

IV Investors' Voice

The American Chamber of Commerce in Kazakhstan

Kazakhstan's leading International Business Association



SPRING ISSUE

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#97

Sanctions and Taxes – Challenges for Kazakhstan's Investment Climate



- ▶ **International Sanctions Impact on Kazakhstan Businesses**
- ▶ **Urgent Changes to the Tax Code – Potential Consequences**
- ▶ **How Can the Caucasus and Central Asia Adjust to New Challenges?**
- ▶ **Barriers to Transparency and Stability in the Tax Code**
- ▶ **Kazakhstan's Geopolitical Turmoil**
- ▶ **Certainty in Tax Law-Making and Disputes**
- ▶ **Intellectual Property and Customs Value**
- ▶ **Excise Taxes and Customs Duties**
- ▶ **Taxation of Permanent Establishments – Kazakhstan's Ambiguous Double Taxation Practice**

A woman with long brown hair, wearing a light blue jacket, a tan fedora hat, and dark sunglasses, is sitting in the driver's seat of a car. She is smiling and holding a red Costa Coffee cup with a white lid. The car's interior, including the steering wheel and rearview mirror, is visible. The background shows a blurred outdoor scene with trees. A large red diagonal shape covers the bottom left corner of the image, containing the text.

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EDITOR'S NOTE



Dear Readers,

Each year, AmCham devotes at least one Issue of *Investors' Voice* to discussions of *Kazakhstan's Tax Policy* as found in the country's new legislation, draft legislation, and long-standing Tax issues still awaiting resolution. This year is no exception as Kazakhstan's *Tax Code* continues to evolve and to invite interpretation. In light of the country's continuing efforts at post-pandemic economic recovery, the *Tax Code* is undergoing significant change aimed at supporting the recovery process – change that is not always seen as beneficial to business.

Many fundamental recommendations for improvement to the *Tax Code* and its interpretation are heard year after year: stability and predictability are major concerns given that tax legislation changes quickly, giving rise to confusion as investors absorb new legislation only to have it reinterpreted, amended, or replaced altogether. The Tax articles published in the *April Issue* address first of all *Tax Policy* – articles from *EY*, *PwC*, and *Deloitte* – and then specific corporate tax problems. The corporate articles are each from different companies and distinctly diverse industry sectors, but together they illustrate the need to revisit the *Tax Code* to attain the stability and predictability needed for a positive investment climate.

However, the *April Issue* begins with several articles outlining a new obstacle to Kazakhstan's business environment – the spillover impact of sanctions on the international community as a result of Russia's war with Ukraine. Although Kazakhstan is not an object of sanctions, having no involvement in the war, nonetheless business ties, financial relationships, and cross-border movements of goods and products create an environment in which a spillover effect is inevitable. This is causing serious obstacles to normal business operations.

The three sanctions articles that open this issue are contributed by knowledgeable sources, each with a different perspective – the *European Bank for Reconstruction and Development (EBRD)*, the *Asian Development Bank (ADB)*, and the *Morgan Lewis* law firm. We look forward to further discussion.

Thus, the *April Investors' Voice* has a full plate of issues to dissect in a rapidly changing environment. We present thoughtful articles by the Big Four financial firms, law firms, international financial institutions, and corporate recommendations alongside articles on international sanctions and their spillover effect for Kazakhstan. All are serious topics in a serious year that will continue to demand our attention in the months to come.

Doris Bradbury
Executive Director, AmCham in Kazakhstan



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INTERNATIONAL SANCTIONS AND THE SPILLOVER IMPACT ON KAZAKHSTAN BUSINESSES – THE LEGAL PERSPECTIVE

by Aset Shyngyssov, Morgan Lewis, Managing Partner (Kazakhstan)

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Introduction

Ukraine-Russia-related sanctions were first introduced in 2014 in response to the situation in the Crimea region. These sanctions have continued to develop since then and escalated in February 2022 due to the recognition by the Russian government of non-government-controlled areas of Donetsk and Luhansk oblasts as independent states and the subsequent events in Ukraine.

Importantly, Ukraine-Russia-related sanctions have been imposed by a number of countries in response to Russian actions in Ukraine. These are currently the United States, Canada, the United Kingdom, the European Union (EU), Japan, South Korea, Australia and New Zealand, among others. Simultaneously, sanctions were also imposed against Belarus. The following article is a brief summary of sanctions imposed on Russia in connection with the Ukraine crisis by the United States and the EU due to their extensive scope and far-reaching nature.

Unprecedented Sanctions

The sanctions imposed by the United States and EU in 2022 are unprecedented because of their scope, nature, pace and magnitude. In a nutshell, in addition to blocking top government officials, Russian oligarchs, and members of their families and property of such persons, the sanctions have frozen Russia's sovereign assets by prohibiting any dealings with the Russian government and instrumentalities - the Russian Central Bank, Ministry of Finance and National Wealth Fund.

It is also noteworthy that the US/EU actions on imposition of sanctions are generally aligned and coordinated in terms of timing, albeit not fully synchronized. That being said, sanctions imposed in different jurisdictions (most notably, the United Kingdom) often vary and therefore a separate analysis for each jurisdiction is advisable.

Legal Basis and Competent Authorities

US sanctions are issued via *Executive Orders (EOs)* of the US President based on the codified laws of the United States. There are a number of Determinations (by the *Department/Secretary of Treasury*), Directives (by the *Office of Foreign Assets Control (OFAC)* subordinate to the *Department of Treasury*), and



Regulations (incorporated into the *Code of Federal Regulations* by OFAC) issued in relation to EOs intended to specify and facilitate implementation of the EOs. Thus, while the President is granted the power to introduce sanctions, government agencies and officials such as the *Department of Treasury and OFAC*, the *Bureau of Industry and Security (BIS)* within the *Department of Commerce*, the *Department of State*, and the *Attorney General*, among others, are responsible for implementing and enforcing US sanctions.

EU sanctions or "restrictive measures" are an essential tool of the EU's *Common Foreign and Security Policy (CFSP)* and pursue the CFSP objectives as set out in Article 21 of the *Treaty on European Union*. Sanctions are issued by the EU Council in the form of Decisions and Regulations. While the *EU Commission* provides the implementation and compliance guidelines in its guidance notices, opinions and comments on FAQ, it is the responsibility of the EU Member States to implement and enforce the EU sanctions, including the identification of breaches and imposition of penalties. The correct and uniform implementation of EU sanctions by the Member States is monitored by the *EU Commission*.

Who Must Observe the Sanctions?

Given that the jurisdiction of each country is limited to its territory, sanctions are intended to be leveraged through either (i) personal jurisdiction (i.e., US or EU persons) or (ii) territorial jurisdiction (i.e., the business or operations done, in whole or in part, within the territory (including airspace, on board of any aircraft or vessel) of the sanctioning country).

Importantly, for US sanctions to apply to an individual/entity, it may be sufficient to meet the "US nexus" test, i.e., these sanctions may apply to non-US persons if, for example, the transaction needs to be cleared via the US financial system, involves data routed through servers in the United States, or contemplates the supply of goods of non-US origin that incorporate US components or technology.

Unlike the US sanctions, despite putting certain pressure on third countries by targeting particular individuals, entities or industries, the EU sanctions are not usually seen as having an extraterritorial effect. This is because the EU sanctions typically only create obligations for non-EU persons or entities if their business is conducted within the EU, whether in whole or in part.

In addition to the above, it is worth mentioning that definitions of terms used in sanctions are quite broad. For example:

- “*property*” or “*interest in property*” covers, among others, financial instruments, rights in the nature of security, power of attorney, deeds of trust, services and contracts of whatever nature, insurance policies, and so forth;
- “*financial, material or technological support*” covers, inter alia, any transmission of value, communications equipment, computers, electronic devices, facilities, vehicles and goods;
- “*transferrable securities*” covers various classes of securities, shares, bonds or their equivalents, including in the form of crypto-assets, and other securities giving the right to acquire or sell any such transferrable securities or giving rise to a cash settlement determined by reference to transferrable securities;
- “*transfer*” covers any purported act/transaction and includes the making/execution/delivery of any contract, statement, the fulfillment of any condition, the exercise of POA, and so forth.

Given the broad coverage of key terms utilized in the documents imposing sanctions and subsequent broad application, it is prudent to analyze on a case-by-case basis whether a person or an operation (transaction) is subject to sanctions.

Any Exceptions?

There are general exceptions (*e.g., providing goods or services for the purposes of medical or humanitarian aid*) that apply to different categories of sanctions.

As for US sanctions, the conduct of the official business of the following entities is explicitly authorised:

- *the US government*, including by its employees, grantees and contractors
- *the United Nations*
- *the ICSID and Multilateral Investment Guarantee Agency*



- *the African Development Bank, Asian Development Bank, EBRD, and Inter-American Development Bank Group*
- *Red Cross entities.*

Authorisation to engage in activity prohibited by the US sanctions can be obtained via general (covering certain types of activities) or specific (issued on a case-by-case basis) licenses. Any authorisation would usually be limited in time and is mainly designated to provide time for ensuring compliance with sanctions. The general publicly available licenses are updated on a regular basis.

Waiver of sanctions can be granted by the US President in the interests of national security.

As to the EU sanctions, the relevant Council Decisions and Regulations set out *general and specific “derogations” (essentially, limited exemptions)* from the prohibitions. General derogations relate to humanitarian purposes, health, environment emergencies, maritime safety, diplomatic representation of the EU or its partner countries, and the transport of fossil fuels, oil and gas into the EU.

Most of the general derogations do not exempt entities from obtaining authorisation (*e.g., export licenses*) of/notification to the competent authority of the concerned EU Member State. Authorisation may be annulled/suspended/revoked if such annulment/suspension/revocation is needed for the effective implementation of the underlying EU Regulation.

The competent authorities of EU Member States are empowered by the EU Regulations to grant specific derogations (authorisations) on a case-by-case basis when they determine that, by way of example, derogation is necessary “for critical energy supply within the Union”, or it “exclusively concerns a legal person operating in the Russian energy sector but owned by an EU person”.

What Are the Sanctions Categories?

In general, the sanctions applied can be divided into the following categories:

- ***Blocking sanctions*** against specially designated nationals and blocked persons (*Specially Designated Nationals*, or *SDNs*, under US sanctions or designated persons under the EU “individual sanctions”), their property and interest in property (as referred to in the US sanctions) or funds and economic resources (as referred to in the EU sanctions). US/EU persons are generally prohibited from dealing with such persons and their assets.
- ***Sectoral sanctions*** against entities operating in certain key sectors of the Russian economy, such as finance, transport, energy, technology, trade and defense. The relevant prohibitions cover not only the sale, supply, transfer, import/export of goods to and from sanctioned sectors but also related financing, financial and/or technical assistance, brokering or other services. There are lists that help identify persons operating in sectors of the Russian economy, goods and technology, dealings with which are prohibited.
- ***Ban on new investments/new debts***. These sanctions are less than full blocking sanctions and target financing or financial assistance to trade with, or investment in, Russia. Under US sanctions, along with prohibition to provide financing or otherwise deal in new debt and new equity, the sanctions prohibit US persons from transacting with the *Russian Central Bank*, *Ministry of Finance*, and *National Wealth Fund*.

As for the EU sanctions, they prohibit financing or financial assistance to projects co-financed by the *Russian Direct Investment Fund*; the sale or purchase of transferable securities and/or money-market instruments issued by Russia and its government or the *Russian Central Bank* or provision of related investment services; and the supply, sale, transfer, and export of Euro-denominated banknotes to Russia or any persons in Russia, subject to certain derogations.

- The *US Non-SDN Menu-Based Sanctions List (NS-MBS List)* specifies the type of sanction imposed on the person and the legal authority under which the person is sanctioned.

- ***Regional sanctions*** which prohibit most transactions with persons located in the Crimea, Luhansk and Donetsk regions. These sanctions target businesses and business operations in the Donetsk, Luhansk and Crimea regions and provide for a ban on imports and exports in respect of certain goods and technologies to and from the above-mentioned regions, as well as trade and investment restrictions.

US sanctions also provide for a block on property or interest in property of persons operating in these regions, whereas the EU sanctions put a ban on supplying tourism services.

- ***EU other sanctions*** – restrictions on broadcasting *Russia Today* and *Sputnik* television channels and restrictions on economic (no new lending by the *European Bank for Reconstruction and Development (EBRD)* and *European Investment Bank*) and diplomatic cooperation (suspension of regular summits, diplomatic/business/“golden” visa/passport benefits) and the implementation of a *SWIFT* ban on certain Russian and Belarus banks.

A few points to bear in mind:

- any categorization of sanctions is rather conventional because in many cases one sanction can fall into more than one category, while more than one category of sanctions can apply to one and the same matter, so the distinction between the categories is somewhat subtle;
- therefore, a person appearing on one list may also be listed on the other(s);
- the lists are updated on a regular basis; and
- the lists are not exhaustive: the US government agencies and *EU Commission* are entitled to consider a person meeting certain criteria to be a blocked/targeted person, even though not directly included or named on the list.

What are the Impacts and Liability for Sanctions Violation?

As for the sanctions effect, sanctions are typically forward-looking, do not have a retrospective effect, and often set the deadline by which the compliance is required.

The imposition of sanctions does not require immediate sale or liquidation of a blocked property or interest therein. In fact, such alienation or liquidation may need an authorisation or an instruction from the competent authority. By way of example, if a US person holds funds subject to sanctions (e.g., proceeds from a prohibited transaction), such US person must place the funds into a so-called blocked account located in the United States, and operations with such funds will be limited.

However, sanctions effectively prevent any future dealings subjected to sanctions and, therefore, the businesses either shut down or suspend their operations to the extent affected by sanctions.

Importantly, it is evident from the US sanctions' Regulations that each Regulation devoted to a specific set of sanctions applies independently from any other set of sanctions. Thus, no authorisation, carve-out or other inapplicability of one regulation (sanction) will exempt the same in connection with other regulation (sanction).

As for the liability for non-compliance with sanctions, one should note that actions in violation of sanctions are generally null and void under relevant *US Regulations*.

