venue are in a different country.

Timing /speed of consideration of the case in arbitration may become an issue in complex cases as arbitration may be perceived to be slower than litigation in some countries. The availability (or perceived non-availability) of summary resolution of clear cases is sometimes cited as a disadvantage of *International Commercial Arbitration.* This is a criticism that some of the institutions are currently seeking to address.



Which Arbitration Forum to Use?

There are many arbitration institutions administering the *International Arbitration* process, but the most commonly used in commercial transactions in Kazakhstan are: *LCIA (London Court of International Arbitration)* in London, *ICC (International Chamber of Commerce)* in Paris and *SCC (Arbitration Institute of the Stockholm Chamber of Commerce)* in Stockholm. They have their own procedural rules governing their arbitration process. Commonly these arbitration institutions (rules) are selected to resolve disputes that arise in larger commercial transactions, or those with an international element. Please refer to our *October 2020 IV article* regarding the choice of arbitral institution for more details.

There are also local Kazakhstan arbitration institutions such as the *Kazakhstan International Arbitrage* and *Arbitration Centre of the National Chamber of Entrepreneurs Atameken* that may be called upon to resolve disputes in transactions governed by Kazakhstan law.

There is now the *AIFC International Arbitration Centre* (*Arbitration Centre*) created as part of the *Astana International Financial Centre (AIFC). AIFC* is a distinct territory (jurisdiction) within Kazakhstan's capital city Nur-Sultan (former name: Astana) with its own law, court, stock exchange and other related infrastructure, including the *Arbitration Centre*. As discussed in our *October 2020 IV article:*

"*If the AIFC law is chosen, it is important to note that it is not a pure English law jurisdiction. The AIFC law consists of (i) the relevant Constitutional Law, (ii) the AIFC Acts of the AIFC Bodies that may be based on the principles, statutes and precedents of the law of England and Wales and/or standards of the world leading financial centers and (iii) Kazakhstan law on all matters that are not regulated by the Constitutional Law or the AIFC Acts.*

The Constitutional Law is silent on the arbitration or interpretation of arbitration clause and there are no special AIFC Acts on these matters. Therefore, there is a risk that Kazakhstan law would apply in accordance with the above definition of the "AIFC Law"".



Should One Select the Arbitration Centre?

So, is there a potential for the Arbitration Centre to become a leading arbitration institution /forum in Kazakhstan? It has all ingredients to become one:

- ***First***, awards of the Arbitration Centre can be enforced under the *1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards*.

- ***Second***, the Arbitration Centre is part of the AIFC infrastructure (and, as such, is mentioned in the *AIFC Constitutional Law*) and it may be an instinctive choice for the parties to select this forum if they do business in or through the AIFC.

- ***Third***, the government fully supports and promotes the Arbitration Centre, e.g., it is specifically designated as a forum for resolution of disputes in the model contract for the implementation of an investment project. The Government also is also seeking to renegotiate some existing contracts executed by Kazakhstan national companies to change the governing law to the law of the AIFC and the dispute resolution clause for litigation or arbitration at the AIFC.

- ***Fourth,*** under the *Kazakhstan Arbitration Law* in many cases, state-owned companies are required to obtain consent for agreeing to an arbitration clause; however, notably, according to the *AIFC Arbitration Regulations (Resolution of the AIFC Management Council* dated 5 December 2017):

  > "*The requirements of the Arbitration Law of Kazakhstan do not apply to arbitrations conducted under these Regulations*" (part 1, paragraph 7)

  which might be interpreted to mean that no such consent is required for disputes to be resolved at the Arbitration Centre (this interpretation may be too liberal) or, at least there is a better chance of getting such consent if a dispute is to be resolved at the Arbitration Centre.

That being said, there are important nuances. The main one is governing law of the underlying transaction. ***Consider three scenarios: a) a contract governed by Kazakhstan law, b) a contract governed by AIFC law, and c) a contract governed by English law.***

If a contract is governed by Kazakhstan law an analysis of whether the Arbitration Centre or one of the main institutions is most suited to the contract should be undertaken. In a smaller contract, or one where both parties are from Kazakhstan there are clear advantages in a Kazakhstan based arbitration, including the more ready availability of Kazakhstan law arbitrators.

So, the Arbitration Centre may be a good and practical choice, although we note that the list of arbitrators currently available at the Arbitration Centre is rather limited. That being said, it is still possible and sometimes desirable to select an international arbitration institution. Arbitrators would be able to hire Kazakhstan law experts, and the case might benefit from arbitrators specializing in a given type of dispute (say, cost overrun in complex industrial construction contracts) and there is a history of trust and impartiality which may give comfort.



If a contract is governed by AIFC law, then the Arbitration Centre seems to be a viable choice. The arbitrators should have knowledge of AIFC law. In this particular case, in addition to the Arbitration Centre, it may be worth considering the *AIFC Court* if enforcement is going to be in Kazakhstan. While it is not part of the Kazakhstan court system, its decisions are enforced just like Kazakhstan court judgments and, most importantly, the judges are former English judges. So, there is inherent trust in their impartiality and knowledge of the roots and spirit of the AIFC acts. International arbitration institutions are also an option, especially for large and complex cases for the reasons mentioned above.

If a contract is governed by English law, then the most natural choice remains an International Arbitration Institution. However, considering the current composition of its arbitrators' panel, the Arbitration Centre may also be acceptable for some disputes governed by English law.

Overall, the Arbitration Centre has a potential to attract selection, in particular when costs are sensitive. According to the Arbitration Centre's website, "*All applications, administration and hearings at the IAC are free of charge until 31 December 2021. All parties to a contract which is agreed before 31 December 2021 and includes the IAC for dispute resolution will be eligible to receive free administration of any dispute resolution at the IAC under that contract before and after 31 December 2021*".

However, given the literal interpretation of this statement, such waiver of fees does not apply to fees of the arbitration tribunal (please refer to our *October 2020 IV article* where we note, in particular, that, "*it is even more important to have a clear picture of how an arbitrator or tribunal's fees will be charged (hourly rate, fixed fee, etc.) and/or whether there are certain limitations on such fees (e.g., maximum threshold for an hourly rate). For example, the International Chamber of Commerce (ICC) charges on an ad-valorum basis, while the London Court of International Arbitration (LCIA) limits the hourly rate of arbitrators*")).

The Bottom Line

The Arbitration Centre is a new platform for resolution of disputes. It appears a natural choice for disputes governed by AIFC law. Given government support, and subject to establishing its reputation, it has a good potential to become a desired forum for the resolution of disputes between international investors and state / quasi-state companies.



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AMBIGUITIES IN KAZAKHSTAN'S NEW DIVIDEND TAXATION POLICY

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The Tax Code has been amended from 1 January 2021 to significantly change how dividends paid by Kazakhstan companies to foreign investors are taxed and to make it more diffi cult to fully exempt profit distributions from tax in Kazakhstan. Generally, dividend payments to foreign shareholders are taxed at source at 15% (or 20% if the shareholder is registered in a low-tax country). International treaties can be applied to reduce the standard rate (15%).

To help attract long-term investment into the country, both non-resident companies and individuals have had access for over a decade to domestic tax exemptions on dividends received from Kazakhstan. To apply such exemptions the recipients of dividends must not be registered in a low-tax jurisdiction and are required to have held the relevant shares / interests for at least three years and have no (or insignificant) links to subsoil user assets in Kazakhstan.



The Tax Code amendments signed into law by the President on 10 December 2020 impose additional qualification requirements such that from 1 January 2021, only dividends paid from "income previously taxed" are eligible for tax exemption (provided all the other above conditions are also met).

We believe the amendment has made it much more challenging to achieve the tax exemption of dividends and leaves a number of questions open on how the new provision can be applied in practice.

Ambiguity of "income previously taxed"

The legislator has provided no detailed instructions on how to identify cases where income may be treated as "already taxed", leaving ample room for random interpretation, in particular:

- the possibility to treat dividends paid out by holding companies as "already taxed" at operating company level

A shareholder may own assets in Kazakhstan through a holding company, which holds shares in Kazakhstan operating companies. Given the Tax Code requirement to adjust aggregate annual income by the value of dividends received, the holding company may actually have no income subject to corporate tax, while profits distributed to shareholders would be sourced from and fully taxed by the operating companies.



In other words, these dividends could be considered as already taxed, but only at the operating company level. The lack of any clear rule enabling such income to be treated as "already taxed" leads to economic double taxation of the same taxable object – at both the operating company and shareholder levels.

- defining the net income distributed by a resident legal entity, and the period when it should be "previously taxed"

The amendments do not appear to be taking into consideration unavoidable differences that the taxpayers have in their financial and tax accounting due to different income and expense recognition principles. Probably the most significant aspect, from the perspective of investors and production companies, is the difference between financial and tax accounting in depreciation of fixed assets due to different depreciation methods, rates and accelerated depreciation allowances – "investment tax preferences".

Thus, due to timing differences caused by differences between financial and tax accounting rules, a Kazakhstan company paying dividends may record losses in tax accounting and net profit for financial accounting purposes.

In other cases, a Kazakh company may pay dividends on retained earnings from net profits generated three, five, ten or more years ago. It is not clear, given the statute of limitation restrictions, how the tax authorities in these cases intend to check whether corporate income tax has been paid on such net income, and on which part of this income. In other words, income could have been taxed in previous tax periods (or will be taxed in future), but the tax exemption would not apply due to ambiguity of the new amendment.

Lack of definition of net income

The tax law does not contain a definition of net income for dividend taxation purposes.

Under a general dividend distribution procedure set out in the Kazakhstan LLP law, net income received by an LLP is distributed based on the decision of the shareholders' general meeting approving financial results for the year. This decision is made based on approved financial statements of a company – i.e., source of dividends is the net income (net profit) as per accounting data and financial statements.

Given that dividends are not based on corporate tax reporting results, we believe it is improper to equate net income per financial statements distributed to shareholders to after-tax income reported in a corporate tax return.

The logic behind comparing these results and the methodological approach proposed in the new provision are not clear.

If we assume that the new approach was introduced so that exemptions could be disallowed in those cases when net distributable profits have not been taxed in Kazakhstan, then the concept is flawed merely because under Kazakhstan accounting law this situation is not possible.

In Kazakhstan, recognition of income and expenses



(including income tax expense) is based on the accrual method. Under the accrual method, even if taxpayers do not have taxable income and CIT expenses in the current tax period, they are required to report deferred income tax expense in their financial statements, which reduces net income to be distributed among shareholders.

