

IV Investors' Voice

The American Chamber of Commerce in Kazakhstan

Kazakhstan's leading International Business Association



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#101

Kazakhstan Prepares for Tax Code Reform



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The OECD View

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Kazakhstan

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EDITOR'S NOTE



Dear Readers,

Each year AmCham begins *Investors' Voice* with a review of tax issues, some new, some lingering and unresolved for years. The current Issue contains a mixture of the old and the new, but the Government's intention to update and revise the *Kazakhstan Tax Code* sounds a hopeful note. This is an ambitious goal, but one that AmCham and its members welcome and strongly support.

With this objective in mind, AmCham devoted two of its most recent Council sessions with the *Prime Minister* to tax issues of concern to investors in all industries. Differences of opinion and tax disputes between the business community and the government are not uncommon throughout the world, but in Kazakhstan these disputes too often lead to litigation – often leading into the Supreme Court – instead of a speedy resolution.

Litigation instead of resolution is a source of frustration to investors, often causing them to reduce their investment and serving as an obstacle to tentative new investment. Investors choose countries where they can fully devote their efforts to business development, which Kazakhstan aims to encourage, but litigation and continuous tax disputes at odds with international best practices is counter-productive.

And so the planned *2023 Tax Code Reform* is welcomed with hopes for better coordination with international best practices and an easier climate for economic development. The articles in this Issue of *Investors' Voice* combine many voices on different, but crucial topics: *International Financial Institutions* such as the *OECD (Organization for Economic Cooperation and Development)*, *IFC (International Finance Corporation, a branch of the World Bank)*, *ADB (Asian Development Bank)*, *Embassies (Ambassadors of Canada and the United Kingdom)*, *Law Firms (Morgan Lewis, BakerMcKenzie, Kinstellar)* the *Big Four* accounting firms (*EY, PwC, KPMG, Deloitte*), and *Corporate CEOs* of leading international companies.

The chorus of voices above are united in their hopes and expectations that many of the crucial tax issues they have confronted for years will be changed so as to allow for increased investment in Kazakhstan, a country that holds so much promise in its rich natural resources, its endless agricultural potential, and the talent of its people. AmCham will support the Government in every way in this year's Tax Code Reform effort.

Doris Bradbury
Executive Director



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Kathy Leach joined the Foreign Office (now the Foreign Commonwealth and Development Office) in 2000. Over the course of her career she has worked on EU trade and development, security policy, human rights, consular policy, climate change and energy, and UK-EU negotiations. She has been posted to Moscow and Tokyo and was Ambassador to Armenia from 2012-2015. Most recently, in London she was Head of the Policy Unit, then Deputy Director of the Strategy Directorate, before becoming Deputy Director of Constitution and Devolution in the Europe Directorate. She took up her role as Ambassador to Kazakhstan in August 2021.

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Ben Dickinson joined the OECD in 2005 as Head of the Governance and Fragile States Unit in the Development Corporate Directorate, responsible for the Development Assistance Committee's work on economic governance, conflict, and security matters. He established the OECD's horizontal work on taxation and development and illicit financial flows.

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TAX POLICY CHALLENGES AND OPPORTUNITIES FOR KAZAKHSTAN

by Ben Dickinson, Head of Global Relations / Development Division

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Kazakhstan's Taxation Partnership with OECD

Kazakhstan and the *Organisation for Economic Cooperation and Development (OECD)* have been collaborating on taxation initiatives for more than a decade. Kazakhstan is a member of the two bodies established and hosted by the OECD to deal with international taxation, namely the *OECD/G20 Inclusive Framework on BEPS*, bringing together 142 countries and jurisdictions, and the *Global Forum on Transparency and Exchange of Information for Tax Purposes*, whose membership is comprised of 166 countries and jurisdictions. Kazakhstan is involved on an equal footing with other members in both projects.

As a member of both multilateral standard setting bodies, Kazakhstan is participating and contributing towards the development of new international standards, such as the *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* as well as standards on *Tax Transparency and Exchange of Information*. At the same time, Kazakhstan is making significant progress and is a regional leader in implementing these global standards and best practices in international taxation.