In addition, for violation of US sanctions *OFAC* may:

- *impose civil penalties* (in an amount not to exceed the greater of US\$250,000 or twice the amount of violating transaction),
- *engage in discussion on or enter into settlement*, or
- *refer a matter to law enforcement agencies* for a criminal investigation/prosecution on a vis-à-vis basis for a criminal penalty (20 years of imprisonment or a penalty of US\$1 million or both).

As for the EU sanctions, each Member State must determine penalties that it considers to be sufficiently effective and dissuasive to deter breaches of the sanctions regime. Thus, depending on

- (i) *the jurisdiction in which the breach has occurred*,
- (ii) *the nature of the breach*, and
- (iii) *the authority within the jurisdiction concerned*, the potential offence may be criminal or civil in nature, and the penalties may range from fines to custodial sentences. This lack of uniformity across the EU is not without its critics.

The consequences of a failure to comply with sanctions can be severe and cannot be ignored.

What are the Secondary Sanctions?

To date, secondary sanctions have been utilized by the United States only due to their extraterritorial nature, which has been the subject of criticism by many countries (including the EU) in the past. The following are key features of the secondary sanctions:

- *secondary sanctions are so-called "smart" sanctions* (i.e., specific because they are directed at individuals and companies or restrict trade with certain goods);
- *unlike primary sanctions, they apply when there is no clear US nexus*, but if, for instance, a transaction involving a US-sanctioned person or industry is deemed to be 'significant' or to constitute the provision of 'material support'; and
- *they may target normal arm's-length transactions* executed outside of the United States that are legitimate under the laws of the foreign (i.e., non-US) jurisdiction.

The secondary sanctions use the indirect leverage of the US financial system and may, therefore, result in, for instance, denial of export licenses or loans from US financial institutions or even designating the foreign person as an *SDN*, thus forcing a non-US person to abandon targeted transactions or transactions with targeted persons and their property.

Historically, most secondary sanctions are Iran-related. But given the magnitude of the current primary sanctions imposed by the United States and EU, one may not exclude imposition of secondary sanctions.

New Trends; More Risks?

Unfortunately, in the absence of a peace settlement between Russia and Ukraine, one could expect further expansion and stiffening of the sanctions regime. By way of example, the US BIS in charge of issuing export licenses has shifted its general approach from "*presumptions of denial*" to a so-called "*policy of denial*", meaning that export licenses will be issued only in exceptional cases. In addition, recent implementing guidelines issued by the EU Commission demonstrate a trend towards broad (catch-all) interpretation of certain key concepts of the sanctions regime, such as ownership or control.

The above trends alongside harsh penalties for breaches of the sanctions regime are fraught with and

have already resulted in de-facto overcompliance by businesses across the affected sectors of the global economy.

Another trend worth mentioning is the exit from Russia of foreign companies mainly due to reputational risks.

One should bear in mind blocking statutes that have been adopted or are pending adoption by the Russian government in response to sanctions imposed by the United States and other “unfriendly states” (e.g., the EU, United Kingdom, Canada). The adopted countersanctions introduce a wide range of measures, such as a ban on providing financing in forex or mandatory conversion of 80% of proceeds in forex, authorisation of parallel import in certain cases or an authorisation for Russian companies to register foreign-leased jets and aircraft in Russia.

The countersanctions pending adoption appear to aim for, *inter alia*, (i) *nationalization of assets of foreign investors* originating from the “unfriendly states” via forced replacement of a company’s management by “special external management” and the subsequent spin-off of its assets, and (ii) *criminalization of compliance with anti-Russian sanctions*. These developments further complicate compliance with the US/EU sanctions and may eventually lead to loss of business in the crossfire of various sanctions regimes.

Conclusion

In view of the above, given the geographical proximity and close trade relations with Russia, the Kazakhstan government and business community are inevitably concerned by the new sanctions’ reality and must act proactively to address timely and efficiently the inherent challenges and problems. Those challenges include, *inter alia*, the need for a new regulatory framework and business decisions to mitigate the adverse effect of primary sanctions on the Kazakhstan economy and exclude or minimize exposure to secondary sanctions – all this while taking into account new business opportunities in Kazakhstan for Western investors and current integration process within the Eurasian Economic Union.

Indeed, because the rapidly evolving sanctions represent a moving target, one may no longer rely on blocked persons or other sanctions lists only when analyzing whether the persons, assets or the activities are subjected to sanctions. A thorough compliance analysis and due diligence become critical, and the focus of those should rather be on substance of the matter in question and not a form of it. For that purpose, the resources available at the *US Department of Treasury* website (including the FAQ section) and *EU Commission* websites can be very helpful.



CONTINUED GEOPOLITICAL TURMOIL IS TESTING KAZAKHSTAN'S RUSSIAN CONNECTION

by Huseyin Ozhan

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European Bank for Reconstruction and Development
(EBRD)

On Monday, February 28, 2022, four days after Russia's invasion of Ukraine, the *National Bank of Kazakhstan* and KASE published a joint statement suggesting that the two organizations "do not rule out <...> a complete suspension of exchange currency trading amid geopolitical uncertainty." When trading did open on that day (with a delay and subject to modified trading rules), the Kazakh tenge dropped from 456 to 490 to the dollar. And it did not stop there. Within two weeks, by March 12, KZT lost more than 20% of its pre-war value, reaching an all-time low of 524 to the dollar.

Nothing about Kazakhstan's fundamentals - a successful political 'reset', enviable reserves, fiscal buffers and relatively modest external indebtedness - warranted the tenge's precipitous fall. Moreover, during the same period, the price of oil - Kazakhstan's main export and a key source of the country's foreign currency earnings - saw a dramatic increase of more than 40%.

The tenge collapsed because of the country's multi-pronged "Russian connection".

Kazakhstan is a member of the Russian-led *Collective Security Treaty Organisation (CSTO)*, which deployed to Kazakhstan in early January at President Tokayev's request. It is also a key pillar of the *Eurasian Economic Union*, which effectively implies a shared customs border, regulatory harmonization and free movement of goods, people and capital between Kazakhstan, Russia and three other EEU members. Kazakhstan

is crucial for the northern branch of the 'belt and road' connecting Central Asia and China to Russia's ports and the EU.

As we have been reminded only recently, the CTC pipeline (taking 2/3 of Kazakhstan's all-important oil exports to European buyers) terminates in Russia's Black Sea port of Novorossiysk. Finally, Russia and Kazakhstan have significant presence in each other's markets and are interconnected - physically, through a dense web of transport, broadband and electricity networks - and economically, through a myriad of finance, trade, and investment relationships.

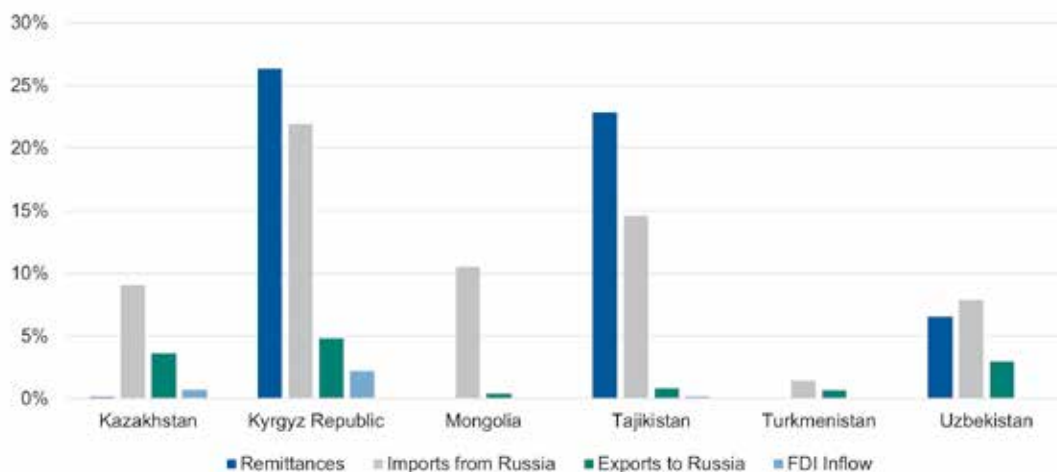
With so much at stake, no wonder investors hit the panic button. The military and financial confrontation between Russia and the West has immediate implications for Kazakhstan (and other Central Asian nations) as it finds itself on the receiving end of significant collateral damage from Western sanctions.

Financial Disorganization

The ever-escalating sanctions add to an already volatile situation as the Kazakh banking system is still reverberating following the January events. While the tenge has almost fully recovered from the lows of March (helped by the rouble's comeback and aggressive action by the Kazakh regulator - a steep policy rate hike, a cap on FX conversion, and indexation of local currency deposits), the general mood among investors and financiers is one of severe uncertainty.

A major headache is concerned with the presence of *Sberbank*, *VTB*, and *Alfa Bank* affiliates, which account for almost 13 cent of Kazakhstan's banking sector assets. Sanctioned by the West, these banks have no easy access to liquidity and have to be either sold or nationalized. *Alfa Bank* has already reported

Central Asia's economic exposure to Russia (per cent of GDP)



that its Kazakh subsidiary will be sold; facing a July 12 deadline to wind up transactions, *Sberbank* has returned all public funding and sold a part of its assets to *Halyk Bank* to ensure additional liquidity.

Disruptions and distractions can be observed everywhere. Kazakh businesses have a hard time finding workarounds for payments to Russian banks and entities. Some companies are not able to repay their FX loans to sanctioned Russian banks, implying a technical default. Joint Russian-Kazakh ventures are forced to engage in corporate manoeuvring to carve out Russian assets (and Russian minority shareholders). On the positive side, in March alone, Kazakh banks opened accounts for 12,000 new Russian clients, over-fulfilling their annual targets on this indicator.

Uncertainty and FX volatility caused funding costs and interest rates to go up (to 18-19% for working capital KZT loans). Banks are not lending, preferring to sit on a lot of liquidity (around 40-45%). Businesses are not rushing to borrow. Some are waiting for the government to launch new subsidy programs, other simply take their time.

Consumer lending (and downstream retail business) is another victim of the sanctions-induced uncertainty, particularly when it comes to imported consumer electronics. Kaspi, on which many retailers rely for a big chunk of their sales, is no longer willing to take exchange rate risk on long-term loans. This implies a 20-25% hit on retailers' revenues (and some losses for the lenders, too). Car sales may be one exception as consumers seek to preempt expected price hikes.

But the gravest risk for Kazakh banks is to be hit by secondary sanctions. According to a Reuters article, as the US is prepping new efforts to crack down on Russian sanctions evasion, all eyes will be on the country's banking system. Many banks are already seeking guidance from the regulator regarding supposedly legit transactions involving Russian entities, rouble payments or restructuring of loans issues by Russian banks.

Going forward, inevitable attempts to circumvent the sanctions regime will put a lot of pressure on the banking sector and the regulator, necessitating significant upgrades to their compliance systems. This will be a complicated game to play with the sanctions-busting business growing in capacity and sophistication over time.



Trade and Transport Bottlenecks

As a net energy exporter and a major producer of metals, cereals and oil seeds, Kazakhstan could benefit from the crisis-induced increases in commodity prices. That is, if it finds the ways to bring its commodity exports to the market. For the moment, oil and gas continue to flow westward, and trains keep running across Eurasia and over Russia's borders with EU. But the time and cost of delivering Kazakhstan's goods may dramatically increase as Europe continues to decouple from its Eurasian neighbours by blocking the transit of Russian and Belarusian trucks or prohibiting Russian ships from calling their ports.

Kazakhstan's exports may also fall prey to Russian countersanctions, should Russia decide to escalate its economic warfare with the West. The vulnerability of Kazakh crude exports has been very well illustrated by the recent incident at the Novorossiysk terminal of the *Caspian Pipeline Consortium*, the main gateway for Kazakh oil exports (53-54 million tons of oil in 2021). With two out of three moorings out of commission, Kazakh crude exports to Europe have been instantly reduced to a trickle.

Unfortunately for landlocked Kazakhstan, alternative transport routes are few and far between, especially given that China has just re-imposed Covid restrictions and Iran continues to be sanctioned by the West. Capacity on the *Baku–Tbilisi–Ceyhan* (BTC) pipeline is extremely limited, and any expansion would require very significant investment. The so-called 'middle corridor' (from the port of Aktau over the Caspian Sea and through Azerbaijan to Georgia's ports

on the Black Sea) is both extremely complicated (requiring multiple border crossings and multimodal transshipments) and limited in capacity with it comes to container terminals and Ro-Ro vessels. As demand continues to swell, bottlenecks may emerge on all other links of this transport route, including Georgian railways and ports.

Adjustment to the new realities may be easier for large multi-national companies operating in Kazakhstan, such as ArcelorMittal (a major exporter of steel). Having a strong international sales team, as well as own logistics and vessels, ArcelorMittal managed to very quickly redirect its sales from Russia to other geographies – Europe, Pakistan, India, Vietnam. The company is currently in the process of acquiring necessary certification and testing new transportation arrangements.



Kazakh companies may have a much harder time dealing with similar challenges.

Transportation and logistics are also becoming a major challenge for Kazakh imports (and consumers). Until now, most retailers have been sourcing close to 50% of their products from Russia-based distribution hubs. With major European, South Korean and Japanese producers pulling out of Russia, Kazakh companies will have to seek replacement suppliers and alternative supply routes.

Given that direct sourcing from Southeast Asia is non-viable because of restrictions on China's borders, Turkey appears to be the likely winner of the war in Ukraine, at least as far as its trade and logistics business is concerned. The extra cost of more complicated logistics through the 'middle corridor' will be passed onto Kazakh consumers – the main losers of the conflict – increasing people's cost of living and adding to inflationary pressures.

But Every Coin Has Two Sides.....

The Georgian wine industry has acquired a new lease on life in 2006-12, thanks to the Russian ban on Georgian imports. Locked out of the Russian market, Georgian winemakers had no choice but to invest in modern technology, increase the quality of their products, and develop premium brands targeting European consumers. Western sanctions on Russia may have a similar effect on Kazakh companies, stimulating them to explore higher quality products suitable for lucrative Asian markets.