This deferred tax recognition mechanism does not allow for situations when untaxed net income (profit) is paid as dividends. Thus, the restriction of the tax exemption on the grounds of non-taxation of underlying income is based on the confusion of the terms "taxable income after CIT according to tax accounting" and "net income (profit) according to financial accounting", which distorts the general principle of forming dividends.



We believe the new dividend exemption rules will create an uneven playing field for many taxpayers: for example, those that had enjoyed additional CIT deductions by applying accelerated depreciation option, will find themselves discriminated against when paying dividends to shareholders, i.e. they will be forced to pay an additional 15% tax.

Because dividend income is these days mostly exempted, this WHT will be an absolute loss to such groups of companies, as there is generally no scope to credit or otherwise relieve this tax. This renders investment into Kazakhstan less attractive.

Likewise, taxpayers that did not apply the accelerated deduction option in the current period (retained it for a future period), will be able to make use of the dividend tax exemption.

This sends out a signal to investors that capital investment in production assets (which was the reason for introducing accelerated deduction option in the first place) is no longer worth it because it can have the reverse effect, i.e. lead to additional tax on dividends.

Retrospective application of the new dividend taxation concept

Until the amendments were adopted, foreign investors did not have any issues with using the domestic tax exemption on the grounds that underlying income had not been taxed (except in specific cases where CIT was reduced by 100% for certain types of activities).

However, in their recent opinion published before the discussed amendment was signed into law, the tax authorities stated that dividends tax exemption was not applicable if the entity paying the dividends did not generate taxable income. As far as we understand, this position is based on the definition of net income as "income after taxation", which, as we noted above, does not correspond to the principles for forming dividends.

Although tax authority clarifications are not binding, any such Tax Code interpretation may have far-reaching consequences and allow the tax authorities to consider the amendments from 1 January 2021 as of clarifying nature. Thus, the tax authorities' opinion can now be used as a tool for legalizing the retrospective application of restrictions and making additional assessments during a tax audit, including for earlier periods.

Interestingly, this position places doubt on the exemptions historically applied to dividends paid not only to foreign investors but also to Kazakh resident individuals.Given that the desktop audits on this issue have already started and they currently target dividend payments to non-residents, we recommend that Kazakhstan companies that paid dividends to foreign shareholders in previous periods be ready to support their position and prepare a defence strategy.

Clarification or amendment that worsens the taxpayer position?

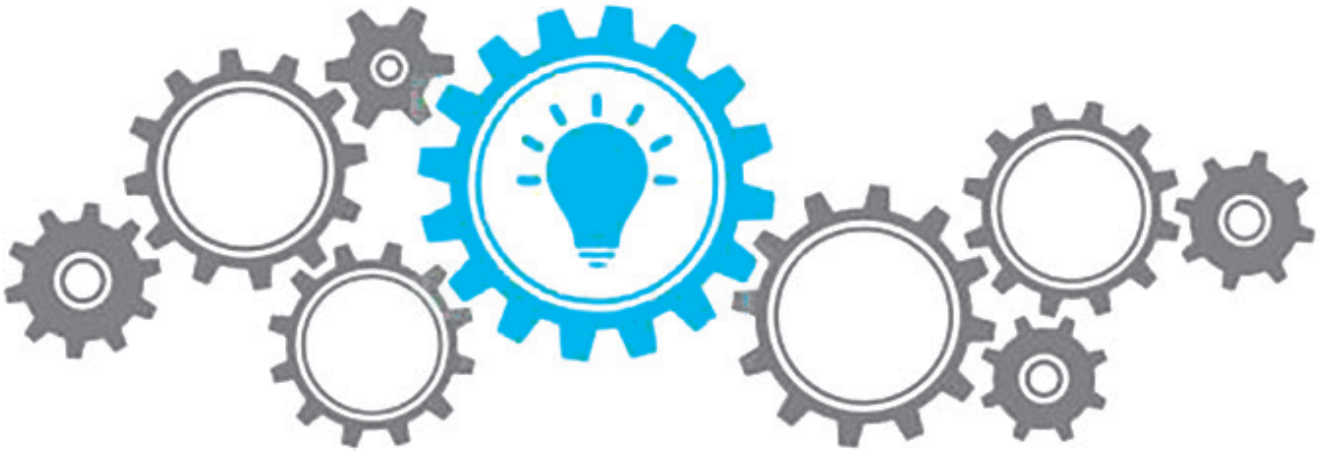
Based on the Tax Code, amendments may be made to:

- change objects of taxation / tax bases and repeal tax concessions – but only by 1 July of the current year and can take force not earlier than 1 January of the year following the year they are adopted, and
- change tax administration, tax reporting provisions and where such changes improve taxpayer position - by 1 December of the current year.

In our opinion, the provision introducing a new restriction for applying tax exemption is a significant change that impacts the object of taxation and abolishes concessions stipulated by the Tax Code. Therefore, adopting this provision after 1 July 2020 and enforcing starting 2021 as if the change clarifies or improves taxpayers' position is questionable.

Thus, bearing in mind the governing principle of certainty of taxation, we believe the new provision restricting tax concessions for dividend distributions to foreign investors requires further discussion and improvements around clarity of implementation and application rules.

Without this clarity, the current ambiguity of the new provision is likely to be one of the major dispute issues for foreign investors in Kazakhstan and is a reform that significantly reduces the attractiveness of Kazakhstan as a destination for foreign investment.



KAZAKHSTAN'S APPROACH TO DIVIDENDS TAX EXEMPTION

by Lyazzat Zhilkibagarova
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The article below covers the tax exemption of dividends distributed by a Kazakhstani company to its foreign shareholders (participants). In particular, the recent tendency of the Kazakh tax authorities in this respect is examined.

As a general rule, dividends received by a foreign shareholder (participant) from a Kazakhstani company are subject to withholding tax at rate of 15% in Kazakhstan. However, such dividends may be exempted from withholding tax upon compliance with the following conditions:

- the foreign shareholder (participant) is not registered in a tax haven;
- the foreign shareholder (participant) has owned its share (participant interest) for more than 3 years as of the date of the dividends' accrual;
- the Kazakhstani company distributing the dividends, is not a subsoil user;
- no more than half the assets of the Kazakhstani company distributing the dividends are comprised of the property of the subsoil users.

In addition to these four conditions, withholding tax exemption is not applicable to dividends distributed by Kazakhstani companies that enjoy corporate income tax exemptions (for instance, non-profit organizations, participants of special economic zones, investors implementing investment contracts, and others).



At first glance, the last limitation might seem reasonable – if the Kazakhstani company's income has already been exempted from taxation, why should it be subject to additional tax exemptions like the one in respect of the dividends? Moreover, the dividends are generally recognized as part of the net income distributed by the Kazakhstani company among its participants (shareholders).

However, neither the tax legislation, nor any other legislative act provides for a clear definition of the net income. Thus it is generally implied that net income is income excluding expenses on its generation as well as taxes and other obligatory payments. Hence, disallowing dividends tax exemption by taxpayers enjoying corporate income tax exemptions appears to be justified.

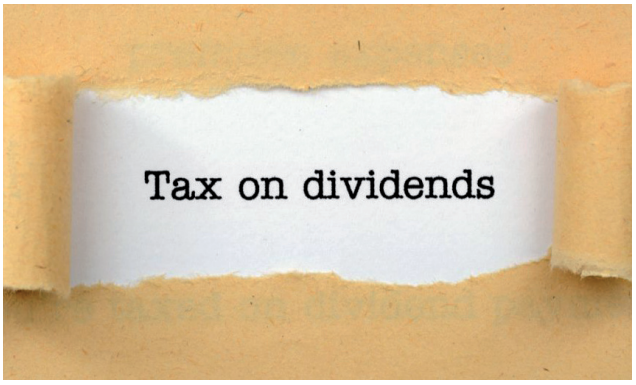
But what if the Kazakhstani company applies a special accounting procedure such as the one applicable to the long-term contracts? Long-term contracts are contracts on manufacture, installation, and construction that cannot be completed within the calendar year in which they began. Kazakhstani companies implementing such contracts are allowed to determine their corporate income tax obligations on the basis of either the actual or completion method.



Under the actual method, taxable income is determined on the basis of income received in the reporting calendar year which at the same time shall not be less than the expenses incurred during that year. While under the completion method, taxable income is recognized as the total amount of income received under the contract multiplied by the percentage of the contract's completion. The percentage of the contract's completion is, in turn, determined on the basis of the expenses of the previous and current calendar years divided by the total expenses under the contract.

As can be seen from the above, the actual method does not limit the amount of income the company is allowed to recognize as the taxable one and, thus, pay to the budget, while the latter method allows the company to recognize only part of the received income as the taxable one. Respectively, if the Kazakhstani company implementing a long-term contract uses the completion method, there may be discrepancies between the amounts of actually received and declared income.

For instance, a company signed a construction contract for 3 years amounting to US$ 120,000 and intends to spend US$ 100,000 on its implementation. This year the company completed 30% of the construction work and spent US$ 30,000 on their performance. As a remuneration, it received USD $40 000 from the client. If the company used the general procedure, it would have declared taxable income in the amount of US $10 000 and paid corporate income tax in the amount of US $2000.



However, since the company uses the completion method of accounting, it declares the taxable income in the amount of USD 6 000 and pays corporate income tax in the amount of US $1,200 now, while recognizing US $800 (corporate income tax on the difference between the actually received income and the declared income) as the deferred tax payable in the following years.

In view of this, the question is – is it fair and reasonable to give such companies the same treatment as companies that do not pay corporate income tax at all, when the issue concerns dividends tax exemption?

Prior to this year one might give a negative answer to the last question as it seems that a deferred tax payment incentive cannot be equated to a full tax exemption, since in the first case the taxpayer is still obliged to pay the full tax to the budget, even if in installments, while in the latter case the taxpayer does not pay the tax at all.

But at the end of last year, Kazakhstan's Parliament adopted a package of tax legislation amendments, most of which came into effect this year. The amendment relevant to the case at hand is among these, namely, it envisages that the dividends tax exemption is applicable only in case when such dividends were distributed from the income earlier levied with the corporate income tax.

In accordance with the legislator's explanations, this amendment is purely editorial in nature and was adopted to clarify uncertainty about the definition of net income. If viewed from a different angle, however, this amendment may pose a threat to Kazakhstani companies implementing long-term contracts, in particular, the ones applying the completion method.