The results of these efforts are two-fold – increased tax revenues due to the ability of Kazakhstan to prevent revenue loss resulting from aggressive tax avoidance practices as well as tax evasion, while also enhancing the business climate by aligning its tax policies and administration approaches to those applied by its major trade and investment partners.

Kazakhstan also signed and ratified both the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (signed in December 2013 and in force since August 2015), and the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (signed in June 2018 and in force since October 2020).

Further, Kazakhstan is the beneficiary of technical assistance and capacity-building programs as part of a *BEPS Induction* programme launched in 2017, as well as of the *Global Forum*, enabling Kazakhstan to send and receive information based on the *Automatic Exchange of Information Standard*.

As part of the joint *OECD-UNDP* initiative – *Tax Inspectors Without Borders (TIWB)* – Kazakhstan is in the process of gradually enhancing its capabilities to review and audit complex international transfer pricing cases since 2020. Thanks to the support provided through the *TIWB* programme, Kazakhstan has already collected significant additional tax revenues, which amounted to USD 160 million in 2022.

In addition, Kazakhstan previously worked with the OECD in conducting a *Tax Policy Review* of its taxation framework, and a final report was issued in September 2020. The final report contained valuable recommendations that are relevant to the ongoing tax reform.

This year, Kazakhstan and OECD are jointly launching a new transfer pricing reform project. The main objective of the project is to build on the initial work of reforming Kazakhstan's transfer pricing legislation, carried out in the years 2020-2021. This new project will achieve closer alignment of Kazakhstan's transfer pricing framework with the OECD transfer pricing standard, as well as enhancing tax certainty and predictability for the business community, notably by establishing a predictable transfer pricing framework and administrative practices with the objective of preventing double taxation.

Another goal of the project is to stop revenue losses resulting from the existence of gaps and divergences in Kazakhstan's transfer pricing rules, which are exploited by some *MNEs* operating in Kazakhstan. This has been evidenced by the work carried out through the *TIWB* initiative. This transfer pricing project will involve a systematic review of the current legal and administrative framework to assess its strengths and weaknesses, which will inform further policy design and legislative drafting work as well as capacity-building activities.

Finally, Kazakhstan recently joined the newly launched *Inclusive Forum on Carbon Mitigation Approaches (IFCMA)* in January 2023, together with 132 other countries, with a view to work on a multilateral basis to jointly analyse best practices and identify suitable policies to achieve net-zero carbon emissions targets.

Further opportunities also remain in terms of assessing the impact of Kazakhstan's tax system, based on evaluation of the design of the system in ways that support inclusive growth, while being aligned with the principle of ability to pay. Co-operation with the OECD in this area was discussed in February 2022 between the *Minister of Economy – Alibek Kuantyrov* and the *Director of the OECD Center for Tax Policy and Administration – Grace Perez-Navarro*.

Additional collaboration is foreseen on this topic to support Kazakhstan in addressing the tax policy and administration challenges already identified, while supporting Kazakhstan in formulating practical and tailored responses.

Opportunities for a Broader Tax Reform

As the 2020, the *OECD Tax Policy Review* report explained, Kazakhstan currently relies significantly on revenues from the natural resource sector and in particular O&G. The non-O&G tax revenues are low, undiversified, and volatile by international standards. Despite the nominal increase of tax revenues over the past decade, taxes as a share of GDP in Kazakhstan have decreased and remain low by international standards.

While the OECD's tax policy recommendations remain accurate, the sense of urgency for reform has increased further because of the invasion of Russia in Ukraine, which has contributed to rising inflation and interest rates.

In fact, it needs to be acknowledged that Kazakhstan is running a significant non-oil deficit. The analysis of the non-oil deficit in our report shows that it could range from 4% to 7% of GDP by 2025. Climate change and global efforts to mitigate its impact through a reduction in the use of fossil fuels further amplifies this issue. This is an important point because Kazakhstan's tax-to-GDP ratio was 16.7% in 2019, below the Asia and Pacific (24) average of 21.0%. Furthermore, it is below the OECD average (33.8%) by 17.2 percentage points.

The general idea of a non-oil deficit is to disregard oil revenues from the budget to provide a more realistic measure of the budget deficit in the absence of oil revenues. There is an interaction with oil prices – when countries around the world start lowering their demand and supply remains fixed, prices of fossil fuels may decline over time; so it is imperative that the revenues generated from the oil sector be put aside for a rainy day in the future.