Sanctions also create opportunities for Kazakh businesses, at least in the short run. For example, with Russian airspace closed for international flights, Kazakh airports see increased demand for technical stops and refueling of cargo transit flights. Likewise, Kazakh airlines see less competition from Russian airlines (*Aeroflot*, *S7*) on flights to/from Russia.

A much more significant opportunity concerns the arrival of Russian, Belarusian and Ukrainian migrants, many of whom are IT entrepreneurs, developers and digital nomads – a great addition to Kazakhstan's start-up ecosystem and the country's knowledge-intensive industries. Absorbing this talent pool is a realistic possibility given that Kazakhstan is a member of EEU and its labour markets are open for Russian and Belarusian migrants.

Moreover, Kazakhstan's legislation has been amended in recent years, making it an attractive, tax-and-hassle-free destination not only for individual developers but also for IT companies registered as residents with Kazakhstan's IT Hub and similar special economic zones.

Diversifying the Kazakh economy, getting it off the oil and gas needle, has always appeared to be an elusive target. Now this target may finally be within reach, with a little bit of help from the Kazakh government.



HOW CAN THE CAUCASUS AND CENTRAL ASIA ADJUST TO NEW CHALLENGES?

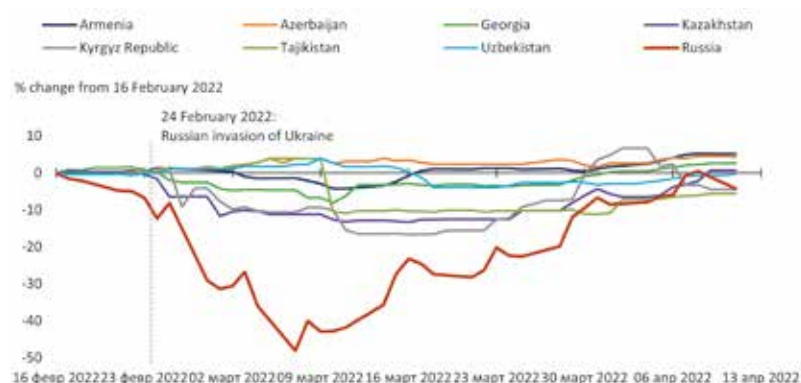
by **Genadiy Rau**, *Economist*
Kazakhstan Resident Mission
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Economic and Research Department
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The Russian invasion of Ukraine and ensuing economic sanctions are impacting economies in the Caucasus and Central Asia. Depressed trade, investment, and remittances notably affect income, exchange rates, and inflation. Some impacts are already visible, while longer-term effects will depend on the duration and extent of the war, and on the severity of the sanctions against Russia.

The Russian ruble collapsed, before rebounding. The ruble lost half of its value relative to the euro in the first two weeks of the war as foreign investors pulled out funds and domestic savings were withdrawn (Figure 1).

Figure 1. Euros per currency units



Source: CEIC Data Company (accessed 14 April 2022).

Around half of the \$640 billion in foreign reserves of Russia's central bank were frozen, limiting its ability to ramp up purchases of the ruble to offset downward pressures on the exchange rate. Russia's central bank, however, raised the policy rate from 9.5% to 20% and imposed capital controls, including forcing exporters to convert 80% of their foreign currency earnings to rubles.

At the same time, imports plunged due to the depreciating exchange rate and depressed consumer sentiment; and nominal exports increased as energy prices rose. This resulted in an unprecedented current account surplus, which pushed the ruble back to its prewar level on 8 April.

Domestic currencies in the Caucasus and Central Asia followed similar patterns. The depreciation of the ruble spilled over to currencies in the Caucasus and Central Asia, which also lost value, although to a smaller extent. Central banks mimicked actions taken by Russia's central bank.

For example, the central bank of Kazakhstan raised the key policy rate by 325 basis points to 13.5%, pledged a 10% premium for local currency deposits not converted or withdrawn for a year, and banned cash and gold exports exceeding \$10,000. In Armenia, the central bank increased the policy rate by 125 basis points to 9.25%; and exports of cash were temporarily banned in the Kyrgyz Republic. These measures as well as the rebound of the ruble itself brought confidence back, pushing domestic currencies to rebound as well.

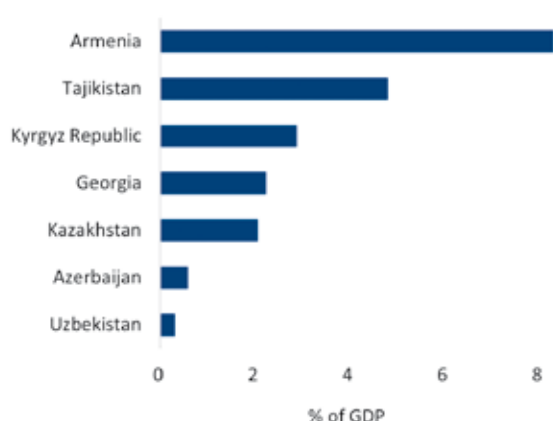
Additional sanctions, however, may depress the ruble again. On 7 April, the European Union (EU) announced a ban on Russian coal imports which will take effect from mid-August. Most importantly, the EU is discussing a ban on Russian oil, which accounted for 61% of the EU's imports from Russia in 2019. If enacted, this embargo would seriously weaken Russia's trade surplus, and could even reverse it. Depreciation of local currencies would increase the price of imported goods, adding to the inflationary pressures from rising energy and food prices.

The war and sanctions also disrupt supply chains. Exports in the Caucasus and Central Asia are facing challenges with obtaining insurance to transport merchandise through Russia, and the EU bans ships flying the Russian flag from its ports. Additional friction is created by the disconnection of some of Russia's largest banks from the payment order messaging system of the *Society for Worldwide Interbank Financial Telecommunication (SWIFT)*. Many banks are connecting to the Russian alternative system, but this complicates transaction and increases costs.

Economies in the Caucasus and Central Asia are also exposed through investment linkages with Russia. Russia is an important investor in the region, bringing know-how and building critical infrastructure (Figure 2). Some of these projects will be postponed or cancelled. In September 2021, the government of Kazakhstan signed an agreement with Russia's *Sberbank* to develop an e-government platform for Kazakhstan. The plans were cancelled following the invasion of Ukraine and sanctions.

Other key projects for Kazakhstan include the development of the *Kalamkas-Sea* and *Khazar* offshore oil fields with Russian *Lukoil* company. These projects require an estimated \$5 billion investment and will likely be put on hold. In Uzbekistan, plans for the construction of a nuclear power plant by Rosatom are still being considered, although they might be delayed. Combined with liquidity constraints arising from a difficult situation at home, capital controls will limit Russian investment to the region.

Figure 2. Russia's outward direct investment stock in the Caucasus and Central Asia, 2020



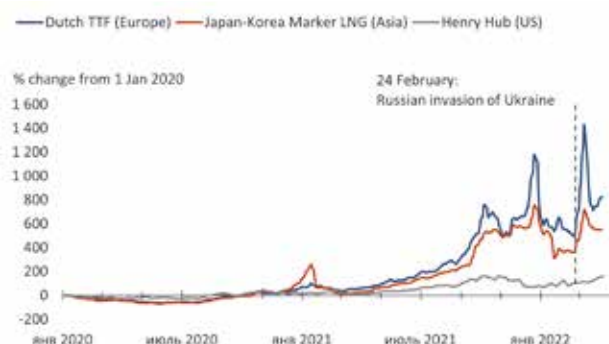
Note: Data as of 30 September 2021.

Sources: Bank for International Settlements; Central Bank of the Russian Federation (both accessed 16 March 2022).

Inflation is bound to increase in the Caucasus and Central Asia. It will be boosted by supply chain disruptions, rising global energy and food prices, and possible depreciations of local currencies. Energy importers will find it challenging to cover energy bills, particularly when they are already managing balance-of-payment strains such as Tajikistan or subsidizing energy costs as in Armenia (Figure 3). The war has also pushed up food prices. Ukraine and Russia account for a combined 55% of global exports of sunflower seed oil, 22% of wheat, 17% of barley, and 12% of corn. The war threatens the harvests of winter crops already sown in Ukraine, notably wheat and barley, and the sowing of spring crops.

Sanctions and self-imposed restraints also constrain purchases of Russian products, notably food, further restricting global supply. In March 2022, the food price index of the *Food and Agriculture Organization* of the United Nations was up 13% from February, which was already its highest level since the index was created in 1990. Food inflation will disproportionately affect low income and vulnerable groups of people, creating conditions for social unrest.

Figure 3. Natural gas prices (US dollars)

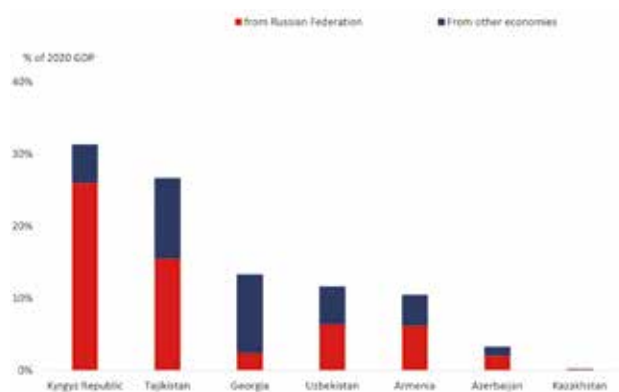


LNG = Liquefied Natural Gas; TTF = Title Transfer Facility; US = United States.

Source: Investing.com (accessed 11 April 2022).

The recession in Russia will slash remittances to the Caucasus and Central Asia as migrant-workers lose jobs. The Kyrgyz Republic, Tajikistan, Uzbekistan, and Armenia are particularly vulnerable as remittances from Russia are equivalent to large shares of their GDP (Figure 4). Coupled with rising energy and food prices, the drop in remittances will weaken balances of payments and tax revenues. Countries are discussing support measures for migrant workers already returning from Russia and their families. This would soften the impact on poverty, but at the cost of weighing on public finances.

Figure 4. Remittance inflows to the Caucasus and Central Asia, 2020



Sources: Ratha and Kim 2022; World Bank. World Development Indicators database (both accessed 9 March 2022).

The Russian invasion of Ukraine will have long-term geopolitical implications, which will affect trade, investment, and remittances. The magnitude of these impacts is difficult to predict but these developments will weaken the role of Russia in the Caucasus and Central Asia. Countries in the region should adjust to the situation, notably by seeking to diversify their economic linkages, with each other, as well as with countries outside of the region.

THE KAZAKHSTAN TAX SYSTEM: TIME FOR CHANGE

by **Michael Ahern**
Tax and Legal Services Leader
PwC Eurasia

Following the difficult events early in 2022, and after the 30 years of Independence celebrations, President Tokayev declared the concept of a *New Kazakhstan: A Path of Renewal and Modernization*, introducing change in the political structure and economic reform. Associated with this, business anticipates positive reform in tax policy. Such reform is crucial to support business and to attract new investment.

Key principles driving tax reform include transparency and predictability / stability. This article points to issues in the tax law-making process; uncertainty of interpretation of tax legislation; the absence of an effective mechanism for resolving tax disputes; and the need to review the performance management system of the tax administration. While pointing out the issues, we have also made suggestions to improve the system. If any tax reform is initiated, it is worth considering these matters for inclusion.

Tax Law-Making Process

The Tax Code undergoes numerous changes every year and sometimes on a number of occasions during the year. Often, the changes are drafted quickly and, consequently, the quality of drafting is poor. If consulted, unreasonably tight deadlines are put on the investor community to respond. Determination of who participates in working groups is not transparent. Proposed changes are discussed in Parliament by members who may not be competent in this area.

There is also a conflict of interest in the tax law-making process. The *Ministry of National Economy* is the body responsible for tax policy. However, it is clear that the *State Revenue Committee (SRC)* (the body responsible for tax administration and collection of taxes under the *Ministry of Finance*), is extremely influential in accepting and rejecting proposed amendments.

We propose that the Tax Code amendment cycle takes place over a two-three year period. This would allow meaningful discussion of proposed amendments with business and technical experts. The longer time and wider discussion would allow higher quality drafting. The impact on other laws could be considered appropriately. If a change of law is urgent, this should be handled as an exception and be well communicated at the outset so that relevant commentators know deadlines are tight.

In addition, a reasonable period should exist between adoption and enactment, to allow business time to adapt if needed. While these suggestions address the future, there is an important and urgent need to review the current tax laws, to address areas of ambiguity and uncertainty. This would be a very positive sign for taxpayers and start to build trust.

Another immediate action is to review the tax law for provisions which, for whatever reason, do not work in practice. For example, legislation for *Transfer Pricing Advance Pricing Agreements (APAs)* has existed for many years, but the tax administration does not allow this very important measure to be used. If there is no intent to allow APAs, eliminate the provision. (We revert to APAs below.)

Tax Law Certainty

Most investments take time to generate positive returns. Given the ever-changing and unpredictable tax rules, those prevailing at the time of deciding to invest may change significantly by the time the investment brings returns. The investor has little sense of what future tax legislation may hold. This uncertainty greatly increases the risk.

As such, business and investors need predictability in taxation. This requires clear and precise tax legislation, which does not allow arbitrary and unjustified interpretations by tax officials or other taxpayers (since this distorts competition).

Crucially, as part of our proposals, amendments to tax law should not have retroactive effect or be interpreted as if they were drafted in that way. Additionally, where appropriate, the tax law should have stability provisions to give needed comfort to potential investors for longer term projects.

We mentioned APAs above. APAs, which are legally binding on the taxpayer and the Government, enable both parties to agree on the tax consequences of certain transactions in advance. They are widely used in the developed world and provide certainty for investors. Using APAs effectively in Kazakhstan would be a very important sign of progress.

Tax Disputes Mechanism

There are a number of issues associated with the tax dispute mechanism which need to be addressed.