Thus Kazakhstani companies implementing long-term contracts under the completion method have recently already found themselves in disputes with Kazakhstan's tax authorities on the dividends tax exemption. The tax authorities have challenged the dividends tax exemption in this case on the grounds that the Kazakhstani companies distributed the dividends from income not recognized as net income. They justified their conclusion from the net income definition in the previous tax law that is now invalid.

According to the previous law, net income is defined as taxable income excluding accrued income tax. Respectively, in the opinion of Kazakhstan's tax authorities, if the dividends are distributed from income, in which respect the corporate income tax was not accrued, the dividends cannot be exempted from taxation as they were distributed from income not correspondingly to the definition of net income.

Prior to adoption of the above amendment, these claims by Kazakhstan's tax authorities were not sufficiently justified as application of an invalid legal acts is considered a violation of the general legislative rules. Hence, the taxpayers had a reliable defense in this regard. But it now seems the Kazakhstan tax authorities may have a "sturdier" argument for their claims against the dividends tax exemption, at least in this particular case.

Thus, using the above example, if the Kazakhstani company now distributes dividends from the income for which respect corporate income tax was partially paid and partially deferred, it will be difficult to prove that the full amount of these dividends is eligible for the dividends tax exemption. The Kazakhstan tax authorities may claim that this exemption can only be applied to the amount of the dividends distributed from the income levied with the corporate income tax, while the rest amount of dividends distributed from the income for which the corporate income tax was deferred, shall be taxed without a tax exemption.

Nevertheless, there is hope that the latter scenario may not happen as the Atameken National Chamber of Entrepreneurs has recently objected to this practice. The Atameken position was also supported by the Ministry of the National Economy, which is responsible for the taxation policy in Kazakhstan. Both Atameken and the Ministry are of opinion that for the purposes of the dividends tax exemption, the net income should be determined on the basis of the actually received income rather than the declared one.

Therefore, it is anticipated that the tax authorities will refuse to proceed with their unjustified claims on this matter. Nonetheless, for now Kazakhstani companies, fulfilling long-term contracts under the completion method, might want to exercise extra caution when distributing dividends among their foreign shareholders (participants).

GRATA INTERNATIONAL

MORE SECURE DIGITAL TECHNOLOGY - WHAT THE PANDEMIC HAS CHANGED

by Rafal Trepka
Country Manager
Mastercard Central Asia

As a leading contributor of innovation and solutions in payment systems, Mastercard is certain that technologies are driving the transformation to a Digital Economy, and it stands ready to this uphold this conviction in words and deeds

The coronavirus pandemic continues. It has changed how we live and work. It has been about one year since many countries first imposed quarantines, introducing numerous restrictive measures and closing their borders. Many governments were unprepared for the challenges they face. This situation proved to be a unique challenge for everyone, and Kazakhstan was no exception. However, the Kazakh government displayed a welcomed decisiveness, implementing timely measures that helped keep the situation under control by ensuring the continued functioning of the economy and providing support for the population.

However, some industries are having a hard time, especially small and medium businesses. Economies have witnessed significant growth in e-commerce. Any business that didn't previously have an online presence had to pivot quickly, or risk irrelevance. However, as lockdowns eased and people gradually returned to shops and restaurants, these new habits of reduced consumption seemed to stick.

A report published last year by the World Bank showed that the COVID-19 pandemic had a greater negative influence on the economy of Kazakhstan than any other factor in almost 20 years and has already negatively affected growth. In these difficult circumstances, government organizations, financial institutions and merchants are looking for new opportunities to work and grow.

Companies such as Mastercard, that have global expertise in achieving cost-effective solutions that take the specifics of each local market into account, are in the best position to help. Mastercard solutions cover all areas of life, from national economic systems and large corporations to small, city-level enterprises and individuals with their everyday needs.

The COVID-19 pandemic has accelerated the implementation of payment solutions that help develop commerce and support SMEs. The security of contactless payments, the evolution of electronic wallets, the use of biometric methods of identification and introduction of artificial intelligence have all helped to make these processes faster, more efficient and secure and has solved problems not only in the financial sphere, but also in the social, educational and medical fields, among many others.

Mastercard is committed to working with governments globally to educate, advocate, support and advance policies that will realize the full potential of the Digital Economy and the value to society it creates. It is in everyone's interest to have trusted, robust and reliable Digital Economy infrastructure, where access is easy and where the rights of privacy, property, inclusion and security are respected.



The cashless economy is very actively developing in Kazakhstan, and Mastercard is proud to contribute to this process. As in the rest of the world, Mastercard is are doing everything possible in Kazakhstan to ensure that electronic transactions replace cash and that financial services are as accessible as possible. Mastercard firmly believes that a digital economy cannot emerge without the development of financial technologies and cashless payments, and so the company is introducing the most advanced innovations and technologies that further stimulate development of a cashless economy. A number of innovative Mastercard payment solutions for e-commerce, banks and SMEs have been or will be implemented in Kazakhstan soon.

The *Tap-On-Phone* solution allows merchants to convert their phones into acceptance devices and consumers to pay for purchases using a card, smartphone and tokenization technology. This significantly increases the number of card acceptance points by eliminating the need to install additional POS terminals — a solution that many businesses, and especially SMEs find very convenient.

Another example is the *Card on File Masterpass* service that allows you to store card credentials securely and pay for online goods and services in one click without disclosing your card details. With the mobile wallet, users you can send and receive money from other users, pay bills, buy tickets, receive cashback and much more. This solution not only speeds up digital transactions, but also ensures payment security.

Mastercard has created many other solutions that help develop e-commerce. And, as more and more people are active online and leave various data there, they need to be confident that the technologies and partners with whom they interact are proven, safe and reliable.

Cyberspace is the world's commons. Enormously productive, beneficial things can happen there, but only if we all work together to make it a safe and secure shared space. Currently, cyberthreats pose tremendous and growing risk to national, economic, corporate and individual security. While significant progress has been made — both by governments and the private sector — in improving our cyber defenses and response capabilities, the challenges continue to increase.

Cyberattacks continue to grow in scale and sophistication. Worse yet, the business processes and infrastructure that define today's globally-connected, digital economy were not designed with security in mind, putting us all at risk. We must secure the whole of the digital ecosystem for today's society and for the generations to come.

We need a new comprehensive plan of action involving thoughtful, proactive government action and global standards, investments by the private sector in collaborative cyberdefenses and new technologies that balance security and convenience, and increased focus on security-by-design solutions that empower individuals to stay safe.

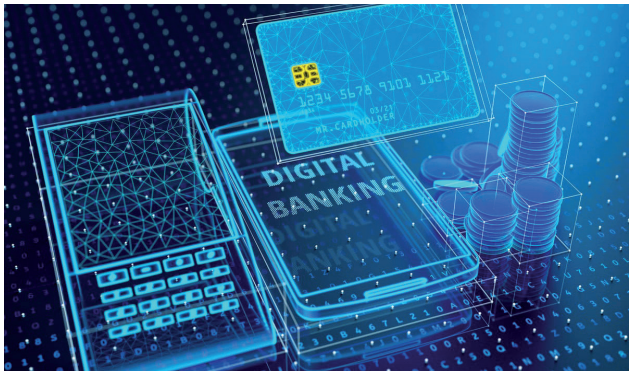
It's time to redefine cybersecurity rules to focus on protecting the entire digital ecosystem and a global population of users, rather than discrete parts of the system. We need to work together to create the combinatory effect of layered defenses. That's why Mastercard is working to advance a comprehensive program of cybersecurity improvements grounded in transformational change across three key domains: governments, government-private collaboration and private-private collaboration.

Governments are critical players in securing the entire ecosystem. Mastercard is leading calls to action for governments about new standards and practices and working with them to initiate a series of approaches to improve our collective defenses in cyberspace. In order to secure cyberspace, public-private partnerships are needed together with pro-market, pro-innovation policies to support these partnerships.

Companies have an enormous role to play in securing cyberspace. But if companies focus solely on themselves, they lose the substantial benefits of "collective defense". Mastercard believes there are multiple critical avenues for private-private collaboration in cyberspace, and we are investing significant resources in these initiatives now.

For all this progress, the shift to digital will be considered a success when it includes everyone. A vibrant economy and an inclusive economy are synonymous. Digital innovations can help lower barriers to participation for people who are typically underserved by financial products and services. Digital identity solutions can be a vital enabler of financial inclusion, providing secure access to a bank account for unbanked populations around the world. Without trustworthy identification for citizens, it is difficult to roll out digital banking. When the private sector and the public sector co-operate, however, this will undoubtedly become a reality.

The transformation Mastercard is committed to achieving will lead to growth, jobs, financial inclusion, economic opportunity and better government for people around the world, especially in emerging markets. The global network that Mastercard has developed is a dynamic and evolving infrastructure that is changing to meet the challenges of today and the promise of tomorrow. Mastercard is committed to working with all parties to educate them on the value of electronic payments and the opportunities to be gained by an effective public-private approach to moving society forward.



About Mastercard

Mastercard is a global technology company in the payments industry. Its mission is to connect and power an inclusive, digital economy that benefits everyone, everywhere by making transactions safe, simple, smart and accessible. Using secure data and networks, partnerships and passion, our innovations and solutions help individuals, financial institutions, governments and businesses realize their greatest potential. The Mastercard decency quotient, or DQ, drives culture and everything it does inside and outside Mastercard. With connections across more than 210 countries and territories, we are building a sustainable world that unlocks priceless possibilities for all.

Kazakhstan is one of the priority markets for Mastercard. It is part of *High Growth European Markets (HGEM)* region that unites 12 countries and contributes to the pan-European success of the company.

As a technological leader, Mastercard brings global payment solutions and makes the digital future closer, developing a cashless economy in Kazakhstan and introducing the most advanced innovations and services. Thanks to Mastercard, tokenization, payment with smartphones and many more technologies have been launched in Kazakhstan.

CONTACTLESS PAYMENTS ARE HERE TO STAY

New Year, New Habits: Contactless Payments Are Here to Stay

As the one-year mark of the Covid-19 pandemic approaches and digital payments play a larger role in daily life around the world, there will be no reverse gear on consumer behavior as we head into 2021. In the third edition of its global research study, the "*Visa Back to Business Study – 2021 Outlook*," Visa found that the continued small and micro business (*SMB*) shift towards digital commerce will evolve in the New Year and bring an increased focus on areas such as security and fraud prevention, and more emerging payment tools such as *'buy now, pay later'* and mobile payment acceptance.