Therefore, Kazakhstan should strengthen the design of its tax system and start raising additional tax revenues from alternative sources to support its medium-term goals and longer-term sustainability. The financing needs of the country could be met by gradually increasing non-resource taxes.

By diversifying the economy, Kazakhstan's reliance away from the fossil fuel sector will make the country more resilient over the medium to long-term. As a general recommendation, our report suggests that Kazakhstan should not focus on increasing tax rates on the currently narrow tax base in the case of most taxes; rather, the priority should be broadening the tax base and increasing levels of tax compliance. That is the best strategy to also stimulate broader economic activity (beyond the fossil fuel sector).

Financing needs could be met by gradually increasing some taxes that have potential for generating more revenue and are not linked to the extraction of natural resources. Additional tax revenues could be raised from personal income tax (*PIT*), social security contributions and property tax with a modest increase in taxes on goods and services. In particular:

- *Kazakhstan could consider transitioning to a progressive PIT system to support equity and raise revenues over the medium-term but not before certain preconditions are addressed, including implementation of the universal tax declaration.*
- *The taxation of personal capital income needs reform. Personal capital income such as dividends and capital gains are mostly exempt from tax in Kazakhstan. Where tax does apply, the rates are low. Some of the exemptions on personal capital income could be removed and a single low rate or a progressive rate could be applied across all forms of personal capital income (either by taxing capital income jointly with labour income or by applying a separate progressive rate schedule on personal capital income).*

Further, the lessons learned from the Covid-19 pandemic and a need for extra financing for the health system and social protection raises the issue of the role of social security and health taxes, a growing international topic where the OECD is able to assist Kazakhstan. Kazakhstan should continue implementing its current reform of the social security contributions system to support the underperforming health and welfare systems while also considering broadening the base for social security contributions.

There are also opportunities in the form of revenue potential and positive impact on lifestyle changes that can be achieved through the introduction or reform of specific excise taxes levied on the consumption of tobacco, alcohol, sugar-sweetened beverages and other selected products, which may also induce people to live healthier lifestyles.

Corporate income tax revenues are generated by a small number of companies and sectors. Scope exists to broaden the corporate income tax (*CIT*) base while maintaining the 20% *CIT* rate at its current level. Kazakhstan offers many generous tax incentives to companies that come at a significant tax revenue cost. A comprehensive review of the current incentives, including their effectiveness, is recommended.

Attention should also be given to the tax and the informal sector. An appropriate design of presumptive tax regimes in Kazakhstan is a topic for further work where the OECD stands by to provide assistance. The number of special tax regimes for *Small and Medium Enterprises (SMEs)* could be reduced. In addition to reducing the number of special tax regimes for *SMEs*, the design of some regimes could be strengthened. This area of tax reform has become more urgent with the recent surge in creation of *SMEs*, which may constitute a driver of growth and an opportunity to broaden and diversify the tax base.

Opportunities also remain in the area of *Value Added Tax (VAT)*, where the transactions involving cross-border sales of goods and services via digital platforms present opportunities for tax reform in Kazakhstan. These transactions are already partially included in the *VAT* base in the area of services, but further tax base broadening is feasible in respect of the application of *VAT* rules on the remote sales of goods into Kazakhstan.

Transfer pricing reform to ensure closer alignment to the OECD standard and prevent BEPS, while ensuring tax certainty and a stable environment for business

Kazakhstan introduced transfer pricing legislation in 1995 when, following the country's independence, the first modern taxation framework of Kazakhstan was put into place with the *1995 Law on Taxes and Other Obligatory Payments to the Budget*. This law contained a general provision that permitted the tax authorities to adjust the income of a taxpayer if transaction prices between the parties deviated from the objectively determined market price.

This rule applied to transactions with non-residents and residents that benefited from tax incentives. Furthermore, the rule explicitly permitted reclassification of a transaction based on economic substance, a critical tool to address tax avoidance resulting in base erosion and profit shifting (*BEPS*). This is a fundamental part of the OECD transfer pricing framework but it is absent in Kazakhstan's current framework.