Despite the introduction of the administrative justice system on 1 July 2021, the dispute resolution mechanism for tax cases (usually with a significant assessment) does not work. Decisions are not made

in favor of taxpayers. More generally, few judges have experience in business or dealing with tax law. Consequently, they default to the government position. In short, the dispute resolution / court process does not work and is unacceptably protracted.

Within a wider discussion about the rule of law, an alternative dispute mechanism for tax cases should be implemented. Adjusting the current pre-court resolution process by introducing truly independent tax experts should create the mechanism to resolve disputes fairly and quicker. It would also free up the court system.

Tax Staff Qualification

While understanding that matters related to staff are always sensitive, we would like to suggest a review of the SRC performance management system to ensure it is aligned with current best practice. Many of the issues mentioned in the course of this article ultimately come back to people.



Conclusion

This article highlights some practical steps, short and longer-term, to move towards trusted relations between tax officials and business. There may be a decrease in tax collections in the short-term, but they would help develop a more competitive economy to attract new investors and support existing investment.

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DRAFT AMENDMENTS TO THE TAX CODE AND THE CONCEPTUAL FRAMEWORK FOR TAX REFORM

by **Erlan Dosymbekov**
Managing Partner, EY

At a meeting with foreign investors on 22 February 2022, President Tokayev stressed the need for tax reform. He also stated that such reform should be aimed at achieving greater transparency and stability of tax law, thus addressing investors' long-standing concern about the high frequency of changes to the *Tax Code*.

In this regard, two sets of amendments to the *Tax Code* prepared by the *State Revenue Committee* are currently under discussion. First, a **high-priority set**, dealing with tax issues related to the January state of emergency, and second, a **low-priority set**, including other amendments to the *Tax Code*.

In this article, I would like to focus on the high-priority amendments, most of which were formulated in the immediate aftermath of the January events – that is, before the most recent geopolitical events in the region. Unfortunately, some of these amendments, in the current geopolitical crisis, could eventually lead to a reduction in foreign investments and a decline in business activity. This could run counter to the president's stated priority of creating a favorable investment climate in Kazakhstan.

An example of such unfavorable amendments is the restriction on deductions for services provided by non-residents affiliated with a Kazakh taxpayer. Such deductions are to be limited to a maximum 3 % of taxable income. Clearly, this amendment is inconsistent with the principles of a market economy and international practice. It may also substantially increase the tax burden on international companies that make extensive use of related parties' services in business processes. The amendment will thus have a largely negative impact.

Moreover, there is no need for such an amendment, as the current *Tax Code* already sets requirements for expense deductions. For example, expenses must be documented and related to income-generating activities, and in certain cases there must be transfer pricing control. We believe that these requirements place sufficient restrictions on expense deductions, so it is not necessary to introduce yet another one, especially because it may have an adverse effect on foreign and, to some extent, local businesses.



Another unfavorable amendment eliminates the tax exemption of dividends when an owner has held shares or interests for over three years. Such dividends are to be taxed at a rate of 10%. Notably, the original intention behind exempting dividends from tax was to stimulate investments in Kazakhstan's non-extractive sector. Furthermore, this exemption does not apply to all owners; for example, recipients of dividends registered in countries with preferential tax treatment do not qualify.

If, however, the current exemption of dividends is eliminated, this will increase the overall tax burden on companies in the non-extractive sector. An alternative to complete elimination of the exemption would be to modify the exemption's terms of use. Such modifications may be borrowed from existing double-tax treaties.

In light of the above, at our most recent AmCham Council meeting chaired by the Prime Minister, we suggested that the government consider the following approaches in order to avoid an overall adverse impact:

First: The **high-priority** set should include only amendments regulating the compensation of damage done during the state of emergency. Amendments that improve the position of taxpayers or lower the tax burden may also be left in this set. All other amendments should be removed from the high-priority set.

Second: A consistent, structured approach should be taken to amending the *Tax Code*. This can be accomplished by preparing a conceptual framework,

or concept, of tax reform. Such a concept would lay out the goals and tasks of reform and cover all proposed amendments. The concept should be widely discussed and then used as a basis for formulating and agreeing specific amendments to the *Tax Code*.

In this way, Kazakhstan would lay the groundwork for amending the *Tax Code* in a much more organized fashion and much less frequently. Investors' concerns over the current lack of stability and transparency of tax rules would thus be largely addressed. On the other hand, law application and court practices must also be carefully reviewed for consistency if we want to achieve a material improvement in the overall tax system in Kazakhstan.

Generally speaking, these steps are especially important in view of the ongoing geopolitical crisis and the potential slowing of national economic growth. A well-conceived and correctly implemented



concept can help our country weather the current market situation. It should also help Kazakhstan take maximum advantage of the unique opportunity to attract foreign investments and resources that are freed up on other markets, and this will subsequently augment Kazakhstan's tax revenues.

In an evolving tax environment, is trust your most valued currency?

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TAXATION OF PERMANENT ESTABLISHMENTS – CONTINUING AMBIGUOUS PRACTICE OF DOUBLE TAXATION IN KAZAKHSTAN

by **Anthony Mahon, Partner,**
Energy and Cross-Border Taxation, Deloitte Kazakhstan

Karina Kalimzhanova, Senior Manager
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Over the last decades, Kazakhstan has made significant strides in seeking to increase the attractiveness of its investment climate by promoting the protection of investors' rights and taxpayer interests. In certain dimensions, Kazakhstan's tax reforms in recent years have had an overall positive impact on the business environment as they have operated so as to eliminate legislative uncertainties and increase the transparency of tax administration processes.

Facing significant economic challenges and risks as a consequence of events ongoing today, the country is also in a position to benefit from a potential influx of new investment (in addition to new potential investment from existing major investors in Kazakhstan). The likelihood of such investment actually flowing into the country, however, is jeopardized by continuing dysfunctions

in Kazakhstan's taxation landscape – most notably as a result of:

- differences between declared principles in tax law and the reality of the effect of administration of such provisions,
- Kazakhstan's practices of the taxation of non-residents being significantly out of line with long-established and globally accepted methods of international taxation and
- the continuing aggressive practices of the tax authorities (in enforcing such principles and laws) leading to long-term disputes with foreign investors.

Taxation of permanent establishments, which we have already discussed in previous editions, still remains to be a source of disputes between tax authorities and foreign investors.

Based on widely accepted principles of international taxation enshrined in most double tax treaties the non-resident's business income shall be exempt from taxation in the source state providing that such income is not attributable to a non-resident's



permanent establishment in this jurisdiction. At that, the source jurisdiction's taxing rights shall be limited to profits attributable to a permanent establishment (i.e., generated through a permanent establishment).

Following adoption of a new Tax Code the tax authorities started to implement the revised approach on domestic procedures regulating application of full tax exemption of a non-resident's income under the double tax treaty provisions. Particularly, starting from 2019, the tax authorities specifically interpret provisions of Article 666 of the Tax Code which governs this procedure arguing automatic application of tax exemption under the double tax treaty (applied by the tax agent paying income) based on the fact that the non-resident obtaining income has a registered branch in Kazakhstan, i.e. ignoring profits attribution rules.

As a result, in course of desktop audits the tax agents are systematically charged with a 20% withholding tax with respect to income paid to the non-resident and exempt from tax under the double tax treaty and Article 666.

In our view, the new approach of the tax authorities distorts a fundamental principle of allocation of taxing rights, actually blocking the provisions of double tax treaties and leading to a double taxation.

We provide below several examples when income received by the non-resident is actually not attributable to its permanent establishment registered in Kazakhstan and, therefore, shall be exempt from taxation based on double tax treaty's provisions:

- services/works are provided/performed by the non-resident out of Kazakhstan;
- services/works provided/performed by the non-resident on the territory of Kazakhstan are not identical or similar to activities carried out by the non-resident's permanent establishment in Kazakhstan;

As per the tax authorities' position the presence of registered branch in Kazakhstan gives rise to levy taxes from any income received from Kazakhstani sources, notwithstanding that such an income may be not attributable to the permanent establishment as described in cases above.

Given the new approach, it is not clear how the tax authorities would treat cases when non-resident has a permanent establishment, which is in a dormancy regime. So far, we have not seen cases where dormancy issues have been raised in practice, however, such does not guarantee that the tax authorities will not change their position with respect to dormancy branches in future.

Responding to the concerns raised by the business community, the tax authorities refer to the right of the non-residents to obtain double tax treaty relief via tax refund procedure, which is time consuming and burdensome in practice. When applying to refund the non-resident shall evidence the fact that the permanent establishment in question ought to have had none of the relevant profits attributed to it.

During 2021 the issue on taxation of non-residents with a permanent establishment (branch) in Kazakhstan has been discussed with the state authorities on various platforms and at a different levels. Whilst the country's leadership admits the critical importance of establishing the fair international taxation principles, the issue is still open as of today.

The position of the tax authorities remains the same, no progress was made in terms of establishing clear procedures of application of full tax exemption by the tax agents at the legislative level nor transparent mechanisms of profit attribution rules upon refund procedure.

Recent court practice shows negative trends as courts support the tax authorities' view not performing a comprehensive profits allocation analysis and investigation of nature of works performed / services rendered from perspective of connected projects.

In our view, resolution of this issue on a methodological level is extremely important for investors and the national economy as existing aggressive approaches do not comply with international taxation principles and may have negative impact from the perspective of the attractiveness of Kazakhstan's investment climate in future.

Fair principles of taxation excluding any possibility of double taxation of non-residents in Kazakhstan among with the adequate practice would bring a significant input in establishing the transparent and predictable business environment.



CUSTOMS TREATMENT OF ROYALTIES FOR INTELLECTUAL PROPERTY RIGHTS

by **Mukhit Yeleuov**
Partner, *Kinstellar Law Firm*

Meaningful investment often depends on the movement of goods across customs borders. Therefore, predictable, fair, and consistent application of customs rules is critical for the investment climate of any country integrated into the world economy.

Sophisticated modern businesses rely on using know-how, software, and other intellectual property rights. How the customs authorities treat these rights is significant. An important practical issue is whether or not royalties for the use of intellectual property rights should be included in the customs value of imported goods. This issue has generated a lot of uncertainty as well as numerous and protracted legal disputes in Kazakhstan.

Substantively, whether or not royalties for the use of intellectual property rights should be included in the customs value of imported goods depends on two legal criteria:

- *if royalties relate to the imported goods;*
- *if royalties are required to be paid as a condition of sale of the imported goods.*

Each of these two criteria is independent of the other. For royalties to be included in the customs value of imported goods, both of these criteria need to be present simultaneously.

These criteria are outlined in the *Kazakhstan Customs Code*, the *Customs Code of the Eurasian Economic Union (EEU)*, and other sources of law. A detailed legal act of the Eurasian Economic Commission explains how these two criteria should be interpreted and applied. The act contains detailed rules: explanations, clarifications, and examples.

Unfortunately, the application of these criteria by some Kazakhstan customs officials has strayed from the detailed written rules. This creates a significant problem for businesses. They are unjustly and retroactively punished by customs officials for not including royalties for the use of intellectual property rights in the customs value of imported goods, even when one or both of the established criteria are missing.

Since it is difficult in Kazakhstan to successfully challenge actions of customs officials to higher state agencies, businesses are often forced to go to

court. The number of these court disputes has been growing. The author is personally aware of nine court cases concerning inclusion of royalties for the use of intellectual property rights in the customs value of imported goods in Almaty alone in 2021-2022.

Obviously, businesses cannot agree with this approach by the customs authorities, and so they head to court for resolution. These businesses collect, carefully analyse, and skilfully present their cases to Kazakhstan's courts, including the judicial practice of other *EEU* countries. Surely, Kazakhstan is not a common law country and judgements by courts (not to mention foreign courts) are not a source of law. Nonetheless, the *EEU Customs Code* and legal acts of the *Eurasian Economic Commission* are common to all countries of the Union. Therefore, judicial judgements rendered in other *EEU* countries on the same matter, applying the same rules, are of obvious interest to Kazakhstan's courts. There are several cases when Kazakhstan judges have confirmed that the same rules cannot and should not be applied differently – this would create economic risks not only for investors, but also for Kazakhstan itself.

What else tends to work in local courts: substantiated references to global practice. One business proved in court that it exports identical goods to, and transfers the same intellectual property rights for use in, almost 100 countries worldwide, and that in none of these countries, except Kazakhstan, are royalties for the use of the intellectual property rights included in the customs value of the imported goods.

What else tends to work in local courts: references to opinions and positions expressed by Kazakhstan in the *Eurasian Economic Commission*. They can be used to argue that actions by a local customs office contradict the position of Kazakhstan's national authority on the same issue internationally.

Witness statements, cross-examination of customs inspectors, expert opinions, letters, invoices, other documentary evidence – all have been and can be used in courts. Such customs disputes may be difficult and time-consuming, often involving months of litigation, but can be successful. Judicial practice is still not uniform and the same courts have rendered different rulings on the same issues.

Businesses obviously need a more systemic solution. The national authorities of Kazakhstan need to ensure that local customs officials properly apply the law. This is in investors' interests as well as in Kazakhstan's interests. Predictable, fair, and consistent application of customs rules is critical for the investment climate.

THE PITFALLS OF DISCRIMINATORY EXCISE TAXATION

by **Alexandra Akkirman**
Regional Public Affairs Manager
Coca-Cola

For the past decade, excise taxes on soft drinks have come to be viewed by governments of some countries as a “panacea” for fighting non-communicable diseases, such as obesity. Over 40 countries and states have implemented discriminatory taxes aiming at a single product category. While an excise tax is not a new idea (the first excise tax was enacted (and repealed) almost 125 years ago), the renewed recommendation for taxation, initially provided by the World Health Organization (WHO) as one out of an array of 88 measures to tackle obesity (but not a top 16 “Best Buy” recommendation), has been misinterpreted by many governments as a convenient way of increasing budget revenues.