According to the study, by the end of 2020, 82% of SMBs surveyed had embraced new forms of digital technology to meet changing consumer behaviors. Looking ahead to 2021, SMBs are assessing what other payment technologies are critical to meeting today's consumer expectations, with results led by security and fraud management software (47%), contactless or mobile payment acceptance (44%), accepting payments via mobile device (41%), installments or 'buy now, pay later' (36%) and digital backend payment operations (31%).

"*With greater hindsight into 2020, we can clearly see that the digital payment experiences that exceled the most – contactless and eCommerce – were driven out of necessity and have become more habitual in people's daily lives at a pace not often seen*," said Kevin Phalen, Global Head of Business Solutions, Visa. "*If 2020 was the year of contactless and eCommerce, results of this study tell us that 2021 will bring greater attention to security and fraud prevention*.

All markets surveyed have seen a rapid adoption of new payment technologies and changing consumer behavior.

The Road to Recovery for SMBs in 2021

- **Contactless Payments Are Here to Stay:** The global rise of contactless payments in 2020, spurred by challenges including consumers looking for safer ways to pay amidst the pandemic, is showing no signs of slowing down in the New Year. In fact, in June 2020 only 20% of SMBs surveyed had offered contactless payments for the first time — now, 39% report they have started to accept new digital forms of payments.
- **SMBs Meet Consumers Where They Are:** SMBs have steadily increased their efforts to meet consumers where they are now: online. Globally, 82% of SMB owners have made updates to their operations to meet the increasing demand for digital payments, up from 67% in summer 2020 when the first Visa *Back to Business Study* was released.
- **The Fight Against Fraud:** Tech-savvy business owners (52%) are more likely than their novice counterparts (39%) to invest in security and fraud protection. Recognizing the significance of and responding to a potential fraud attack will continue to be a decided advantage in 2021 as the shift to digital sales continues to increase. Despite concern, global fraud rates remain at historic lows, at roughly $0.007 for every $1.00[1].

The New Year Brings a New Era for Consumer Habits

- **Consumer Preference:** Almost overnight, consumers put Covid-19 safety measures at the top of their shopping lists, igniting a rapid shift to touchless commerce. Two-thirds (65%) of surveyed consumers would prefer to use contactless payments as much as, or even more than, they are currently, and only 16% say they would revert to their old methods of payments, post-pandemic.
- **Safety-Conscious Shoppers:** While the universal focus is on mask use in stores, consumers are also eager to have payment alternatives to handling cash, pens and keypads. 47% of consumers say they will not shop at a store that does not offer a contactless way to pay.

Regional Insights: Making Moves to Meet Consumers

- **Pivoting to meet the new digital-first era:** Nearly all UAE SMBs (97%) and Hong Kong SMBs (96%) have adjusted the way they operate in the past three months, compared to the global average of 82%. In June, just two in five Hong Kong SMBs (40%) were selling products and services online. Now, nearly three in five (57%) are selling more online, compared to the global average of 43%.
- **Consumers are shopping digitally, and with an eye on security and safety:** Globally, 82% of consumers have taken some additional action to protect themselves from fraud, with UAE the most likely at 90%. Nearly all UAE consumers (96%, compared to 62% globally) are also taking steps to keep their credit card clean, making them the most likely of all markets surveyed to do so.

Visa will continue to introduce new programs and resources that advance its commitment to digitally enable 50 million SMBs.

FINANCIAL TECHNOLOGY IN THE SERVICE OF EFFICIENCY AND PROGRESS

by Gani Uzbekov
Founder and President
S1LK Kazakhstan

Kazakhstan is not the first place that comes to mind when we think of financial technology (fintech). Although Kaspi Bank has made Kazakhstan noteworthy in Central Asia, whether it will be the first and last such example or whether it will mark the beginning of a new Kazakh era in terms of supplying fintech companies to the world, is hard to say today.



Most banks are slow and clumsy. Without certain privileges, Kazakhstan's banks would suffer the fate of dinosaurs, but with a special diet they manage to survive. However, banking and financial privileges bring slow progress that entails even greater inefficiency in the country's economy.

There is only one type of banking license (23 mln USD to open a bank), further strengthening financial regulation for non-banking institutions (setting up new or higher capital requirements (200k) for payment companies), enhanced reporting for non-banking companies, and licensing requirements for most financial activities (for instance, issuing loans is illegal if there is no other license from the regulator).

All of the above makes Kazakhstan's financial sector less attractive for new players, especially for startups. Furthermore, the regulator does not want to stop. This detracts from Kazakhstan's ability to attract new business when the whole world is competing for new talent.

Kazakhstan's major asset is not oil, but people. Not everyone wants to emigrate or work for the government, national companies, or the private sector. Many people want to open their own businesses, and business needs proper financial solutions and infrastructure. In the final analysis, business chooses a solution that saves time and/or money. The world has many good solutions that could have been implemented in Kazakhstan more rapidly and at less cost, but obstructive legislation prevented this from happening.

For example, setting up a specialized bank in the European Union requires minimum capital of 1 mln. Euros. A specialized bank can provide the following services:

- Business and retail lending
- Payment services
- Receipt of deposits
- Currency exchange
- Issuing of e-money
- Issuing guarantees
- Fund administration
- Financial leasing
- Financial intermediation
- Credit-worthiness assessment services
- Safe-deposit box rental
- all other traditional banking services



A full banking license to provide additional services would require 5 mln. Euros of capital requirements.

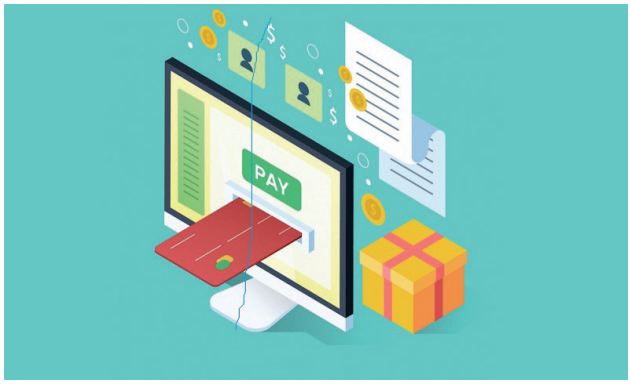
To set up a bank in Kazakhstan, 10 bln tenge (20 mln. Euros) is required and there are no alternative types of banking licenses. *The Astana Financial Supervision Agency (AFSA)* requires 10 mln. USD to open a digital bank at the *Astana International Financial Center (AIFC)*. Thus, entry costs alone make Kazakhstan unattractive. The Kazakhstan market itself presents challenges for investors, and so the political leadership must compensate by regulatory arbitrage. Unfortunately, Kazakhstan's restrictive legislative tendency is not encouraging.

As for E-money licensed companies, the European Union provides the following services:

- Services for cash to be placed on a payment account
- Services for cash withdrawals from a payment account
- Execution of payment transactions, including transfers of funds on a payment account with the payment service provider of the payment service user or with another payment service provider
- Execution of direct debits, including one-off direct debits, execution of payment transactions

through a payment card or a similar device and/ or execution of credit transfers, including standing orders.

- Payment transactions where the funds are covered by a credit line for a payment service user: execution of direct debits, including one-off direct debits, payment transactions through a payment card or a similar device and/or credit transfers, including standing orders.
- Issuing and/or acquiring payment instruments.
- Money transfers.
- Payment Initiation Service (PSD2 implementation).
- Account Information Service (PSD2 implementation).
- Issuing Electronic Money



E-money companies in Europe can issue a virtual *IBAN (International Banking Account Number)* through *SEPA (Single Euro Payment Area*) cards, providing payment and transfer services without the involvement of banks. The minimum capital requirements are much lower than in Kazakhstan. *SEPA Direct Membership* provides e-money license companies with an option to have a direct dialogue and membership at *Mastercard, Visa*, and *Union Pay* in order to obtain issuing and acquiring licenses.

As a result, e-money licensed companies in Europe are fighting over consumers by offering more innovative solutions and products as compared with banks. For example, Europe's *PSD2 (Payment Services Directive Two)* forces banks and other financial institutions to give third-party payment service providers access to consumer bank accounts if account holders give their consent, thus being more competitive through innovation.

Kazakh e-money licensed companies cannot issue *IBAN* since they cannot be members of *KISC (Kazakhstan Interbank Settlement Center* – SEPA's brother) and only Kazakh banks can be members of *KISC*. As a result, e-money companies cannot be members of international payment system companies like *Mastercard, Visa Union Pay,* and others and issue cards. Why? Because international payment system companies usually conduct clearing and settlement through interbank settlement centers like *SEPA* and *KISC*.

When Kazakhstan wants to issue cards, e-money companies must find a bank as their guarantor for international payment system companies, and this requires time and money. Companies must spend many months to find a bank that will work with them and provide guarantees with the international payment system companies. Furthermore, e-money companies must apply for a special AIFC license since conventional legislation does not allow them to issue cards.

By comparison, conventional legislation in Europe allows everything listed above, while Kazakhstan's government had to introduce a separate law on AIFC and include special AIFC provisions in the Constitution. Thus, AIFC legislation that is regarded as innovative legislation has already been standard practice in Europe for a long time.

Introduction of AIFC has clearly made a big difference in the region for fintech companies, but there is a still a long way to go to address all the challenges. The biggest challenge is to create a Chinese wall between the regulators, i.e., *AFSA (Astana Financial Supervision Authority* at *AIFC*) and *NBK/ KFSA (National Bank of Kazakhstan and Kazakh Financial Supervision Agency*). The next challenge is to set up an independent payment/ wire/ transfer settlement center at AIFC or secure access to *KSIC*.

Kazakhstan's political leadership is undoubtedly trying to make the country regionally attractive for investment and talent. To achieve this, however, it is important to have a consistent, systemic vision and a better regional regulatory environment. Unfortunately, what we have seen so far is constant inconsistency between declarations by the political leadership and follow-through action from ministries and agencies. As a result, regulatory costs for doing business in Kazakhstan's financial sector are higher with most of the costs borne by licensed companies and their clients.

The sooner legislators realize the urgency of vision that will bring about fundamental change, the higher will be the chances for Kazakhstan to become a regional center for financial innovation and technology.