Since 2001, the issues of transfer pricing are regulated by a separate law – initially by the 2001 *Law on State Control over the Use of Transfer Prices* which as of 2008, was replaced by the *Law on Transfer Pricing*, still in force and applicable today. Over time, there have been several secondary laws (i.e. regulations) relevant for its application.



While the Kazakhstan *TP* framework is inspired by the international standard represented by the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (hereinafter *OECD Guidelines*), the *OECD Guidelines* are not recognized as an official or binding source of interpretation. At best, they can be considered a source of inspiration both for the taxpayers and the tax administration, but the legal framework, as well as administrative practices, may lead to outcomes that deviate from the *OECD Guidelines*.

These deviations have been very well known among foreign investors for unpredictable outcomes and risks of double taxation. Several attempts have been made to bring the transfer pricing framework into line with international standards. However, these attempts resulted only in fragmented and marginal changes and, as a result, the current transfer pricing system continues to contain significant gaps and divergences from the international standard.

OECD and Kazakhstan started a working dialogue on transfer pricing in 2019, which has been carried out in the context of two ongoing technical assistance programmes: “*Assistance in Implementation of BEPS Recommendations*” and “*Tax Inspectors Without Borders (TIWB)*”.

Both of these projects identified significant gaps and divergences between Kazakhstan’s current legislative and administrative transfer pricing framework and the internationally accepted transfer pricing standard represented by the 2022 edition of the *OECD Transfer Pricing Guidelines for Multinational Enterprises*. These Guidelines are followed by the vast majority of countries around the world as well as all the key trading and investment partners of Kazakhstan. The risk of double taxation as well as tax uncertainty persists, negatively affecting the business climate but surprisingly these divergences also have a negative impact on tax revenues.

The findings of the joint *OECD-UNDP TIWB* program indicated significant revenue losses resulting from *Base Erosion and Profit Shifting (BEPS)* practices in Kazakhstan. *BEPS* outcomes materialise partially as a result of legislative and administrative gaps since Kazakhstan did not fully implement some key international standards and *BEPS* recommendations, in particular in the area of transfer pricing. Such gaps and divergences have a dual effect.

As already explained, there is a significant risk of double taxation, which creates uncertainty for investors, unpredictability of administrative outcomes, while the eminent risk of double taxation also presents a barrier to trade and some types of investments.

On the other side, evidence collected during the *TIWB* program also leads to understanding that these gaps and divergences are being exploited on a large scale by some *MNEs* for purposes of eroding the tax base and shifting profits out of Kazakhstan, including through aggressive tax avoidance

arrangements involving undervaluation of exported minerals and agricultural commodities, as well as abusive financial transactions. As a consequence, Kazakhstan experiences revenue losses in the range of hundreds of millions, but more likely billions of US dollars, prompting immediate tax policy action and administrative attention.

The *Transfer Pricing* project, foreseen as one of the joint projects between OECD and Kazakhstan in 2023-2025, should bring more transparency and public awareness in relation to these challenges and should also inform further tax policy design and capacity building in tax administration to address these gaps and divergences.

Alignment to the OECD standard on transfer pricing thus clearly presents an important and strategic step that can contribute towards reduction of the magnitude of those revenue losses and increase investment attractiveness by ensuring tax certainty and predictability, as well as reduce the pressure on introducing new taxes. Therefore, it is likely that this topic will remain an important tax policy and tax administration priority for Kazakhstan.

Such alignment with international standards will need to be accompanied by further investment in the administrative capacities of the tax administration with a view to ensuring their consistent application and the predictability of outcomes and tax certainty by implementing best practices in tax administration. Significant investment in tax administration capacities is also required to boost expertise levels and professionalism to ensure that the tax administration is able to attract, train, and retain the best talent to administer the new framework and fully accomplish the aspirations of transfer pricing reform.

It is obvious that this specific area of taxation requires appropriate staff attraction and retention policies to ensure that the tax inspectors administering the new transfer pricing framework have superior knowledge of the international standards. In addition, these inspectors will need to develop an in-depth understanding of business models and operations, as well as tax avoidance and tax planning strategies of *MNEs*. Finally, they will need to have excellent command of English language and other relevant languages so they can engage with foreign tax administrations to effectively exchange information, joint and coordinated audits, and resolve cases that result in double taxation.