As a result, there is no single or common scheme in taxing soft drinks worldwide. The schemes and rates differ, as do product categories subject to taxation; in addition to soft drinks, some countries also tax juices, or milk-based beverages, or even water, or even the bubbles in soft drinks. Likewise, there is no single approach to taxing beverages sweetened with low or no-calorie sweeteners (LNCS). While the WHO recommends encouraging beverage producers to reformulate to reduce sugar content in drinks, some governments even tax zero-calorie beverages with LNCS.

Obesity is a critical global challenge requiring a comprehensive strategy that would include interventions to encourage and empower consumers to make the necessary behavioral changes. This approach implies encouraging the food industry to use pricing policies and product innovation to influence demand for, access to, and the affordability of food and drinks low in saturated fats, trans-fats, salt, and sugar. In response to this challenge, the global food and beverage industry has extensively invested in innovation, reformulation, and new product development that actively help consumers to make smarter choices. Since 2008, over \$1 billion has been invested in sweetener innovation and sugar reduction research.

Non-communicable diseases are complex, with multiple underlying causes, therefore no single solution is likely to be effective in tackling them. Interventions need to be systematic, not only aiming for an immediate impact on the net energy balance, but also making sure that change is sustained. To-date, there is no real-life evidence that taxing a single product category, such as soft drinks, would have any meaningful impact on the rate of obesity.

According to the *McKinsey Global Institute*, for the food industry the most effective ways to combat obesity include reformulation of food and beverages, education, and smaller portion sizes. McKinsey also established that a narrow, discriminatory beverage tax was one of the least effective ways to improve health and found the science supporting such a policy proposal weak, giving it a 1 rating (on a 5-point scale, with 5 being the strongest evidence).

Discriminatory taxes have unintended consequences and often trigger substitution of taxed products with cheaper or non-taxed products, which can lead to adverse results. A new paper from the *International Monetary Fund (IMF, Dec 2021)* suggests that a selective tax on sugar-sweetened beverages could lead to increased consumption of other high-calorie food items (for example, juices, flavored milk, and high-calorie snacks) and that international differences in consumer behavior need to be better understood.

Such substitution effect has been observed, for example, in the UK where a soft drinks tax was enacted in April 2016 and in 2021 *Public Health England* found that there had been a 45% reduction in sugar from soft drinks (largely due to industry reformulation of drinks to bring the sugar content below the taxed level of 5g per 100 ml, done during the two years given to the industry before the tax came into force), but the country's sugar consumption had not moved overall. Therefore, governments intending to deploy fiscal measures in an attempt to reduce the intake of a nutrient such as salt or sugar, should aim for a broad-based tax on all the food and beverages containing this specific nutrient, to avoid the adverse effects of substitution.

Countries that have earlier introduced taxes on soft drinks are gradually moving in this direction. Finland, which has a differentiated tax on sweet beverages (higher tax on beverages with higher sugar content) has committed to introducing a broad-based sugar tax in 2023. The UK has had a differentiated tax on sweet beverages from 2018 in the framework of its *National Food Strategy*. As part of an update of this Strategy, the Dimpleby Commission put forward a recommendation to replace the differentiated sweet beverage tax with a broad-based sugar and salt tax, with salt taxed at twice the rate of sugar. Whereas in the Gulf countries, governments are considering moving away from a high flat-rate soft drink tax to a differentiated rate based on sugar content per 100 ml.

Another adverse effect of discriminatory taxes is that they are highly regressive. Low-income households spend a greater share of their disposable income on food and beverages than rich households, which effectively means that taxes on these categories burden those who can least afford it. Socio-economic

statistics from several markets confirm that indirect taxes seize up to 1/3 of the disposable income from poor households, while for the richest households this ratio is as low as 1/10.

Situation in Kazakhstan

Introduction of a tax on sweet beverages in Kazakhstan has been discussed since 2018. In 2020, an excise tax on sugar-containing beverages was included into the draft *Action Plan of the National Program "Healthy Nation 2025"*. It envisaged a 7% tax in 2020, increasing annually to 45% by 2025, with an intention to use the proceeds from the tax for financing interventions to fight non-communicable diseases in the country.

The proposal immediately revealed several gaps, such as absence of a national legal definition of a "sugar-containing" beverage, absence of research on sugar consumption habits of Kazakhstanis (to determine if soft drinks really pose the highest risk), and absence of an assessment of the potential economic impact of the tax. Increasing tax twofold within only 3 years, as it was proposed, would have severe repercussion in both industry and its ecosystem including suppliers, distributors, and customers, 90% of which are local companies.

A study commissioned by the beverage industry revealed that introduction of a 40% tax could lead to a 40% contraction of production resulting in about 2,300 job cuts. Considering that, according to an EY study, every job at the biggest enterprise in the industry creates 7 jobs in its value chain, the total adverse effect on the employment in the value chain would be much higher. The risk of bankruptcy of smaller local producers, and market monopolization will also be high.

The fact that consumption of soft drinks in Kazakhstan is 4 to 6 times lower than in the markets where excise taxes have been introduced, was also ignored by Kazakhstani regulators. By the way, it should be noted that in parts of Europe, soft drinks benefit from reduced VAT rates of 6% to 14%, whereas standard VAT rates range between 12% and 22%.

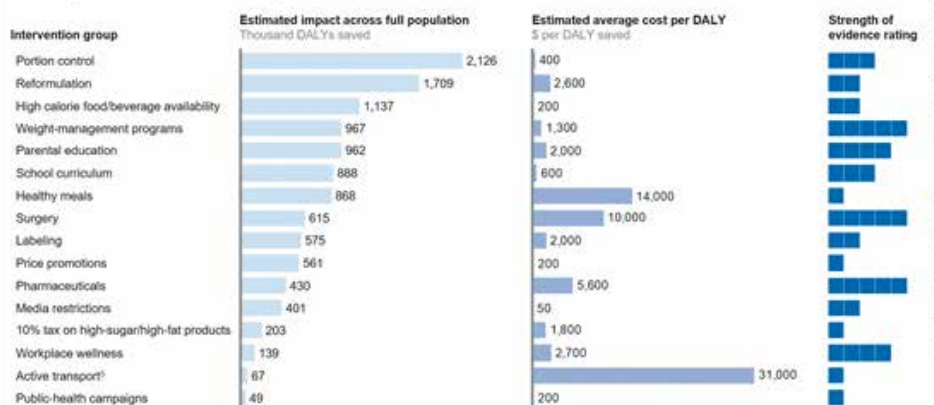
Following an engagement of the beverage industry with the regulators, the industry is pleased to see the *Ministry of Economy* and *Ministry of Health* postponing introduction of the beverage excise tax to 2024, to conduct a thorough assessment of the potential impact of the current tax proposal versus an alternative goal-oriented taxation scheme encompassing products with high sugar, salt, and fat content.

Conducting such assessments, it is important to consider not only the direct effect of a regulatory measure, **but also the indirect and induced contributions that are created through the procurement of goods and services, the industry's distribution network, and consumer spending by the employees of the industry and its suppliers, contractors, and distributors.**

The current state of economy in Kazakhstan and the wider region, weakened by the COVID-19 pandemic, oil price fluctuations, and geopolitical developments does not call for additional inflation fueled by new excise taxes. A drop in sales and profitability along the whole value chain will inevitably reduce total tax payments to the state budget. Further growth of prices, impacted consumer wallet, decrease in total tax payments, exit of smaller local players from the market, and reduction of investments are the typical consequences of a selective, discriminatory tax policy.

There is considerable scope to have high impact on obesity in a cost-effective way

Cost-effectiveness and impact of obesity levers, United Kingdom



TAX ISSUES OF CROSS-BORDER ASSIGNMENTS

by **Assel Nizamayeva**
Director, Tax & Legal
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As the pace of globalization continues to increase, labor movement has become a common practice. In recent years, the COVID-19 outbreak has dramatically impacted on changes in work format. Travel restrictions and containment measures have resulted in the uncertainty of working arrangements and a tendency towards distance work and a work-from-home regime.

Moreover, geopolitical conflicts and economic restructuring have affected many multinational enterprises. In these circumstances, employers should be cautious about complex challenges when relocating their employees to work abroad. The need to address migration issues, country-specific statutory reporting, handling of home and host country payroll, along with other labor and tax-related matters are among such challenges.

Cross-border work as well as work-from-home arrangements raise significant tax risks for the individuals and their employers including, but not limited to:

- *tax residency status, both corporate and personal*
- *personal income tax and payroll requirements*
- *permanent establishment determinations*

These risks may arise when employees travel across borders or stay in the home or host jurisdiction.

Impact of the COVID-19 Outbreak

As mentioned above, the COVID-19 pandemic affected the private lives of individuals and triggered a multitude of tax residence issues for individuals and businesses.

Although starting from 2022 most countries have opened their borders and companies are returning to their regular regime, working-from-home has become a common and comfortable format for many people.

For those who live in the same jurisdiction as their employers, nothing significant has changed in terms of taxation. However, tax issues from remote work may arise for employers with cross-border arrangements. Companies should be on the alert for changes in their expat employees' tax residence status and working patterns as this may trigger a permanent establishment (PE) and thereby create new tax obligations for the companies.

One example that could trigger PE would be when an individual working from home for a non-resident legal entity is when the respective employee habitually concludes contracts on behalf of the legal entity (so-called dependent agent PE). To avoid the risk of creating PE and, consequently, giving rise to withholding tax in the employee's home country, it is essential to perform an analysis that will help identify whether the company is exposed to additional tax costs.

Taxation of Individuals Under Kazakhstan's Tax Legislation

The taxation of an individual in Kazakhstan depends on his/her tax residence status and the category of income earned, that is income taxable at the source of payment (an obligation of tax agents in Kazakhstan) and income that is not taxable at source (a personal obligation of the individual).

Tax residents of Kazakhstan are required to pay personal income tax (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. Generally, employers in Kazakhstan claim deduction for the employment costs incurred for their corporate income tax purposes, whether these are paid directly to the employees or reimbursed to a non-resident legal entity. As such, they are recognized as tax agents responsible for payment of payroll-related taxes on their employees' earnings.

Therefore, when employees are moving from country to country or working remotely from a foreign country, businesses must consider the taxes arising for the companies to which the individuals are assigned and individuals themselves in shadow payroll policy-making processes. It is also essential

for Kazakhstan employers to ensure compliance with the payroll tax when paying income to a distant employee if that employee has traveled extensively or visited Kazakhstan in the past, even occasionally.

In addition to the payroll-related compliance issues, there is also a double taxation issue. A person is a resident of one country but derives income from sources in another country; that income can be double taxed. Kazakhstan's tax residents are allowed to claim a tax credit in Kazakhstan against taxes paid abroad on their foreign-source income. This form of relief is provided for under the local tax legislation. However, the mechanism for relief under a double tax treaty may vary from treaty to treaty.

While the tax residence status is irrelevant for the taxation of employment income, it plays a crucial role in determining an individual's personal income tax obligations in a particular 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 the *Tax Code of Kazakhstan (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 the individual's vital interests (CVI). 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/possess immovable property in Kazakhstan, which is permanently available to accommodate 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 different, '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 aforementioned criteria stipulated by Kazakh tax legislation for a KZ tax resident are met.

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 different, '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 aforementioned criteria stipulated by Kazakh tax legislation for a KZ tax resident are met.

However, 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 have tax residence certificates issued by the competent authorities of their home countries and submit to the tax authorities in Kazakhstan, if requested. If such documented proof is not available, foreign citizens will be unable to leverage Kazakhstan's double tax treaty benefits. They will not be entitled to automatic release from the obligation to file a personal income tax return in Kazakhstan.

Given the above, for cross-border assignments or distance working from another country, it is critical to correctly determine 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 Return Filing Obligations in Kazakhstan

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 the 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.

Starting from 1 December 2021, Kazakhstan has proceeded to automatically exchange information on financial account information under the *Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information* developed and approved by the *Council of the Organization for Economic Co-operation and Development (OECD)*. This means that Kazakhstan has a right to request information on the bank accounts opened, interest income, dividends, and other income of KZ tax residents from 62 countries.

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

- *The first time an individual fails to file an annual PIT return with the Kazakh tax authorities by the established deadline results in the issue of a Notification by the tax authorities. At the same time, 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.*
- *Concealment of property outside Kazakhstan results in 100 times MCI (or approximately USD 690) for each concealed reportable item. In comparison, a similar violation repeated during*

the year is subject to a fine of 200 times MCI (or approximately USD 1,400).

A criminal fine is stipulated for large-scale tax evasion, in other words, if the amount exceeds 20,000 MCI (approximately USD 138,000). Furthermore, such administrative and criminal fines may adversely affect the reputation of the individual and the company or even a group of companies employing this individual. Moreover, it is not widely known that Kazakh legislation includes a provision for foreign citizens that prohibits them from entering Kazakhstan if they failed to submit a PIT return during their previous stay when filing such a tax return was mandatory.

In summary, personal taxes and employment-related taxes must be considered when a person is working in a country different from the country where he/she is employed. In addition to the risks related to personal and payroll taxes, the risk associated with permanent establishment is one of the most substantial issues. Businesses need to monitor any tax exposures created by mobile employees closely. And finally, for many companies, it's essential to manage the challenging period with employees to keep them safe and engaged in the current situation.



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NEW DIVIDENDS TAXATION POLICY: FIRST YEAR RESULTS

by **Andrey Zakharchuk, Partner**
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Tax and Legal Department, Deloitte Kazakhstan



The Deloitte team continues monitoring developments in Kazakhstani tax legislation as well as following the practical difficulties local and foreign entities are facing as regards dividend taxation in 2021 and 2022. This article is an update on the main aspects of the Tax Code changes discussed in last year's article (*Ambiguities in Kazakhstan's New Dividend Taxation Policy, Investors' Voice, February 2021, by Nazira Nurbayeva, Andrey Zakharchuk and Karina Kalimzhanova*).