KAZAKHSTAN'S PHARMACEUTICAL LEGISLATION – RECENT CHANGES

by Aliya Faizullayeva
Senior Legal Consultant
KPMG Kazakhstan and Central Asia

Over the past few years, Kazakhstan's pharmaceutical legislation has undergone significant change. In July 2020, a new Public Health and Healthcare Code entered into effect with various amendments and additions on medical and pharmaceutical activity, digitalization, government control and supervision, and other new elements. From 1 January 2021, companies manufacturing medicines and pharmacy warehouses must comply with *Good Manufacturing Practice (GMP)* requirements. In addition, these companies and warehouses must comply with *Good Distribution Practice (GDP)* requirements.

From 1 January 2023, organizations engaged in retail operations for medicines (pharmacies, pharmacy chains) will need to comply with *Good Pharmacy Practice (GPP)* requirements. Moreover, from 1 July 2021, mandatory certification for pharmaceutical personnel will be introduced. The list of specialties of pharmaceutical personnel required for certification is approved by Order of the Minister of Health dated 30 November 2020. Without a certificate, pharmaceutical personnel cannot practice pharmacy. Certification will be subject to confirmation every five years.

In addition to the above, the Code prohibits advertising of prescription medicines in mass media, which includes TV and radio channels, as well as online resources and periodicals registered as the media. However, advertising of non-prescription medicines is allowed in the media. It should be noted that advertising medicines may be allowed after the advertising materials are evaluated by the government to ensure they comply with Kazakhstan's healthcare legislation.

Based on results, an expert report is prepared and a conclusion is issued. Advertising medicines must meet the general requirements of Kazakhstan's advertising legislation of Kazakhstan and the specific requirements of medical advertisements. In accordance with the general requirements, advertising must be circulated in Russian and Kazakh and provide reliable information.

The new Ethics Rules for promotion of medicines and medical devices mandatory for all pharmaceutical companies in Kazakhstan were approved by Order of the Minister of Health dated 21 December 2020. These rules set out the way in which medicines may or may not be promoted.

For instance, individual contact by medical manufacturers, distributors and their representatives with medical and pharmaceutical personnel during working hours and at the workplace for the purpose of promoting medicines and medical products is not allowed. It is also prohibited to provide or offer financial remuneration or any other incentives of a financial or non-financial nature to medical and pharmaceutical personnel for prescribing and dispensing certain medicines.



Nor is it allowed to organize programs that provide financial and non-financial rewards, or gifts to heads of pharmacy organizations and pharmaceutical personnel for achieving certain sales results. According to the Code, representatives of medical manufacturers and distributors may promote medicines and medical products to medical organizations and educational institutions only during medical conferences, scientific and practical conferences, or specialized seminars.

In addition to advertising and promoting medicines, there have been significant changes in medical pricing regulations. For instance, under the new Rules, price caps and markups for medicines, as well as medical devices within the guaranteed volume of free medical care and (or) in the system of compulsory social health insurance that establish procedures for approving ceiling prices for wholesale and retail sale of medicines in Kazakhstan were approved by Order of the Minister of Health dated 11 December 2020.

Ceiling prices for medicines are approved twice a year no later than 10 July and 10 January. Unlike in many other countries, the ceiling prices for wholesale and retail are set for all medicines sold on the market in Kazakhstan. The sale of medicines without an approved ceiling price is prohibited. The Medical and Pharmaceutical Control Committee under the Ministry of Healthcare monitors and controls pharmaceutical companies' compliance with the ceiling prices for medicines by trade names.

According to the new Rules establishing the formation of price caps and markups for medicines, the sale of unregistered medicines imported to Kazakhstan is allowed at a ceiling price determined as follows on the basis of an opinion issued by the authorized body: 1) for wholesale - by adding a wholesale markup to the import price (invoice) in accordance with the regressive scale of markups for consumer packaging; and 2) for retail sale - by adding a retail margin to the marginal price of a trade name of medicines for wholesale in accordance with a regressive scale of markups for consumer packaging.

Manufacturers of medicines, distributors and pharmacy chains in Kazakhstan need to consider the above changes and other requirements of Kazakhstan legislation that have a significant impact on their activities.

DISPROPORTIONATE PARTICIPATION INTERESTS IN LLP CHARTER CAPITAL

by Gaukhar Kudaibergenova, Partner
SIGNUM Law Firm

At a difficult time for Kazakhstan's economy, the Government of Kazakhstan is more than ever interested in attracting foreign investment. Government leaders constantly make public declarations about creating a favorable business climate, simplifying regulatory requirements, creating an automated digital system, reducing bureaucracy, and much more. No doubt these declarations have a positive effect, which Signum sees each year as the firm represents clients with legal matters. However, there are still flaws, sometimes rather serious flaws.

Signum recently advised a foreign pharmaceutical company (the Investor) about a transaction whereby the Investor was acquiring the right to become a participant in a Kazakh LLP by increasing its charter capital under Clause 2 of Article 26 of the *Law on LLP*. The current LLP participant and the Investor agreed on their participation interests being disproportionate to their contributions to the LLP charter capital as per Article 28 of the *LLP Law.*



However, the following problem arose when filing for the LLP re-registration: the *Citizens Services Center (CSC)* software that registers these applications did not allow registration of participation interests disproportionate to contributions to the LLP charter capital. For example, if the charter capital is 30 KZT and the new participant is entering the LLP by increasing its charter capital for an additional 70 KZT, the software can only register its participation interest as 70%.

In the client's case, the increase of the LLP's charter capital was made by accepting the new participant into the LLP. According to the LLP Law, if the charter capital is increased with an additional contribution by any of the participants or by the newly accepted participant, the size of such contribution is determined taking into consideration its previous contribution and recalculation of the participation interests in the charter capital of all other participants. The Law stipulates that this decision be made by general agreement between all participants.



The client was a new participant in the LLP, and his contribution could not be determined taking into consideration a previous contribution. The parties signed the investment agreement and established in the LLP foundation documents that their participation interests were disproportionate to their contributions to the charter capital.

It is worth repeating that the LLP Law (Paragraph 1 of Clause 1 of Article 28) allows participation interests to be disproportionate to the contributions to the LLP's charter capital. However, the software used by the government did not accommodate agreement between parties. The CSC system rejected every attempt to register disproportionate participation interests.

In this case, the CSC must collect the documents to send them for the further review to the CSC Department for Registration of Real Estate and Legal Entities. After numerous clarifications and written requests, the CSC employee had to temporarily fill in incorrect data to register the application and hand it over to the Department. Information received from the Department indicated the Department could enter the correct data into the system but refused to do so, referring to the fact that the CSC employee should have entered the data before - an example of shifting the responsibility between stakeholders while the interests of the bona fide investor were damaged.

All the officials understood that the legislation allowed for the disproportionate participation interests, and re-registration was possible. Nevertheless, they chose to insist on the software deficiencies placing them above the rule of law. After lengthy discussions and explanations, written requests and phone calls to the central authorities, the Ministry of Justice, and National Digital Technologies, one month after filing the re-registration application, the government authorities finally entered the data manually.

The CSC technical deficiency remained unfixed, and the client's case was resolved individually only after numerous requests and explanations were sent to a higher level. Practice therefore demonstrates that the government needs to reform their procedures if Kazakhstan truly aims to attract more investors.

A LITIGATOR'S NOTES DURING THE PANDEMIC

by Talgat Sariev, Partner
Bauyrzhan Sharibayev, Of Counsel
Dispute Resolution and Litigation, SIGNUM Law Firm

It may be interesting to learn about litigation developments during COVID-19 from a local law firm perspective. March-June 2020 was the most challenging period when all pending litigation was suspended while clients were reluctant to commence new cases due to lack of clarity on the process and the generally depressing pandemic environment. In addition, several tax cases of interest before the courts are considered.

Mass Return of Claims - The Outcome

Like many other law firms in June and July 2020, SIGNUM law firm faced a "mass return of claims" by the courts (slightly less than ten cases). The grounds were all a carbon copy of each other: non-compliance of the pre-trial settlement procedure, the possibility to resolve the dispute through mediation, or a participatory process was still possible.



Naturally, all decisions on return were appealed, and only in the autumn (October-November), did the Courts of Appeal begin to consider the complaints. The first results were encouraging: the Courts of Appeal overturned the return rulings and forwarded cases to the first-instance court for review on the merits. Moreover, the Courts of Appeal indicated that the first-instance courts needed to establish:

- ***actions taken by the claimant for pre-trial settlement of the dispute;***
- ***whether the law or contract established a mandatory procedure for a pre-trial or out-of-court settlement for such disputes.***

Apparently, the reason for the "mass returns" was the enormous caseload on the courts due to the pandemic: technical issues, gaps in legislation, lack of explicit instructions for working in quarantine, and other obstacles. All of this resulted in "spinning out" a huge number of cases for an extended period. Similar measures were taken by the courts at the very beginning of the pandemic (March), when the courts were recommended to suspend or extend the deadlines for consideration of cases.

Remote Arbitration

As an example of a case heard under remote arbitration, Signum law firm managed to successfully defend a client's interests - a large manufacturer of mining equipment - in a debt collection case (more than US $200 thousand) at the Atameken Arbitration Center. The case was considered online, Signum's first arbitration case in this format, and both the client and the lawyers had many questions and concerns about the process.



Fortunately, most of the technical issues were resolved promptly by the Arbitration Center, whose employees and arbitrators were working remotely. It was also surprisingly quick and easy to get a decision on security measures in the Nur-Sultan Specialized Inter-District Economic Court and to impose interim measures in the regions despite the strict quarantine measures.

Cameral Audit Creativity

The "creativity" of the tax authorities in conducting cameral audits is a never-ending source of amazement. The tax authority's position is pretty straightforward: quoting the Tax Code provisions is a description of the breach itself, for example, demands to pay VAT previously refunded from the budget with 3 or 4 years of interest owed. Even though the VAT refund was based on acts of documentary inspections, cameral inspections' results contradict the documentary inspections.

An interesting question arose when appealing the decision to recognize the cameral notification as unfulfilled. The tax authority required payment of VAT previously refunded from the budget (about 170 million tenge). After receiving the cameral notification, the taxpayer sent an explanation on the alleged violations to the tax authority, who decided to regard the notification as unfulfilled only 30 working days after receiving the explanation.

During the first instance court proceedings, the tax authority commences the documentary inspection, which was not based on the date of the cameral notification, but on the date of the taxpayer's request. Therefore, the tax periods covered by the new inspection do not match the tax periods under the cameral audit.