Relevance of the Two-Pillar Solution

Like many other countries, Kazakhstan experiences the remaining tax challenges brought by the evolution of *MNE* business models, ongoing globalization, and digitalization, which penetrates all sectors of the economy. These challenges are further exacerbated by tax competition efforts, which resulted in drastic reduction of corporate tax rate in recent decades and is also demonstrated also through the phenomena of so-called low or no tax jurisdictions. This in turn presents a key motivation for *MNEs* to engage in *BEPS* practices.

Kazakhstan participated in the challenging and ambitious work plan to address these issues and, along with 138 jurisdictions, joined the October 2021 *Statement on a Two-Pillar Solution to Address Tax Challenges from Digitalisation of the Economy*.

Pillar One contemplates development of a new taxing right for jurisdictions such as Kazakhstan to enable them to tax the profits of the biggest and most profitable *MNEs*, which are able to sell their products and provide their services to consumers in Kazakhstan even without a physical and taxable presence in the jurisdiction. The new taxing right will re-allocate part of their profits to Kazakhstan. Without this rule, these companies can continue to earn significant profits in the Kazakhstani market, paying little or no tax there.

While the work and inter-governmental negotiations on *Pillar One* are still ongoing, the work on *Pillar Two* (*GLoBE rules*) has reached the stage where more than 40 countries are already in the advanced stage of implementing the new rules that establish and enforce a minimum level of corporate taxation of at least a 15% effective tax rate.

The *GLoBE rules* are designed to reduce the motivation of *MNEs* to erode the tax base of countries like Kazakhstan and to shift profits to low or no-tax jurisdictions. Instead, the profits of large *MNEs*, which are currently taxed at an effective tax rate of less than 15%, will be taxed in the jurisdictions where the *MNE* has the ultimate parent company or an intermediate holding company. Alternatively, these profits could be taxed in Kazakhstan if Kazakhstan implements the *GLoBE rules*.

It is estimated that implementation of the new rules reflected in the *Two-Pillar* solution will initially bring additional annual tax revenue to Kazakhstan of approximately EUR 100 million. This revenue is likely to increase in future years.

The adoption of *Pillar Two GLoBE rules* by major trading partners of Kazakhstan also presents an opportunity or even the urgency for Kazakhstan to review and rethink the approach to granting the corporate income tax incentives. As under *Pillar Two*, the tax revenue that Kazakhstan may give up by granting these costly and often ineffective tax incentives could instead be taxed in other jurisdictions, which would render the tax incentives ineffective in some cases while at the same time resulting in significant tax revenue loss for Kazakhstan.

Naturally, for Kazakhstan to reap those potential additional tax revenues as well as deriving the indirect benefits of reduced tax avoidance practices, Kazakhstan will need to take further legislative action to implement these new standards in domestic law. The ongoing tax reform is an excellent opportunity to do so. OECD is ready to support Kazakhstan with the implementation of the *Pillar 2 GLoBE rules* to reach these goals.



Climate Change as a Fiscal Challenge and Opportunity for Further Reform

Along with many other countries, the increasing importance of the climate change agenda is both a challenge and an opportunity for Kazakhstan.

Kazakhstan is heavily reliant on the Oil & Gas (O&G) sector for both tax revenues and exports. In the long run, strong reliance on these resources is unsustainable in light of the global commitment for a reduction of greenhouse gas emissions. During the transition phase, oil and gas will continue to be used, but at a declining rate, and Kazakhstan will need to carefully evaluate its position in the global supply context. Meanwhile, diversification of the tax base is urgent through a combination of tax and non-tax policy changes.

Despite being an oil producer, Kazakhstan can still consider measures to discourage domestic consumption and investment in carbon-intensive production methods, through carbon prices. This need for reform presents an opportunity for Kazakhstan to transform its economy as well as its tax revenue structure. There are also significant implications for other exports, heavily reliant on energy inputs from fossil fuels (processing of minerals and iron-based products, such as steel).