Ambiguity of "income previously taxed"

In 2021 and 2022 the provision remains unchanged with all uncertainties around determination of net profits that are taxed and, respectively, exempt from tax on dividend. The difficulties can be seen better from a simple case based on hypothetical data in the table below:

Year	Net profits per P&L report	Taxable income less CIT per CIT returns	Difference (1) – (2)
	(1)	(2)	(3)
FY2020	1,000	900	100
FY2021	900	1,000	-100
Total	1,900	1,900	0

The above data presents a typical situation that results in a deviation of financial statements from CIT returns due to temporary and permanent differences (depreciation of fixed assets, taxes, bad debts, allowed adjustments from annual aggregate income, and so forth).

Based on the current version of Article 645 of the Tax Code effective from 2021, a difference of 100 in 2020 may not be tax exempt as it exceeds the net profit declared for CIT purposes in 2020. A taxpayer who decides to make a profit distribution to foreign shareholders for 2020 in 2021 would have to comply with the new restriction and would face the dilemma on whether to postpone distribution of 100 or pay a dividend tax of 15 in 2021. The latter option may look odd as from the table we can see that 100 difference is subject to tax later in 2021, that is, in the period in which a temporary difference between financial and tax accounting is realized.

And, if the decision is to distribute 1,000 and pay tax from 100 in 2021, the main question is whether or not our hypothetical taxpayer would be entitled to any tax offset or tax adjustment in 2022 when further distribution of 900 will occur. The law suggests no mechanism for such tax compensation in the following periods, thus creating space for interpretation.

We also believe the problem will not disappear if a taxpayer decides in 2022 to distribute profits for two years, although cumulatively we can see a parity between financial and tax accounting. The existing rule doesn't allow to conclude with confidence that the whole amount of net profit that in our case amounts to 1,900 will be deemed by tax authorities and courts as previously taxed in context of Article 645, especially for more complicated cases with a history of deviations between financial statements and CIT returns in prior periods.

The ambiguity inclines to apply a conservative approach that involves comparison of financial net profit and net profit as per tax accounting on an annual basis rather than cumulative results for several years and application of tax exemption to the lowest of two numbers in each year. The results of the cameral control performed in 2021 and 2022 with respect to some taxpayers supports the above approach as within the desk audits the tax authorities reconcile dividend paid to foreign shareholders with taxable income subject to CIT less CIT assessed for a particular tax year.

Finally, taking into account CIT reporting deadlines (i.e. 31 March of the year following the reporting period) it is quite arguable that payment of dividend for a particular year can be exempt from withholding

tax before CIT return for the same period is duly filed with the state authorities, since otherwise there will be no documental evidence of the profit being taxed. This is despite the fact that CIT might be remitted to the state throughout the reporting period in a form of CIT advances.

The conclusion is that taxpayers need more specific regulation that would allow to assess free of tax profits taking into account temporary differences between financial and tax accounting as well as the profits accumulated for a number of years.

Lack of Definition of Net Income

In 2021 and 2022 the discussion of net income definition has been continued at various forums involving government representatives, experts, and associations of taxpayers and investors. Everything indicates that the majority of experts and state officials agree that net profit definition used in Article 645 prior to and after 2021 should be deemed as net profit as per financial statements compiled in accordance with applicable accounting standards and principles.

At the state commission meeting on issues related to economic modernization chaired by the Prime-Minister in early May 2022, it was recommended to determine “net income” based on the taxpayer’s financial accounting for retrospective purposes.

Retrospective Application of the New Dividend Taxation Concept

As of today, special tax audits initiated to verify applicability of tax exemption to the dividend paid by certain taxpayers before 2021 are frozen and considerations of tax appeals by the State Revenue Committee are being suspended for more than a year.

The official position of tax authorities is that they do not intend to apply retrospectively changes to Article 645 as regards exemption of “previously taxed” profits.

Although this is a very positive statement in itself, it is, at the same time, unhelpful in terms of resolving issues raised by tax authorities with respect to dividends paid before 2021 in excess of the profits declared in CIT returns. Hopes for a positive outcome in this respect lay solely with the recommendations supported by Prime Minister, which in our view should serve as the basis for completion of WHT thematic audits / consideration of appeals for periods before 2021.



New Potential Challenges Concerning Taxation of Dividends

We understand that, given the changing economic situation in the world and in Kazakhstan, the government is exploring possibilities to combat capital outflow from the country and increase state revenues through cancellation of tax incentives among which are dividend tax exemptions.

We have reviewed the latest draft changes to the Tax Code developed by the Government due to be forwarded to the Kazakh Parliament in May 2022 after the Prime Minister’s approval.

From the draft changes to the Tax Code we have outlined the following major initiatives directly related to dividend tax policy.

The proposed amendments do not address the ambiguities mentioned above for implementation of the “previously taxed” restriction for 2021-2022 and will still leave ample uncertainties and “grey” areas around the “previously taxed income” mechanism for the periods starting from 2023.

In our view, the proposed mechanism to determine “previously taxed income” omits the large scope of cases that taxpayers could face in practice, such as:

- **distribution of retained earnings for previous years** – given that the proposed mechanism dictates to perform calculations for each particular tax period, an excess of profits reflected in financial statements for a particular period will be subject to standard withholding tax rate at 15%;

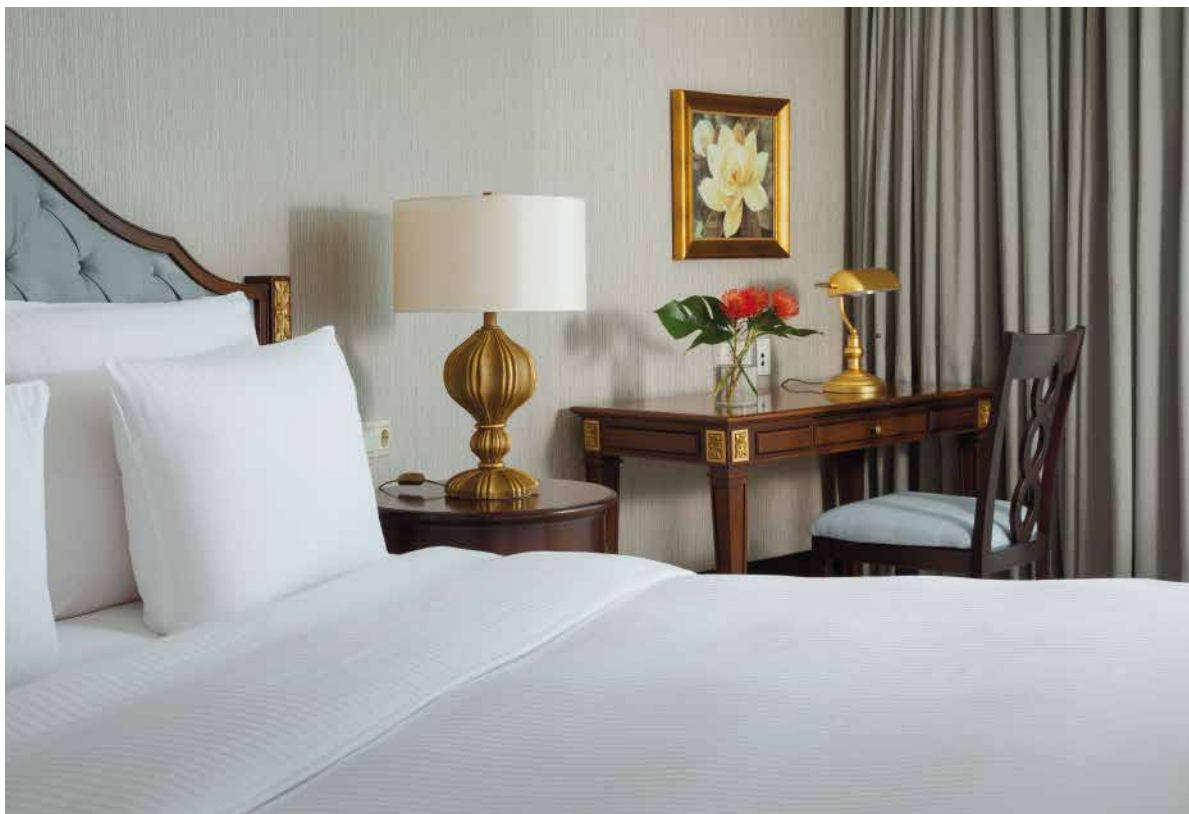
- **distribution before submission of CIT returns** – given that CIT advance payments are excluded from calculations, it is reasonable to conclude that the previously taxed income shall be determined based on CIT returns submitted to the tax authorities;
- **temporary differences between financial and tax accounting** resulted in taxation of income in future periods – the proposed mechanism does not cover cases when the income distributed may be taxed in future periods due to different accounting principles;
- **lack of clarity on the mechanism of withholding tax returns correction** – the proposed amendments provide no instructions for cases when distribution and CIT submission is made within one quarter (e.g., distribution for 2021 is made in February 2022, CIT return for



2021 is submitted in March 2022 – given that there is no clarity on how withholding tax returns shall be corrected within the quarter, the granted right to correct it becomes inapplicable).

As a source of serious concerns for foreign investors, the dividends taxation issue requires a comprehensive consideration and elaboration of clear rules as to how new restrictions will apply to avoid any inconsistency or misapplication in practice.

#	Article of the Tax Code	Description of the initiative	Expected effective date
1	645 and 654	Exclusion of tax exemption for dividends paid to foreign shareholders	1 January 2023
2	646	Introduction of a reduced withholding tax on dividends paid to foreign shareholders at 10% (subject to conditions currently envisaged for tax exemption, including “previously taxed” limitation)	1 January 2023
3	646	Introduction of a mechanism to determine the “previously taxed” income, particularly: - income previously taxed by CIT shall be calculated as taxable income less CIT (given the allowed adjustments) for each tax period for which distribution is made; - CIT advance payments shall not be considered when calculation of income previously taxed by CIT; - reduced withholding tax rate cannot be applied if distribution is made during a year with the right to correct withholding tax returns upon completion of a taxable period (year) and given that all conditions are met	1 January 2023
4	241	Removal of right to adjust annual aggregate income on dividends received except for those derived from securities listed in stock exchange in Kazakhstan	1 January 2023



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ISLAMIC FINANCE IN KAZAKHSTAN

by Gordon Haskins
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History and Development

The contemporary history of Islamic finance around the world can be divided into three stages: (per Sagiyeve 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 stringent 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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U.S. CONSUL GENERAL CAROLINE SAVAGE GUEST SPEAKER AT MARCH BUSINESS ROUNDTABLE LUNCHEON U.S. ECONOMIC POLICIES AND PRIORITIES IN KAZAKHSTAN AND CENTRAL ASIA

Core Principles and 2022 Challenges

The core of U.S. Policy in Kazakhstan and the countries of Central Asia has been the same since 1991—to support Kazakhstan's stability, sovereignty, and territorial integrity. To this end, the U.S. government has been active in promoting regional connectivity throughout Central Asia, including in the energy, trade, and environment spheres. Support for international business engagement as a driver for economic diversification goes hand in hand with these core principles. The last few months have shown how important this is.

2022 has already been quite a year with the January unrest and now Russia's re-invasion of Ukraine. Many of you here today were directly affected by the unrest, as were many of the Consulate's staff. However, it was heartening to see damaged businesses near Republic Square reopen quickly after the violence, demonstrating the city's resilience. U.S. Consulate staff, American and Kazakhstani, have called Almaty home for more than 30 years, and the Consulate is planning to expand its presence with a new Consulate compound. We are confident Almaty will remain the commercial and creative center of Central Asia.

Concerning Russia's invasion of Ukraine, President Biden made it clear that we would respond with severe sanctions meant to hold Russia accountable for its actions and protect Ukraine's sovereignty, which is what we are doing. You may wonder why this route has been chosen, and how it will affect Kazakhstan.

Sanctions

Sanctions are a foreign policy tool designed to change behavior and are targeted at Russia's economy. U.S. actions include prohibiting the importation of Russian oil, natural gas, and coal into the United States, sanctions on more than 200 individuals and entities, and various financial restrictions on *Sberbank*, *VTB*, and to a lesser extent *Alfa Bank*. Other restrictions include prohibition on the exportation of U.S. dollar banknotes and many U.S. technologies to Russia.

However, our sanctions are designed to mitigate the impact outside of Russia. For instance, the U.S. government has issued 16 General Licenses, including one that authorizes certain energy-related transactions until June 24. These sanctions may have made operating in Kazakhstan harder for many AmCham members. However, stopping Russia's aggression in Ukraine is of paramount importance to the U.S. government, and we all need to be ready to bear some of the pain necessary to stop Russia's war of choice against Ukraine.

Everyone is encouraged to carefully review U.S. sanctions and examine your business linkages with Russia. We recognize the deep economic connections between Russia and Kazakhstan, as well as the risks our sanctions pose to Kazakhstan and the possibility that Russia may try to use Kazakhstan to evade the sanctions. The U.S. Mission has been actively working to inform the Kazakhstani government and financial sector about our sanctions, as well as their impact on U.S. businesses operating here to our leadership in the U.S.

Economic Reforms

2022 has been a year of crisis but every crisis is an opportunity. President Tokayev has outlined serious and substantive reforms. The U.S. government continues to support his reform agenda, and we are hopeful these reforms will build confidence in Kazakhstan that will help attract further domestic and foreign investors and help the country develop and diversify its economy. Below are some areas of particular interest that the United States supports.

Many people voice their concerns about transparency, as heard at a recent business roundtable discussion about the perspectives and concerns of U.S. businesses operating in Kazakhstan. There must be a level playing field for all businesses. We know investors need predictability and transparency at all levels of government decision-making, including rule-making, enforcement, and procurement procedures.

In this vein, the U.S. Department of Commerce's *Commercial Law Development Program* has been training Kazakhstani law students in international arbitration. Developing commercial law community will improve Kazakhstan's business and investment climate for all businesses, including American. Further, the Commerce Department is working to create an *Informal Virtual Commercial Dialogue* between the U.S. and Kazakhstani governments, which would be a forum to address mutual commercial issues. This dialogue is scheduled to begin in May. U.S. businesses should reach out to our *Foreign Commercial Service* team in Almaty led by Don Townsend on topics to include in this dialogue.