In court, the tax authority sought to prove that all violations under the cameral notification were "included" in the new documentary inspection and would not “affect" future. No reference was made to the legislation, while the Tax Code provision for extension of the deadline to the cameral notification was ignored.

Another interesting issue also arose about the cameral notification. Under the the double taxation treaty, the taxpayer applied a tax exemption to the non-resident’s income from equipment rental.

The tax authority considered the income from equipment rental as royalty income because leased equipment is classified as "industrial equipment." At the same time, the tax authority referred to the Classifier of Fixed Assets, which does not contain a definition of "industrial equipment, nor does Kazakhstan’s legislation.

Tax Trends on Deals

The tax authorities are constantly modifying their regulations to term a taxpayer's transactions as invalid and therefore to charge additional taxes on them. For example, the tax authorities try to exclude expenses from deductions and from VAT offset on transactions with a counterparty, and to charge CIT and VAT (about 190 million tenge). In this case, the basis for exclusion is the invalidation of transactions between the taxpayer's counterparty and third parties. An additional "argument" is that a criminal case has been initiated under Article 216 of the Criminal Code (issuing an invoice without actually performing work, providing services, or shipping goods) against a person at the third-fourth level in the taxpayer's supply chain.

The tax authorities simply ignore the Tax Code provisions that establish the grounds for excluding expenses from deductions or excluding turnover from offset. They do not take into account the confirmation of the actual performance of works and services provided by the end customer, usually large infrastructure facilities (hydroelectric power stations, railways).

Echoes of International Sanctions in Kazakhstan

There was a unique case on protecting a Kazakhstani company's interests in which a counterparty terminated the contracts based on applying foreign sanctions to the client. The situation was complicated because the contracts were concluded for performance of state procurement work. Therefore, in parallel with the counterparty dispute, the client needed to be protected from being regarded as an unfair participant in state procurement.



RESOURCE CAPITAL FUNDS: PARTNERING TO DEVELOP MINES IN KAZAKHSTAN

by Michael Bingemann
Investment Manager
Resource Capital Funds (RCF)

Resource Capital Funds (RCF) is a global mining-focused investment fund that has partnered with Kazakh investor *Verny Capital* to develop RG Gold's *Raygorodok* project, one of Kazakhstan's many gold deposits and third largest in terms of the country's gold resources. Operating out of Denver Colorado, and with a presence in the major mining regions across the globe, RCF has more than two decades of experience investing in mining projects.

In fact, RCF pioneered the concept of a mining-focused private equity fund, and uniquely combines the deployment of capital with deep mining sector technical expertise to develop and grow mining projects. Since inception, RCF has supported 200 mining companies, with projects located in 51 countries and across 32 commodities.

RCF has a global mandate and is always looking for technically and economically attractive mineral assets, in commodities that are strategic and in attractive stages of the market cycle and looks to partner with motivated and proven management teams. RCF recognised RG Gold's *Raygorodok Project* as an attractive deposit that has been successfully brought into initial production and could significantly grow with the help of the right partner.

For a foreign investor like RCF, deploying capital in new jurisdictions can present challenges. These challenges can be as fundamental as bridging language barriers and understanding cultural differences, to navigating complex regulatory processes to allow a project's development to remain on track.

Finding a local partner to bridge that gap is essential to the success of an investment. A strong working relationship between RCF and Verny Capital has allowed for the combination of international mining expertise and local knowledge for the mutual benefit of RG Gold and the development of *Raygorodok* to become a globally significant gold mining operation.

As a mining destination, Kazakhstan is endowed with abundant and diverse mineral and energy resources. The country ranks in the top 5 globally in reserves of copper, chromium, uranium, silver, lead, manganese, zinc, and molybdenum, and in the top 20 in oil and gas.

The country is the largest uranium miner in the world, producing 43% of the world's uranium in 2019, and ranked amongst the top 10 coal and top 20 oil producers globally in 2010. It follows that the extractive industry is a major contributor to Kazakhstan's economic activity, accounting for around 16.3% of annual GDP in 2018.

This is heavily dominated by the oil & gas sector which alone constituted 13.3% of GDP and 70% of export earnings in 2018. It is clear that broader mining activity is under-represented in Kazakhstan's economy given the country's rich resources, offering significant development potential for investors.

The *Raygorodok* project is in the *Burabay* area of the *Akmola* region in Northern Central Kazakhstan, around 200km from Nur-Sultan. The Company currently processes around 2 Mtpa of oxide ore from the North and South *Raygorodok* pits, producing over 50,000 oz. of gold per annum. The mine employs more than 1,000 personnel and contractors.

Table 1 – Kazakhstan's Mineral Reserves

Natural Resources	Number of deposits	Reserves	World ranking
Gold (thousand tonnes)	349	2.3	15
Silver (thousand tonnes)	195	49	2
Copper (million tonnes)	124	40	3
Lead (million tonnes)	93	15.5	3
Zinc (million tonnes)	90	32	4
Iron (million tonnes)	63	20	8
Chromium (million tonnes)	17	355	1
Manganese (million tonnes)	42	677	3
Molybdenum	51	1.1	4
Uranium (thousand tonnes)	56	903	2
Oil (billion tonnes)	249	4.6	12
Gas (trillion m^3)	252	1.7	19

RG Gold has been mining and processing the upper oxide layer of the ore body since 2014. Mining is via relatively low-cost shallow open pit mining operations, with the ore processed on site via a heap leach and extraction process to produce gold Dore.



Open Pit Mining Operations at RG Gold

The upper oxide layer will reach the end of its life by 2022, but directly below the mined oxide layer is a substantial 6M oz. sulphide resource. The scale of the resource allows for an investment that will unlock the true potential of the asset and maximise value through a significant expansion of the operation.

The expansion of the operation has commenced with RG Gold initiating early works for the construction of a new 5Mtpa CIP (carbon in pulp) plant to process the sulphide ore. All ore will be processed through the new plant and production is expected to increase threefold to around 150,000 – 180,000 oz. of gold per year. The total expansion investment will be in the order of $400M and is scheduled for completion in the third quarter of 2022. The CIP plant will be a modern gold processing facility similar to that found in other well established gold mining regions of the world.

James McClements, Managing Partner at RCF, describes the RG Gold investment as *"a core investment for RCF that has been a good example of being very hands on and leveraging our technical team across the disciplines of geology, mining, metallurgy and project execution. RCF has also used its extensive global mining network to fill key roles within the project team and introduce expertise from internationally recognised technical consultants."*

Ultimately the investment thesis for RCF is to progress RG Gold from a small-scale miner and development company to a world class mining operation that will be attractive to large and mid-tier global miners. This will not only provide a positive return on investment for RCF and its investment partners, but also prove a successful foreign investment in Kazakhstan.

CONNECT.KG | March 15-19, 2021

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USAID FROM THE AMERICAN PEOPLE

CONNECT.KG will be the first online international IT expo that showcases Kyrgyzstan as the next IT hub for global startups. From March 15-19, the online event invites U.S. and international companies to explore investment and partnership opportunities in the Kyrgyz IT sector. Connect.KG is organized by the High-Technology Park of the Kyrgyz Republic in partnership with the U.S. Embassy in Bishkek, USAID and the Ministry of Foreign Affairs of the Kyrgyz Republic.

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MEMBER NEWS



Andrey Kurilin, CEO, CITI Kazakhstan

Best Bank Awards
Kazakhstan's Best International Bank 2020: Citi

Citi proved yet again that it is the international bank of choice for Kazakh companies which want to gain a foothold outside the country. It showed its strengths across the board. In investment banking, for example, the US bank managed to bag a role in all the international equity offerings from Kazakhstan during the awards period.

Perhaps most important was the landmark London IPO of Kaspi Bank, a fintech and e-commerce company, which proved very popular among investors. Citi was a global coordinator alongside Morgan Stanley. Kaspi's long-awaited all-secondary share offering was the first bank IPO out of Kazakhstan since 2007.

Citi also worked on a host of other capital markets Transactions. It helped *Samruk-Kazyna*, the Kazakh soveriegn wealth fund, to raise more than $200 million from a share placement in *Kazatomprom*, the state uranium company. It also worked as a bookrunner on a $1.25 billion bond from oil major *Tengizchevroil*.

The bank's prowess in Kazakhstan is not limited to investment banking. Its commitment to the country where it has been operating for nearly three decades, was also reflected in its 25% market share for payments in the nation – the biggest share of any of the banks.

Clearly 2020 posed a whole new set of difficulties given the Covid-19 pandemic, which led to months of emergency lockdown measures in Kazakhstan. But Citi deployed its usual strategy for emerging markets: to help its global network inside the country and support public sector companies and local champions conducting business overseas. It did so while avoiding riskier business that needed too much balance sheet exposure.

Citi's global platform, including strength in digital banking, helped too. The firm was able to get 90% of its staff to work from home in March to curb the spread of the virus and rolled out digital solutions to improve its offerings. A standout launch was the use of biometrics for senior executives to access bank accounts and make payments – standard practice in more developed markets but still a novelty in Kazakhstan.

The bank's Country Chief Executive, Andrey Kurilin, is optimistic about the future, given that Kazakhstan fared better than most of its emerging market peers in mitigating the impact of the pandemic. With rising foreign direct investment, manageable government debt and significant reserves, the government was in a strong position to put money to use effectively during the crisis. This also means the country will bounce back quickly in 2021 – with Citi well positioned to capture new opportunities.

https://www.asiamoney.com
article/27y52lce53ygn1nldou80/awards/best-bank-awards/
kazakhstans-best-international-bank-2020-citi

DISCOVERY: HOW TO ADAPT CONTENT IN CHALLENGING TIMES FOR THE MEDIA AND ENTERTAINMENT INDUSTRY

by Ekaterina Mihajlovic
Director, Business Development
Discovery NEE & Turkey

2020 was a tumultuous year in which the global economy, societal norms, and the way in which the average person spent their time changed dramatically. With the world coming to a stand-still in early March of last year, one of the key questions posed to those within the television industry was: how this has affected viewership and how will we continue to provide insightful and thought-provoking content?

Discovery's approach, although coordinated, focused on the same core values that have led to the brand becoming synonymous with consistently great real-life content today. Within the television industry, viewership increased due to more people being isolated at home as COVID spreading preventions were put in place.