The EU has a concrete proposal for a carbon border adjustment mechanism (*CBAM*), and other major trading partners of Kazakhstan are considering border carbon adjustments. Since such policies will often account for carbon prices applicable to imported goods, this creates an incentive to advance carbon pricing in Kazakhstan, given that these jurisdictions are Kazakhstan's main export destination.

Kazakhstan can build on its existing taxation framework, which already includes implicit carbon pricing through fuel excises, as well as explicit pricing with its *Emissions Trading Scheme (ETS)*. This can be strengthened by adding a carbon tax or increasing coverage and stringency in the *ETS* (including the phasing out of any free permits, potentially in tandem with the gradual phase-in of the *EU CBAM*).

There may also be a need to consider the role of environmental taxes and carbon taxes for Kazakhstan from a fiscal point of view. These taxes will raise revenues that can be used in different ways. The revenues can be used to assist industries with their reconversion and to support the strategic objectives of diversifying the economy, protecting vulnerable households, or keeping other taxes lower than they would otherwise need to be to fund a given level of spending.

Tax incentives can potentially play an important role in transforming the ways the relevant industries operate, and can influence the behaviour of households. The OECD is aware of discussions in respect of tax incentives requested by businesses to offset potential carbon taxes and import duties on exports to EU and other jurisdictions. The design of those incentives is critical to ensuring they are effective and the revenue losses are offset by other revenue gains.

More broadly, the use and design of tax incentives is also relevant in the context of changes to the international tax rules that have been explained

above. Specifically, the elements of the *Pillar Two GLoBE rules* will require Kazakhstan to rethink the current approach to existing and future tax incentives.

In February 2023, the inaugural meeting of the *Inclusive Forum on Carbon Mitigation Approaches (IFCMA)* took place. This new initiative seeks to support dialogue to strengthen global climate mitigation action by providing data on the full range of climate change mitigation policies that countries undertake, map these policies to the emissions base, and estimate the effects they could have on emissions. The *IFCMA* will involve a very broad range of countries, including Kazakhstan, on an equal footing.

Kazakhstan is in the process to become one of the first members of the *Inclusive Forum on Carbon Mitigation Approaches (IFCMA)* and is well positioned to engage in this emerging policy dialogue that may further contribute to identifying and informing both the tax and non-tax policy priorities and strategies for Kazakhstan to address these challenges.



Conclusion

The OECD stands ready to support Kazakhstan in redesigning the tax system and transitioning to a more inclusive and sustainable tax system, which will contribute towards diversification of the economy, broadening the tax base. The ongoing tax reform may involve several stages as there is not a single challenge but several such areas that need to be carefully analysed and considered.

Next to tax policy, there are also opportunities in improving the tax administration as well as enhancing the voluntary tax compliance. The digitalization of the economy, which is penetrating different sectors and industries also plays an important role in modern tax administration.

A CONSIDERATION OF FISCAL DECENTRALIZATION IN KAZAKHSTAN

by **Nariman Mannapbekov**
Country Director
Asian Development Bank (ADB)

Like many of Kazakhstan's development partners, the Asian Development Bank appreciates the Government's efforts to move some of country's regions out of the so-called development trap. ADB also welcomes several measures undertaken to overcome a rising social discontent, the roots of which were the quality-of-life and access to services.

Last year (2021) ADB produced the *Regional Competitiveness and Cohesion Index* for Kazakhstan. This index measured the performance of administrative regions across six quantitative dimensions, including education, health, innovation, labor markets, technological readiness, and market size. Considerable regional disparities are growing among the regions in terms of economic, employment, and productivity opportunities and competitiveness, although this is not new. From an economic perspective, the potential of many regions remains untapped. From a social viewpoint, regional stagnation is limiting opportunities for the population, especially youth.

To better understand and assess the sources of regional disparities, ADB and the *Economic Research Institute* have just completed a survey of the well-being of residents across Kazakhstan's twenty administrative region. This will assist in formation of a view on the need and *ways to improve the country's fiscal decentralization and income redistribution policies*. We believe that fiscal decentralization should be at the crossroads of both tax policy and the agenda for local governance reforms.