A lack of transparency is closely linked to corruption. Companies have a choice of where to make their investments; as countries seek to attract investors, they must remember corruption is a deterrent. Unfortunately, corruption remains a concern. According to *Transparency International*, Kazakhstan's "Corruption Perception Index" score actually declined between 2020 and 2021. Kazakhstan now ranks 102 out of 180 which is eight places lower than in 2020.

We continue to work with the Kazakhstani government to battle corruption. The State Department also recently honored Jamilya Maricheva as one of our 12 “*Anti-Corruption Champions*” for her innovative site *ProTenge.kz* that helps address corruption in Kazakhstan’s government procurement system.

Economic diversification is another priority. Beyond hydrocarbons, Kazakhstan’s young population and vast lands offer many other opportunities to grow this economy as well. Around the world, entrepreneurship plays an important role in fostering diversification. The U.S. government is active in our support for entrepreneurs, including women’s economic empowerment entrepreneurship.

The COVID-19 pandemic has prompted many people worldwide to start new businesses. In the U.S. in 2021, more than 5.4 million new businesses were created. The U.S. government has many different programs that help support women’s entrepreneurship in Kazakhstan. This includes a State Department program known as the *Academy for Women Entrepreneurs*, which will be partnering with the *Astana International Financial Center* to help develop the skills of prospective women entrepreneurs in rural areas across Kazakhstan.

In addition, while Kazakhstan remains Central Asia’s richest country, the economic fallout of Russia’s invasion of Ukraine highlights the need for Kazakhstan to strengthen its linkages with its Central Asian neighbors. *The U.S. Agency for International Development (USAID)*’s regional mission in Almaty is focused on integrating Central Asia’s trade and energy networks to promote efficiencies and build cross-border connections. These efforts seek to streamline the time and cost of moving goods across borders, reduce customs barriers, and strengthen phytosanitary administration. These projects will strengthen Central Asian countries’ economies by facilitating regional trade and lessen their dependence on a limited number of supply routes. All of this will in turn further the Central Asian countries’ independence.

We are cautiously optimistic about President Tokayev’s announced plans to privatize many of Kazakhstan’s state-owned enterprises. It is the government’s role to build the ecosystem for business, not to run businesses. Hopefully privatization efforts will improve efficiency for these companies. Privatization could also attract much needed foreign investment and knowledge to Kazakhstan, including from the United States, Kazakhstan’s largest foreign investor.



At hopefully the tail end of the COVID-19 pandemic, it has been two years since a U.S. Consul General has addressed an AmCham luncheon in person due to pandemic restrictions. One of the biggest changes in U.S. policy during that time has been the rise of Climate Change. Responsible economic growth must incorporate climate change. This decade is now called the *Decade of Climate Action* because the U.S. government acknowledges just how important action will be to successfully addressing the crisis.

Achieving carbon neutrality will not be easy for Kazakhstan, a major hydrocarbon producer and consumer. Nevertheless, we applaud Kazakhstan’s commitment to achieve carbon neutrality by 2060, and the U.S. government is working to help Kazakhstan meet these goals while creating business opportunities. For instance, USAID-supported regional reforms are leading to market liberalization and access to clean and affordable electricity in Central Asia. This liberalization will also create an investment climate for U.S. project developers and investors, all of which will generate opportunities for American companies to export technologies and services to the region.

In closing, let me reiterate my commitment to each of you as business leaders here in Kazakhstan. We all share a vision of a stable, secure, and prosperous Kazakhstan. This will require real commitment from the Government of Kazakhstan, as well as support from the U.S. government, and partnership from you, the AmCham community. My commitment is that the U.S. Mission will work tirelessly to engage the Kazakhstani government to deliver on its efforts to level the playing field for international businesses. And my request is that each of you take an active role in partnering with us and working together to help Kazakhstan create an environment ever more conducive for new investment.

ADVOCACY UPDATE

MARCH-APRIL 2022

Advocacy in March and April has entailed two sessions of **The Prime Minister's Council to Improve the Investment Climate**, an International Sanctions Webinar in partnership with the Morgan Lewis law firm, and follow-up meetings between AmCham members and Ministers to discuss Tax Reform Issues. Although Council sessions continue to be conducted on a virtual platform (the Prime Minister's private communications system), a return to the in-person Council sessions that were highly interactive and productive is under consideration for the autumn.

March 2022 Council to Improve the Investment Climate (11 March 2022)

Topic: Financing COP26 Final Pact Commitments, The Next Challenge

In light of the appointment of a new Prime Minister and a new Cabinet of Ministers, it was decided to revisit the December 2021 Council session, the final meeting in 3 consecutive Council sessions devoted to the *COP26 Climate Change Summit* held in Glasgow in November 2021. The December agenda topic was retained (*Financing COP26 Commitments*), the most complex topic of all, a challenge not only for Kazakhstan, but for all the *Paris Accord* signatories.

The commitments in the *COP26 Final Pact* will be reviewed later this year. Kazakhstan's performance will also be evaluated. Climate change and renewable energy options were discussed at the 2 Council sessions preceding *COP26* in November, but not the financial resources for the costly long-term energy transition process. Moreover, given Kazakhstan's unexpected turmoil in early January, the country's *COP26* commitments risk being neglected.

The December Council session on *Financing Energy Transition* was extremely well-received by the Government – Prime Minister Mamin and the large number of Ministers in attendance continuously took notes and requested follow-up contacts for the speakers, particularly the IMF and OECD. The Council Agenda for March combined new presentations with the December international financial institution presentations from (*IEA, IMF, OECD, and EBRD*).

The December presentations can be read in the *February Special Issue of Investors' Voice: The Urgency of Energy Transition*. The diplomatic speakers in March differed from the Ambassadors who had spoken in December:

- **UK Ambassador Kathy Leach** spoke from the perspective of the *COP26* host country, listed the UK priorities in the Glasgow Summit commitments, and delivered recommendations for Kazakhstan's approach to energy transition.
- **Canadian Ambassador Alan Hamson** – newly arrived in Kazakhstan and attending his first Council session – Ambassador Hamson highlighted Canada's particular areas of focus relevant to Kazakhstan: support for clean energy transition and coal phase-out, notably in extractive industries, and building climate-smart agriculture and food systems.
- **European Union Ambassador Kestutis Jankauskas** stressed that the EU and its member states are the world's largest contributors of climate finance, providing at least one-third of the world's total public climate finance. He encouraged other developed countries to contribute to the \$100 billion mobilisation goal in 2022 and listed EU projects to support green transition in Kazakhstan and Central Asia.
- **Italian Ambassador Marco Alberti**, who has spoken to AmCham members on the geopolitical ramifications of energy transition and whose two speeches were published in the *February Investors' Voice*, focused his March Council presentation on the need for close cooperation, without which the global transition process will not be possible.
- **The Asian Development Bank's Head of Mission, Nariman Mannapbekov**, reminded the Prime Minister of the country's projects to decarbonize the economy. In particular, he stressed phasing out old coal-fired power plants and replacing them with renewable energy sources.

EY Managing Partner Erlan Dosymbekov, who had also delivered a presentation at the December Council meeting, took his December focus on transition away from the coal industry to the next level – the development of electric power in Kazakhstan and the beginning of 'a new super-cycle of high demand and high prices' for metals, specifically long-term demand for copper, nickel, aluminum, and other metals in global markets. He sees energy transition as opening ample opportunities for Kazakhstan to market its energy resources globally as a producer of cheap power in the metals and mining sector.

April 2022 Council to Improve the Investment Climate (21 April 2022)

Topic: Tax Policy/ Tax Reform; International Sanctions' Impact on Kazakhstan's Business Climate

Each year AmCham organizes a Council session devoted to Tax Policy and Tax Reform, two of the most highly discussed topics among AmCham members and the subject of six *AmCham Working Groups* – a Group in each of Kazakhstan's five major cities and an *Inter-Ministerial Tax Reform Group* that meets exclusively with the *State Revenue Committee* and *Finance Ministry*.

The April Council meeting was focused on the many issues in the *Tax Code* and under discussion for new tax legislation. An additional presentation was added on the *Impact of the Russian Sanctions on Kazakhstan's Business Climate*, a subject too important to be left for a later date.

Given the number of presentations on the April Council Agenda, the Ambassadors who usually participate with their country-specific presentations stepped aside, ceding their time slots to the Tax and Sanctions speakers.

The Council began with a detailed outline of the current Sanctions spillover onto Kazakhstan. Although Kazakhstan itself is not the object of any sanctions, nonetheless, like the rest of the world, Kazakhstan is affected by the economic turmoil engendered by the growing list of economic sanctions imposed on Russia as a result of the Ukraine war. **Aset Shyngyssov, Managing Partner of Morgan Lewis**, delivered a summary of his firm's Sanctions Webinar organized in partnership with AmCham several days earlier. (See a brief Webinar report to follow.)

The Sanctions summary, which served to establish the difficult investment environment, was followed by three presentations on *Tax Policy*, long-term challenges in the *Tax Code* for tax structure, interpretation, implementation, and frequent disputes arising from a lack of transparency and predictability. Speakers were from three of the Big Four – **Deloitte Cross-Border Tax Partner Anthony Mahon**, **EY Managing Partner Erlan Dosymbekov**, and **PwC Managing Partner Dana Inkarbekova**. Their presentations are published as articles in this Issue of *Investors' Voice*, speaking out on subjects as diverse as dividends, permanent establishment and double taxation, royalties, and 'good faith' negotiations.

The four corporate presentations that followed provided specific examples and illustrations of difficulties in negotiating resolutions for tax disputes: *intellectual property, customs, excise taxes, discrimination between foreign and local investors in application of taxes and penalties, and inadequate time to correct hygiene standards disclosed during audits*. The companies presenting their cases (some cases in litigation, others still in dispute) were from diverse industry sectors: *oil & gas, large retail chains, popular beverages, and restaurants*.

The official responses delivered by the Finance and Health Ministers at the end of the AmCham presentations showed careful preparation for each problem area and each company. Responses were generally positive, indicating an intention to resolve the issues without resorting to litigation.

Following the Council, individual meetings were confirmed between speakers from the above companies, the *Finance Minister* and the *State Revenue Committee*. *Prime Minister Smailov* delivered his own wrap-up, stressing the value he placed in the AmCham Council, and his intention to continue the monthly Council sessions

Sanctions Webinar (20 April) – Advocacy Partnership between AmCham and Morgan Lewis

The International Sanctions and their economic impact are of no less concern to the Government than to the business community, both of which are trying to fully understand the combined effect of the sanctions from many countries and to facilitate normal operations for business operations. The Webinar had a registration of over 160 business executives and diplomats, all concerned by the Sanctions for their own businesses and countries.

The Morgan Lewis Webinar was conducted by three of the firm's lawyers – *Aset Shyngyssov* in Kazakhstan and two British lawyers, *Peter Sharp* and *Bruce Johnston*, in the firm's U.K. offices. This provided a diverse overview of Sanctions from Great Britain, the United States, and the European Union. Sectors covered included *banking, investment funds, logistics, aviation, environmental, life sciences, technology, fintech, and sports*.

The full Webinar powerpoint presentation may be obtained from Morgan Lewis or AmCham.

ALMATY APRIL SUNDOWNER AT THE RIXOS ALMATY HOTEL SPONSORED BY CHEVRON

The first AmCham Sundowner after more than a two-year hiatus due to Covid-19 pandemic restrictions was held on Friday evening, 22 April at the Rixos Almaty Hotel on the broad, open Mezzanine overlooking the Hotel Lobby Lounge. The sponsor for this long-awaited event was Chevron, whose new *Managing Director of the Chevron Eurasian Business Unit, Derek Magness*, has joined the AmCham Board of Directors. We welcome Derek back to Kazakhstan.

Derek Magness knows Kazakhstan well, having served as Deputy Managing Director of the Eurasian Business Unit in Almaty between 2009-2012. He has held leadership roles at Chevron in South Africa, Angola, Poland, Bangladesh, the U.K. and U.S. His most recent position before returning to Kazakhstan was Managing Director at the South African Business Unit in Angola.

The evening served to welcome Derek to the AmCham Board together with other newly elected Board Members: *Dmitry Kozenkov, Country Manager for Pfizer in Central Asia and the Caucasus, Dana Inkarbekova, PricewaterhouseCoopers Managing Partner for Kazakhstan, and Inna Alkhimova, KPMG*

Tax and Tax Director. Kenneth Mack, Managing Partner of Mack Law was also re-elected to the Board and re-elected AmCham President. It is notable that a growing number of women have been elected to the Board of Directors.

Given the eagerly awaited resumption of the AmCham Sundowners, the Sundowner had a large attendance – over 150 members, diplomats, and invited guests. Sundowners always provide an ideal background for business networking and socializing in a convivial setting. A large buffet dinner provided was served by the *Rixos Hotel*, wine and beer were contributed by *Metro Cash & Carry* (our thanks to Anton van Gorp) and soft drinks were contributed by *Coca-Cola* (our thanks to Erdinc Guzel).

AmCham intends to continue with its resumption of Sundowners in Nur-Sultan, Atyrau, Aktau, and Shymkent, all major centers for the AmCham membership. Our favorite 5-star Hotels in each location await us – *The Marriott* in Nur-Sultan, the *Renaissance* in Atyrau and Aktau, and the *Rixos* in Shymkent. We are eager to see our members together again!





MEMBER NEWS



**Carole Gall Appointed
Managing Director of
ExxonMobil Kazakhstan**

Effective April 1, 2022, Ms. Carole Gall will become the Managing Director of ExxonMobil Kazakhstan. Ms. Gall will be based in Nur-Sultan.

Carole Gall graduated from the *École Nationale Supérieure de Géologie* in France in 1995. She began her career with Esso UK (an ExxonMobil affiliate) in 1995 as a reservoir engineer. She advanced through upstream engineering, operations, planning and commercial roles in the United Kingdom and in the United States before taking on a global commercial manager position in the ExxonMobil Production Company in 2009.