This of course affected many aspects of filming processes and created challenges for the media industry as many planned recordings had to be reinvented. Luckily though, Discovery was able to leverage its real hosts' personalities and continue filming during the pandemic with hosts filming from home and producing relevant content. Thus Discovery was able to maintain an impressive 8,000 hours of original programming in 2020.



Developments in the OTT area and delivery of sports content

Another important milestone in addressing changing media consumption habits occurred at the end of 2020, when *discovery+* was rolled out to fill the void in the market for a real-life entertainment provider with an on-demand focus. Within Kazakhstan and 12 other countries across Eastern Europe and Asia, Discovery formed a strategic partnership with *Megogo* that allowed all customers with a subscription to the service to access *discovery+* as part of their Basic Package.

Discovery+ offers to its *Megogo* viewers in Kazakhstan thousands of hours of video-on-demand shows and a vast amount of additional live sports content, including factual Discovery programs localized in the Kazakh language, as well as *Eurosport 1* and *Eurosport 2 HD*. The addition to *Eurosport* linear channels *discovery+* will feature many more live games and angles from Eurosport's premium sport events, such as *Roland Garros, Australian Open, Tour de France, Il Giro, La Vuleta*. Through partnerships such as the one with *Megogo*, Discovery's aim was and continues to be to satisfy consumers' growing appetite for premium unscripted entertainment, as well as sports.

The return of many live sport events in Q4 2020 also helped Eurosport become the 2nd fastest growing global brand with an increase in growth of 50% YoY in Europe. This was mainly attributable to the return of events such as *La Vuelta* and the *Roland-Garros*. Another key sporting event was the *French Open* Men's final which attracted the largest audience in 10 years with 5.4 million total viewers. Figures like these and creative new ways of capturing these events led to Eurosport being awarded the *Eurosport Cube*: *ISC International Sport Award* for most innovative broadcast solution and *Eurosport Cube: IBC Innovation Award* for best content creation in 2020.

Dynamics of a linear content proposition

Whether it be quick turn-around documentaries on the ever-changing global environment or adapted versions of Discovery's flagship shows, the pandemic has brought a whole host of new content to a variety of channels across the Discovery portfolio. At its core, Discovery remains unique in its content proposition because it offers unscripted content for real people and real, passionate experts who host Discovery shows. This has been an enormous advantage to Discovery as a company during the pandemic as filming new content was not challenged to the same extent as that of others.

Discovery was able to quickly adapt to the new reality and have key hosts filming themselves from home, talking about their lock-down experiences, while also reaching in real time to experts that could knowledgeably comment on the pandemic's global development. Through the continued provision of top-tier documentaries throughout uncertain times and the adaptation and additions of fan-favorites, Discovery has been able to traverse what has been a difficult landscape in 2020. As a company with a key focus on factual programs, Discovery was able to move quickly to produce several titles capturing the "new reality", such as Discovery Channel's *Pandemics: Covid*, *Conquering COVID: The Vaccine*, *The Story of Plastic* or TLC's *90 Day Fiancé: Self-Quarantined.*

How will Discovery evolve going forward?

As the world keeps changing and the practice of working from home cements itself even more securely as the 'new normal', people are becoming more and more conscious of the space that they call home. This has led to a huge surge in the demand for home renovation programs such as *Flip or Flop* and *Celebrity IOU,* which are featured on one of the Discovery flagship channels across the region, *HGTV*. Furthermore, with more spare time and restrictions placed on going out and socializing, many people are turning to family and personal relationships, medical or cooking shows such as *Family Chantel* and *Buddy versus Christmas* on *TLC*.

What do we see as the future of our business? Discovery will continue to develop partnerships and hybrid business models moving forward by leveraging our best-in-class content with brands, storytelling, and characters that people love and partners need. Throughout Discovery's many years in the local markets, we have developed great relationships with our partners. We strongly believe Discovery can now go to the next level: building a path to a compelling aggregated consumer proposition, as part of Discovery's upcoming strategic agreements. Discovery is particularly proud of its development in Kazakhstan's market where we expect our business to continue growing, especially in the streaming and VOD areas.











SOCIO-ECONOMIC IMPACT OF THE COCA-COLA SYSTEM IN KAZAKHSTAN

Global consulting company EY has conducted an independent study for the Coca-Cola System in Kazakhstan, to assess its contribution to sustainable development of the country during 7 years, between 2013 and 2019.
The Coca-Cola System in Kazakhstan consists of The Coca-Cola Company (Coca-Cola CIS Services Ltd.) and its bottling partner 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.



₸ 493 bln

total contribution to Gross Domestic Product of Kazakhstan



₸ 135 bln

paid taxes and other payments in the government's budget



7800 people

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



₸ 110 bln

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



1.6 bln liters

of water were returned to the nature every year through implementation of water supply rehabilitation projects. It is 2 times higher than the volume of water required for production of beverages by the Company in 2020.



1 %

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



$6 mln

was invested in implementation of social projects

(*) Contribution to employment is shown for 2019

MEMBER NEWS

U.S. Department of State
Overseas Security Advisory Council

The Council

Created by former Secretary of State George P. Shultz, OSAC is an active partner with the American public and private enterprise, universities, and NGOs worldwide. This partnership promotes security cooperation between the U.S. government and American business to protect personnel, property, and investments overseas.

The Mission Kazakhstan Country Committee is an overseas extension of the global Council. It provides a forum for effective communication between the U.S. Mission and the U.S. private sector operating in Kazakhstan and represents 231 members from 116 companies.

Objectives

- To establish a continuing liaison between security officials in the private and public sector
- To provide for regular exchanges of information concerning developments in the local security environment
- Recommend methods for planning and implementation of security programs abroad
- Recommend methods to mitigate risks to American private sector interests

Member Benefits

OSAC membership is completely free and open to all U.S.-incorporated organizations:

- Regular Department of State, embassy, and consulate-issued security updates
- Original analysis and benchmarking reports
- Peer network groups by industry (academia, aviation, energy, faith, hospitality, international development, and media/entertainment) and region (Africa, Asia, Europe, Latin America, the Middle East & North Africa)



OSAC in Action in Kazakhstan

2020 was an extraordinary year for American organizations operating abroad. In Kazakhstan, the raging virus coupled with numerous city-wide quarantines, the uncertain state of the local healthcare system and the constantly developing regulations published by regional Akims could have overwhelmed the most grounded corporations. OSAC Kazakhstan pushed information out quickly and worked as a group to determine the veracity of the information in bulk.

Virtual meetings were scheduled with the *U.S. Centers for Disease Control and Prevention (CDC)* and prevention and medical professionals to help our constituents make difficult decisions on the health and welfare of their employees.

Transportation routes were key, and OSAC explored the dwindling flight options in real-time and discussed options for Charter flights and U.S. government aided evacuations. For many, the WhatsApp group, google group, and virtual discussions were a lifeline to the U.S. Mission and U.S. government backed information channels.

For more information about OSAC, please visit *www.OSAC.gov.* To join Mission Kazakhstan OSAC Country Committees in Atyrau, Almaty and Nur-Sultan, please contact us at *MissionKazakhstanOSAC@state.gov.*

ADVOCACY UPDATE
JANUARY – MARCH 2021

The Council to Improve the Investment Climate
March 2021 (Virtual Platform)

AmCham's Premier Advocacy Platform

The *Council to Improve the Investment Climate* is AmCham's major advocacy platform for its members to engage in dialogue with the Government of Kazakhstan through the Prime Minister, who chairs the Council together with the AmCham Executive Director, and a panel of the most powerful Cabinet Ministers responsible for economic policy. The Council has existed for over ten years since its creation by Prime Minister Karim Massimov in 2010 exclusively for AmCham and its members. Council attendance has expanded since then to include invited speakers such as ambassadors, international financial institutions, and local non-member businesses.

The Council is highly structured with a focus on one topic only at each meeting, with ten AmCham speakers who vary depending on the topic and a ten-member AmCham Council Panel of corporate CEOs. On the Government side, in addition to the Prime Minister, the core Cabinet Ministers are the Ministers of the National Economy, Finance, Trade/Integration, Justice, Foreign Affairs, and others as required by the topic under discussion: Ministers of Energy, Ecology, Healthcare, Labor, Digitalization, and Governor of the National Bank.

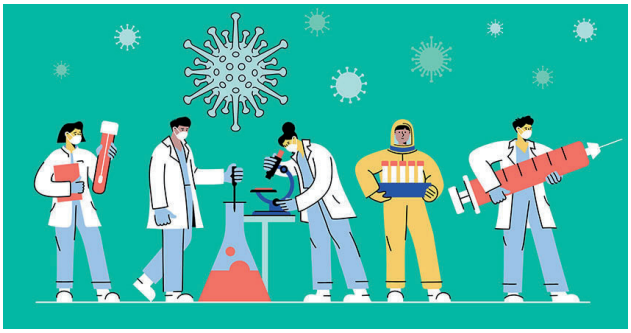
All Council meetings are small, closed sessions with attendance by invitation only.

March 2021 Council Session -
Topic: Pharmaceutical Security: Preparing for the Future

The previous Council session was held at the end of October on the topic of *Kazakhstan's Economic Recovery* attended by the Prime Minister and a large panel of Ministers. The next Council date was set for early December, but with of Parliamentary Elections in early January, the Council was postponed. Immediately following the Elections, as is customary, the Government resigned and the process of appointing a new Government began.

Given this Government turmoil, which has been typical since the pandemic began last March, the Council was postponed to March 4. AmCham therefore carried over its December Agenda focused on pharmaceutical security updating it to include vaccinations and the companies that brought approved Covid-19 vaccines to the market over the past two months.

The new Council Agenda contained a mixture of recommendations by the four Council Ambassadors (U.S., U.K., Canada, Switzerland in place of the European Union), by leading pharmaceutical companies (Pfizer, which has the distinction of bringing the first approved vaccine to the market in December, and Johnson & Johnson, which has just brought the latest approved vaccine to the market at the end of February), Dr. Reddy's, a leading Indian generics company, and Microsoft, which has developed a new system for managing and facilitating the large-scale national vaccination process.



A noteworthy addition to the Council Agenda was a video-presentation from Washington by a member of the *U.S. Government Operation Warp Speed (OWS)* program that provided substantial funding over the past year to speed up development of the most promising vaccines. OWS provided material assistance to Pfizer and Johnson & Johnson along with a number of other vaccine researchers and manufacturers whose medicines are pending presentation for approval later this year.

The OWS presentation concentrated not on vaccine but on outlining the cooperative relationship between many U.S. Government healthcare and medical agencies that creates a supportive environment for resolution of many health issues.