The existing centralized fiscal management system leaves many regions dependent on the central government. More than 60% of total subnational budget revenues consist of central government transfers (compared to 41.2% on average in OECD countries in 2020). Local government own-source revenues are marginal and their scope for fiscal initiatives is very limited. Most regions suffer from fiscal imbalances. Hence, in terms of fiscal decentralization, tax policy in midterm could be geared towards *increasing the share of property and resource tax revenues retained by local governments*. This would strengthen the regional resource base and incentivize local governments to improve collection and administration.

Since 2018 local governments have been allocated seven types of tax and non-tax revenues as part of the devolution of their budget. However, the current system falls short of addressing development needs as most of the funding is conditional and transferred top-down by the central government. This increases concentration of economic activity in certain regions of Kazakhstan and limits opportunities to mobilize local potential in every region to maximize economic dynamism. To improve fiscal resilience of the regions in the long run, instead of increasing tax rates on the currently narrow tax base in the case of most taxes, the government could instead focus on *broadening the tax base and enhancing tax compliance*.

Early next year the Asian Development Bank will present the first wellbeing index for the regions of Kazakhstan, highlighting perceptions of welfare and opportunities across the country. This wellbeing index will serve as the base to inform policies – among others - on highlighting the need for *implementing place-sensitive development strategies* by emphasizing fiscal decentralization to help maximize the potential of every region in the country.

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PERSISTENT TAX OBSTACLES THAT CAN BE RESOLVED

by Anthony Mahon
Partner, Cross-Border Taxation
Deloitte CIS

The events of the last twelve months have, once again, provided previously unforeseen and acute challenges to Kazakhstan and the whole region. As Kazakhstan continues to navigate these turbulent times, economic uncertainty pervades the global economy and the country (like many others) must brace itself for potential shocks brought about by any potential global economic slowdown.

However, notwithstanding the global currents that continue to impact the country's economy, Kazakhstan is faced with its own significant economic challenges brought about, in significant part, by the global imperatives of energy transition.

The major capital project coming towards completion in Atyrau oblast is the last major planned investment into the hydrocarbon industry in-country. Kazakhstan must now grapple with the existential question of whether it is capable of attracting significant new investments from overseas, whether these be from existing investors in Kazakhstan or new entrants.

Notwithstanding the fact that Kazakhstan retains substantial volumes of natural resources that are attractive to investors, the unfortunate truth is that many foreign investors continue to have negative experiences when doing business in Kazakhstan – specifically when it comes to taxation – both in terms of tax policy and tax administration.

Outside the natural resources industry, Kazakhstan must also now address the reality that other businesses (such as those in the consumer goods sector) can no longer do business in Kazakhstan as part of a broader “CIS-wide” operation using the Russian Federation as a hub for supply chain and logistics purposes. This makes doing business in a huge and geographically distant country such as Kazakhstan more economically difficult. Unforeseen incremental taxes imposed on such businesses make their operations in Kazakhstan even less attractive to their investors.

As has been mentioned today, the program of comprehensive tax reform during 2023 should be viewed as a much needed and positive step towards addressing some of the challenges the country faces in both keeping its current investors in-country (and actively investing) but also potentially attracting major new sources of investment.



However, in order to be capable of attracting new investment (and continued re-investment) it is imperative that Kazakhstan reverses the trend of recent years of enacting tax reforms and new laws which:

- **actively seek to target and impose additional taxes upon foreign investors**
- **run contrary to the widely accepted principles of international taxation.**

When such tax code provisions are combined with tax administration procedures and practices that – in practical terms – often make it impossible for taxpayers to benefit from the protections of double tax treaties concluded by Kazakhstan, the effect is an unexpected and unplanned increase in taxation for foreign investors.

Three of the most problematic examples of such damaging tax law and administration relate to:

- **The taxation of non-residents with a permanent establishment in Kazakhstan (Article 666)**
- **The taxation of dividends (and restrictions to exemptions from withholding tax) set out in Article 667;**
- **The definition of royalties set out within Article 1 of the Tax Code and the manner in which this definition (and its non-alignment with the principles set out by the OECD in its *Model Double Tax Treaty* AND the treaties concluded by Kazakhstan) is being used to reclassify service charges (commonly used within the groups of most, if not all, foreign investor groups) as royalty payments and to impose withholding taxes thereupon.**

Where investors routinely encounter problems like this in terms of a bad Tax Code or overly aggressive tax administration, the effect is to push up the risk premium of investments into a country like Kazakhstan.