Subsequently, Carole Gall became *Joint Interest Asset Manager* in the UK and in the Netherlands. In 2018, she was appointed *President and Managing Director of Esso Exploration and Production Chad Inc.*, a position she held until January 2022 when she moved to the United States on a short-term assignment as *Executive Advisor*.



**Shadab Khan Appointed
General Director
of Coca-Cola Kazakhstan**

As *Senior Franchise Director of Kazakhstan*, Shadab supports and provides franchise leadership to our bottling partner, *Coca-Cola Icecek Kazakhstan*. He also manages The Coca-Cola Company's business in the market and is *General Director of Coca-Cola Kazakhstan* in Almaty. Shadab Khan joined Coca-Cola India in 2007 as Senior Manager (Key Accounts) for India and Sri Lanka.

Shadab Khan also worked in Customer Management and Commercial Strategy, and has been in General Management roles since 2012, starting as *Country Manager for Nepal and Bhutan*, *Managing Director for Coca-Cola Bangladesh*, and *Franchise Director for Uzbekistan, Tajikistan, Turkmenistan*. Most recently he has served as *Regional Director for Uzbekistan, Georgia and Armenia*.

Shadab Khan has actively represented Coca-Cola in public-private platforms representing industry issues across South Asia and Central Asia over the years. Most recently he served as President of the American Chamber of Commerce in Uzbekistan.

A graduate in Computer Sciences from Bangalore University, Shadab Khan has also studied at Cornell University, Indian School of Business and T.A.Pai Management Institute, Manipal.





Andrey Guba Appointed General Manager of Amway Kazakhstan

Andrey Guba joined Amway in 2007 and has been with Amway for 15 years. He has extensive experience in direct selling, building his career primarily as Head of the Amway Department Store in Krasnodar (2013-2015), *Head of the Sales Department* in the South Region of Russia (2015-2019), *Head of Amway South Region of Russia* (2019-2021), and since 2021 he has served as *General Manager of Amway Kazakhstan*.

Amway is an international manufacturer of personal care products, household chemicals, cosmetics, biologically active food additives and household items. It was founded in 1959 in the United States. The Kazakhstan branch of the company was launched in 2013. The company's activities are not limited to the production and sale of products. Each buyer can become an independent Amway entrepreneur and build their own direct selling business.

The main Amway office in Kazakhstan is based in Almaty, the second office is in Nur-Sultan. Over 20 people work in the company, which has two stores (Almaty and Nur-Sultan) and five warehouses (Almaty, Nur-Sultan, Shymkent, Atyrau, Aktobe).



Volodymir Nefedov Appointed AVON General Director for Kazakhstan and Kyrgyzstan

Volodymir Nefedov entered Avon for an internship as an analyst and, after the end of the internship, he continued to work as an analyst in the company's Sales department. He has been with AVON for 11 years. In 2012, he was appointed Chief Marketing Analyst for Ukraine and Georgia. In 2014, he was assigned to head the AVON Marketing Analytics Department and in 2015 he was promoted to Campaign Planning Manager. In January 2022, he became General Director for AVON in Kazakhstan and Kyrgyzstan.

The AVON attitude to employees, especially in times of crisis, when support and care are very necessary, has always elicited admiration. AVON campaigns for programs promoting and protecting Women's Health are well-known and have supported an awareness and strong support for many crucial health problems. In 2019, AVON received the *AmCham Award* for its *Health Protection Programs* across Kazakhstan.

Volodymir Nefedov graduated from Kyiv Polytechnic University with a degree in Financial Market Analysis and immediately entered AVON, where he has forged his career.



WORKING GROUPS UPDATE

FEBRUARY – APRIL 2022

Almaty Working Groups

Almaty Technology / Innovation Working Group, January 25, 2022

The *Almaty Technology and Innovation Working Group* met on January 25 chaired by *Sergey Leschenko, Microsoft Country Manager*. The Guest Speaker was *Sergei Bolshakov, Microsoft Government Affairs Lead* in Central Asia, the Caucasus, and the Eurasian Economic Union, who spoke about *Environmental, Social, And Corporate Governance (ESG)*.

The Speaker discussed corporate ESG activity, the importance of CSR, and Microsoft's sustainability journey, which is focused on becoming carbon negative by 2030 and supporting customers in their carbon neutrality goals. The *Microsoft Cloud for Sustainability*, a comprehensive digital solution that helps organizations analyze their environmental footprint and proactively reduce emissions, is now available for public preview.

Microsoft R&D is aimed at adapting its data centers to the ecosystem and has determined six enabling conditions for a more sustainable future: *risk recognition, standards-setting, data digitalization, innovation investment, market maturation, and policy progression*.

The Group discussed corporate sustainability within the framework of the *UN Global Compact*, which stipulates businesses should fulfill their fundamental responsibilities in human rights, labor, environment, and anti-corruption.

Almaty Healthcare Reform Working Group, February 4, 2022

The *Almaty Healthcare Reform Working Group* met on February 4 chaired by *Ksenia Babushkina, EY Partner and Head of Advisory Practice*. The latest news in the healthcare system of Kazakhstan was reviewed special attention devoted to the availability, accessibility, and registration of new drugs.

The Group then proceeded to discuss access to medicines for a wide range of patients and the drug price deregulation process in Kazakhstan. If certain drugs are not profitable to sell on the Kazakhstan market, a revision of their prices or their withdrawal from the market will be inevitable. The international experience of Israel, Turkey, and Georgia in deregulation of medicines was considered.

Combined Working Groups by City

Almaty/ Atyrau Human Resources Working Group, February 23, 2022

A joint meeting of the *AmCham Human Resources Working Group* was held on February 23, chaired by *Maxim Gubashev, NES Fircroft Regional Director*. The topic was *Forecast for the O&G Labor Market in 2022: Trends, Risks, Solutions*. The Speaker was *Anna Borovkova, EY People Advisory Services Manager*, who delivered an overview of trends in compensation and benefits in the oil and gas industry.

69% of companies have not changed plans for revising employee salaries, but 25% are planning an upward revision soon. The market continues to struggle with the selection and retention of technical positions.

Samal Tashengaliyeva, NES Fircroft Recruitment Manager for Kazakhstan, delivered a brief update on Outplacement as a solution in Global HR practice. NES Fircroft provides outplacement services to over 4,000 participants globally. 75% received new job offers during or immediately after the program, and 100% reported that the program gave them new ideas and skills.

The final topic was a *Forecast for the O&G Labor Market in 2022*, presented by *Azamat Mambetov, Head of Employment and Social Programs* in the Atyrau Region.

Almaty/Nur-Sultan Foreign Investment Working Group, February 24, 2022

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 24th. The meeting was jointly held with the *AmCham Technology & Innovation Working Group*. Guest speakers were *Deputy Chairman of the Information Security Committee* and *Deputy Chairman of the Telecommunications Committee*.

The meeting was held in the format of an open dialogue with the *Ministry of Digital Development, Innovation, and Aerospace Industry*. Issues related to protection, localization, processing, and state and non-state services for controlling access to personal data were discussed.

According to Kazakhstan's Law dated May 21, 2013 "On Personal Data and its Protection", publicly available personal data are personal data or information that, following the legislation, is not subject to confidentiality requirements, access to which is free with the subject's consent. The operator and owner of the personal database have the right to establish a procedure for withdrawing consent for the collection and processing of personal data, which differs from the procedure for obtaining it if the subject withdraws his consent.

Combined AmCham Tax Working Group, March 3, 2022

A joint meeting of the *Combined AmCham Tax Working Group (Almaty, Nur-Sultan, Atyrau, Aktau, Shymkent)*, chaired by *Anthony Mahon, Partner and Tax & Legal Lead at Deloitte*, was held on March 3. Deloitte Senior Manager Karina Kalimzhanova delivered an overview of international taxation issues: *MLI implementation and WHT update on the dividends issue*.

Igor Kolupayev from Baker McKenzie delivered updates on recent tax audits and court practice. The speaker gave examples of Branch income attributions and royalties from several foreign companies.

A discussion followed on President Tokayev's most recent address and its effect on taxes moderated by Bakhytzhanyan Kadyrov from Morgan Lewis. Main Discussion Points were the *Concept of Investment Policy* until 2025, Dividend Tax exemption to be abolished, Ore Mining – *Increase of Mineral Extraction Tax rates, Tax Incentives for Exploration and Development of New Deposits*.

AmCham CSR Working Group, March 18, 2022

On March 18, a joint meeting of the *Almaty/Atyrau CSR Working Group* was chaired by *Thomas Jose, Beiersdorf Eurasia General Director*. The speaker was *Beiersdorf Brand and Marketing Manager Nelli Kaunash* whose Agenda was 'CARE BEYOND SKIN' - NIVEA CSR INITIATIVE. The speaker outlined Beiersdorf's CSR activities in Kazakhstan and Azerbaijan and introduced the company's CSR plan for 2022.

The purpose of the *Skin-to-Skin Global* project is to train visually impaired people to work on computers and smartphones, help them gain general skills in working with all types of sensory devices, and interact with others. People with disabilities thus become more employable. The company donates 30 KZT and 0.1 AZN to the Red Crescent from each product sold to support the visually impaired in Kazakhstan and Azerbaijan.



In 2022, Beiersdorf introduced courses on creating and editing audio files, contributing to the possibility of additional earnings and education for blind people.

Almaty Technology / Innovation Working Group, March 29, 2022

The *Almaty Technology and Innovation Working Group* met on March 29 chaired by *Sergey Leschenko, Microsoft Country Manager*. Guest Speakers were *Evgenia Lipko, Microsoft for Startups Program Manager / Russia&CIS*, and *Ainur Yesbosynova, General Manager of the Office of International Relations, Investments and Exports of Astana Hub*. The topic was *Support for Startups*.

Microsoft defines a startup as any business that applies an innovative solution that validates a scalable economical model. The United States is the leading country in the number of startups (71,153). 7.1% of the startups in the world operate in the Fintech (Financial Technology) industry. Over 69% of startup companies start as home businesses. Only 40% of startups can become profitable. Competition (19%) is the greatest challenge when starting a business. 58% of startups have less than \$25,000 at their disposal during the startup phase. 60% of entrepreneurs agree that AI is currently the most promising innovation technology. 90% of Startups fail within 10 years. The main reasons: lack of market, insufficient financial resources, competition, pricing/ cost issues.

Designed to support all founders from idea to exit, *Microsoft for Startups Founders Hub* brings together technology, guidance, and support. The international *IT Start-Up Technopark Astana Hub* was opened in November 2018 as part of *Digital Kazakhstan*, a national program.

The *Technopark* has free IT startup development programs: a startup school, incubation and acceleration programs, as well as the *Roadshow Astana Hub*, and prepares and sends Kazakh startups to the world's largest technology exhibitions. *Astana Hub* consists of legal entities, residents and non-residents of Kazakhstan, and supports ICT activities on the *List of Priority Species* in the *Ministry of Digital Development and Innovation*.

WELCOME ADDITIONS TO THE CHAMBER



Apple Inc.

CORPORATE A

Tim Cook
Global CEO
Apple Park
Cupertino, California

Esri Koni
Head, Public Policy and
Corporate Affairs
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Apple Inc. is a multinational technology company that specializes in consumer electronics, software and online services. It is the world's largest information technology company by revenue, totaling 365.8 billion USD in 2021. As of January 2021, it was the world's most valuable company.

Apple was founded by Steve Jobs, Steve Wozniak, and Ronald Wayne as Apple Computer Company in 1976. In 2011, Tim Cook was appointed Apple's global CEO, a leadership position that he retains today. The company went public in 1980, to instant financial success.

Apple developed computers featuring innovative graphical user interfaces, including the original Macintosh. In January 2007, the company shifted its emphasis from computers to consumer electronics. This event also saw the announcement of the iPhone and the Apple TV. In January 2016, it was announced that one billion Apple devices were in active use worldwide.

Apple Inc. became the first publicly traded U.S. company to be valued at over \$1 trillion in August 2018, then \$2 trillion in August 2020, and most recently \$3 trillion in January 2022.



NetFlix

CORPORATE A

Reed Hastings
Global CEO
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Founded in 1997, Netflix is the world's leading streaming entertainment service with 214 million paid memberships in over 190 countries where members enjoy TV series, documentaries and feature films across a wide variety of genres and languages. Netflix initially both sold and rented DVDs by mail, but sales were eliminated within a year to focus on DVD rentals. In 2007, Netflix introduced streaming media/video on demand. Today 40% of Netflix original programming is produced in-house.

Netflix has won numerous *Emmy Awards*, *Golden Globes*, and *Academy Awards* for the high quality of its original television productions and films.

On October 13, 2021, Netflix announced the launch of the *Netflix Book Club*, where readers will hear about new books, films, and series adaptations. The company will partner with Starbucks to bring the book club to life via a social series called *But Have You Read the Book?*

Netflix is headquartered in Los Gatos, California and is ranked 164th on the Fortune 500 and 284th on the Forbes Global 2000. It is the largest entertainment/media company by market capitalization. During the last decade, Netflix was the top-performing stock in the S&P 500 stock market index, with a total return of 3,693%.



QATAR AIRWAYS

CORPORATE A

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Qatar Airways, is the state-owned flag carrier airline of Qatar. Headquartered in the Qatar Airways Tower in Doha, the airline operates a hub-and-spoke network, flying to over 150 international destinations across Africa, Asia, Europe, the Americas, and Oceania from its base at Hamad International Airport, using a fleet of more than 200 aircraft flying to over 173 destinations. Qatar Airways Group employs more than 43,000 people. The carrier has been a member of the *Oneworld* alliance since October 2013.

Since its founding in 1997, Qatar Airways has earned numerous awards and has been included in the circle of elite global airlines that have received a five-star rating according to Skytrax. Having gained the trust of travelers, Qatar Airways became the '*Best Airline in the World*' according to Skytrax in 2011, 2012, 2015, 2017, 2019 and 2021. In addition to First Class and Business Class, Qatar Airways offers Economy Class, named '*Best in the World*' in the 2009 and 2010 Skytrax Awards. It also operates a corporate jet service.



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