The Pfizer and Johnson & Johnson presentations were devoted to recommendations to eliminate several major obstacles to Kazakhstan's healthcare delivery system. One of these is the regulatory bottleneck delaying approval of innovative new medicines for patients in Kazakhstan who need new and better treatment programs.

The presentation by Dr. Reddy's covered the development of India's pharmaceutical and generics industry following India's independence in 1947, when the country emerged from under the umbrella of the British colonial healthcare system and began to develop its own medicines and its own approach to healthcare. This provided a fascinating insight into the rationale underpinning the legitimate generics industry, which Kazakhstan aspires to emulate through its current 'localization' pharmaceutical program that would provide greater pharmaceutical security for the country in the future.

The Microsoft presentation covered a new technology management program to facilitate monitoring, managing, and delivering large-scale nationwide vaccination systems that are now experiencing chaotic mismanagement in Europe and North America.

AmCham Spring Weekly Webinar Series (Virtual Platform)
Topic: Kazakhstan's Economic Recovery and Future Development

At the end of 2020, AmCham felt there was a need to bring the advocacy topics discussed in closed session at the Council into a public forum. Referring to President Tokayev's *September 2020 Address to the Nation*, in which he outlined an ambitious plan for Kazakhstan's Economic Recovery and identified specific reforms that would drive this plan forward, the Webinar Series was created around twelve areas requiring fundamental reform that would fundamentally change the country's economy and the drivers behind this economy.

The Spring Webinar Series would be a weekly event – a one-hour webinar on one reform topic each Friday afternoon at 12 noon with prominent speakers from the AmCham membership (CEOs and Managing Partners), the diplomatic community (Ambassadors and General Consuls), and the International Financial Institutions (OECD, EBRD, IFC, ADB, World Bank, UN Agencies). Each webinar would be interactive with two speakers delivering 15 minute presentations each, after which viewer participants would be able to ask questions of the speakers and engage in dialogue. The purpose of the Series is to encourage and stimulate reflection and discussion of the fundamental reforms required to drive the complex recovery process that will depend on both local and foreign investment in areas of the economy ripe for economic development.

The four February webinars *(Global and Kazakhstan Economic Prospects in 2021, Anti-Corruption, Fair Competition, Rule of Law/ Judicial Reform)* were extremely well-attended and well-received. Three were headed by OECD speakers live from Paris and the fourth webinar was headed by AmCham members live from Kazakhstan. Based on messages received at AmCham, there were also viewers from major institutions abroad (Washington, New York, London, Berlin, Geneva, Amsterdam). Each of the webinars was recorded and uploaded onto the AmCham website for later viewing.

The Spring Webinars will continue into March and April to cover the twelve topics over a period of twelve weeks.

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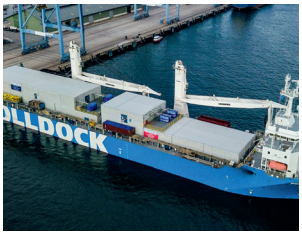


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AMCHAM WORKING GROUP UPDATES JANUARY – FEBRUARY 2021

Almaty Healthcare Reform Working Group
February 5 2021

The Almaty Healthcare Reform Working Group met February 5 chaired by Ksenia Babushkina, EY Partner and Head of Advisory Practice, and Andrei Yorsh, Baker & McKenzie Partner specializing in Intellectual Property.

Discussion began with consideration of the latest Covid-19 vaccines, their development, individual characteristics, and distribution in Kazakhstan with the beginning of the country's widespread vaccination campaign.

The Group then proceeded to discuss problems in the country's medical system: inflationary drug prices, inadequate medical supplies in the pharmacies, and the slow approval and release of innovative drugs. Recent developments in the new Healthcare Code with recommendations for improvements followed.

It was decided to invite officials responsible for drug pricing from the newly created Competition Protection Agency, and to invite Parliamentary Deputies involved in approving access to the market for new and innovative drugs to the next Healthcare Reform Working Group meeting.

Combined Tax Working Group (5 Cities)
February 18 2021

The joint meeting of the Combined Tax Working Group (5 cities) chaired by Anthony Mahon, Partner and Tax & Legal Lead at Deloitte, was held on February 18.

Deloitte Partner Nazira Nurbayeva delivered an overview of changes to dividend tax exemptions as of January 1 2021. The new procedure for assessing and withholding tax applies to income previously taxed with corporate income tax and received from a resident legal entity. The SRC tax authorities regard this amendment as clarification of the previous regulations to be applied retroactively. It is anticipated that the dividends tax exemption will be cancelled altogether in 2022.

Deloitte Tax Manager Karina Kalimzhanova then spoke about changes to Kazakhstan's double tax treaties relative to the Tax Code's Article 666 as of January 1. Article 666 outlines the procedure for applying an international double tax treaty in relation to full exemption from taxation of non-resident income received from sources in Kazakhstan.

Igor Kolupayev, Counsel at Baker & McKenzie, delivered a brief update on other tax changes and recent court cases with special attention to BEPS *(the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting)*.

Other updates delivered at the Taxation WG meeting included the following:

- From 2022, the VAT registration threshold will decrease from the current KZT 83,340,000 (approximately USD 200,000) to KZT 55,560,000 (approximately USD 132,000) during a calendar year.
- From 2022, 12% VAT (Google tax) will apply to supplies of digital content and services to Kazakhstani residents.
- Investment panels at the Nur Sultan city court and Supreme Court will no longer accept tax cases where the claimant does not have a contract with the state.
- The 5 year statute of limitation for major businesses will remain unchanged.

Recent taxation of non-residents with a Permanent Establishment (PE) in Kazakhstan was the final topic presented by Yelena Tsurka, Senior Manager at Deloitte.

Almaty/Atyrau CSR Working Group
February 25 2021

The Almaty/Atyrau CSR Working Group met on 25 February, chaired by Thomas Jose, Beiersdorf Eurasia General Director. The invited speaker was Alexandra Akkirman, Regional Public Affairs and Communications Manager at Coca-Cola, who reported on Coca-Cola's CSR contributions during the pandemic.

Coca-Cola has always been attentive to supporting local communities, for which the company allocated nearly $USD 2 million during the Covid-19 pandemic to assist small businesses and communities in need. Much of the funding was directed to medical support for hospitals and doctors treating Covid-19 patients.

From the moment of the nation-wide lockdown during the early stages of the pandemic, the Coca-Cola Foundation contributed $300,000 (130 million tenge) to the Red Cross and Red Crescent of Kazakhstan. These resources supported 4000 vulnerable households with packages of essential food and hygiene products in addition to 1000 food packages donated by Coca-Cola Bottlers in Kazakhstan. Moreover, 1600 multiple-use personal protective kits, 2900 masks, 270 RNA extraction kits (for 27,000 COVID tests), and 120,000 cotton swabs for tests were supplied to medical workers in 12 hospitals.

Under the *Coca-Cola Belesteri Project*, entrepreneurship training for women was switched to an online format with part of the grant money redirected to food supplies for mothers with many children and disadvantaged families in the Kostanay, Karaganda, Akmola, and Almaty regions. During the quarantine, Coca-Cola donated more than 17,000 L of beverages to hospitals and quarantine hotels.

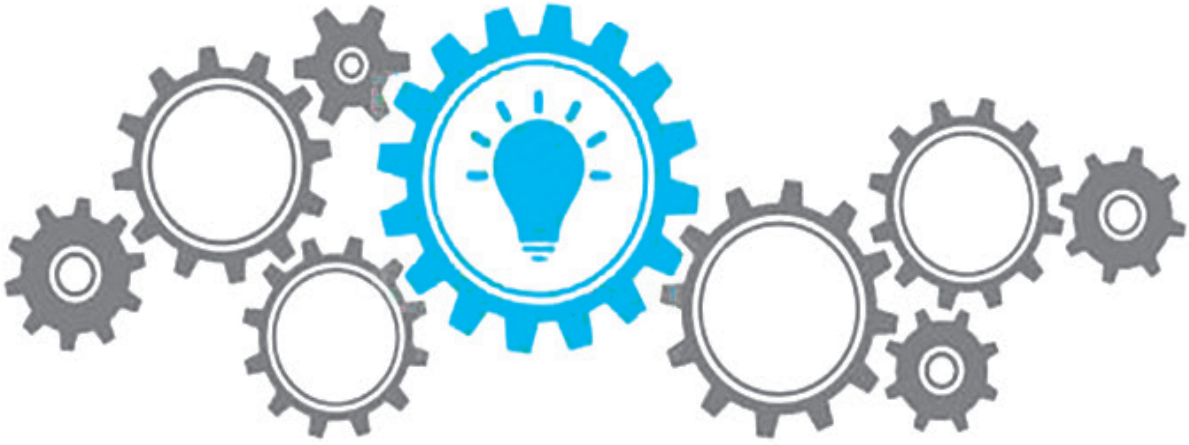
In partnership with Chocofood and Wolt, Coca Cola organized a *Share the Good* charity event whose proceeds paid for combo lunches for health workers (a *Thank You, Doctors!* campaign with Wolt) and families in need. A *Good Menu* campaign with Chocofood was also funded. A pledge of $450,000 by Coca Cola in Kazakhstan was made to support SMEs.

Almaty/Nur-Sultan Foreign Investment Working Group
February 26 2021

A joint meeting of the Almaty/Nur-Sultan Foreign Investment Working Group chaired by Juan Carlos Escobar, Managing Director for Philip Morris International in Kazakhstan & Central Asia, was held on February 26. Invited guest speakers were Orazbek Askhat, Deputy Minister of Digital Development, and Ruslan Abdikalikov, Chairman of the Ministry's Information Security Committee. The agenda was *Personal Data Protection and Cross-Border Data Transfer.*

Deputy Minister Askhat and Committee Chairman Abdikalikov outlined the manner in which personal data is collected, stored, and protected in Kazakhstan, as well as abroad for international companies, and clarified the compliance requirements in Kazakhstan's legislation. While personal data must be stored in Kazakhstan, copies can be stored abroad.

In some cases, the government is allowed to collect personal data without consent, but the Ministry plans to launch a pilot service that will allow the public to query the government body that has access personal data to learn how this data could be transferred between the government and international companies. The public will be able to receive a confirmation request for data transfer to other government bodies and companies. This will increase transparency for the use of personal data based on confirmation or refusal to transfer personal data to third parties.





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