In today's global economy – where there is increased competition for capital in organizations which have traditionally been major investors in Kazakhstan - the country can ill afford such an increase in the perceived risks of investing in Kazakhstan. A better balance must be struck between the desire for an increase in the level of short-term tax revenues and conditions which facilitate the creation of long-term economic prosperity for Kazakhstan.

The pending process of taxation reform must operate so as to bring these and other similar concepts of taxation into line with internationally accepted and widely adopted principles of cross-border taxation.

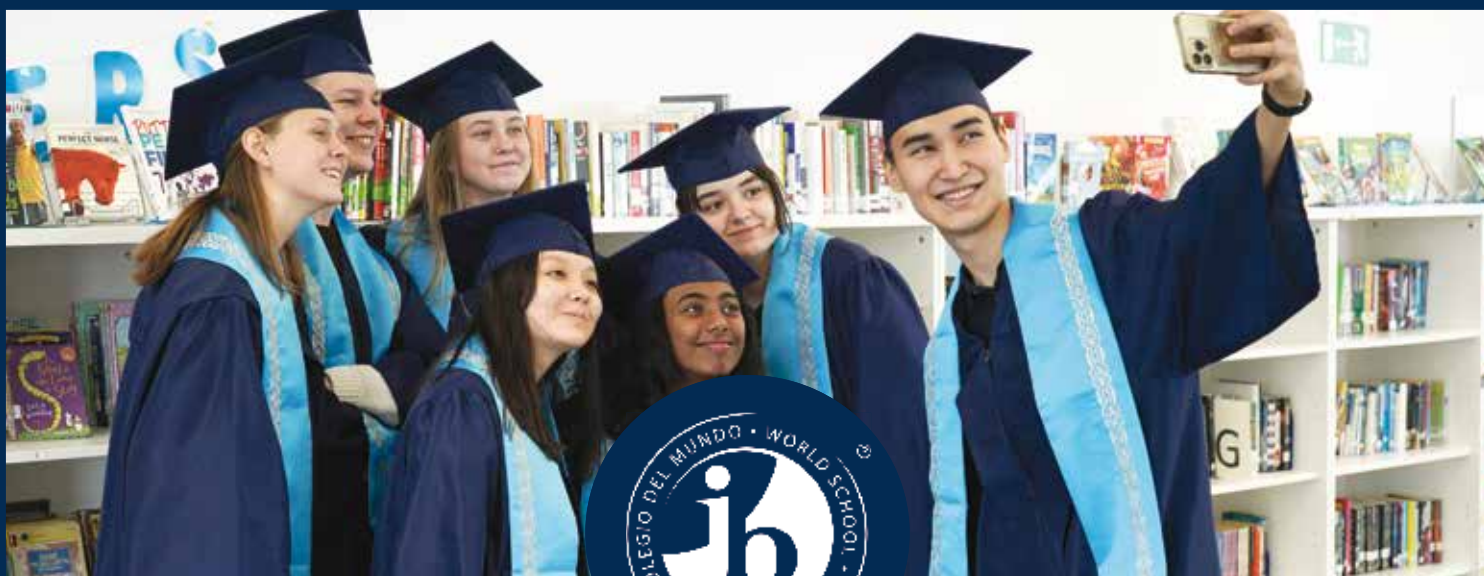
Tax law that strays from generally accepted international or domestic best practices and renders investment in Kazakhstan less attractive would have completely the opposite effect.

Conclusion

AmCham and its members are ready and willing to participate in extensive consultation with the state authorities to provide investor perspectives and examples of global best practice with a view to helping Kazakhstan create a taxation framework that encourages investment and leads to greater long-term prosperity for Kazakhstan.



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TAX POLICY AS A DRIVER OF INVESTMENTS AND NEW TECHNOLOGIES

by Inna Alkhimova
Partner, Head of Tax & Legal
KPMG Caucasus and Central Asia

Fiscal policy is the main tool of the government to stimulate business and increase investment in the economy. Since Kazakhstan's independence, the country's tax legislation has undergone significant positive changes. However, in terms of tax administration, there are problems that reduce Kazakhstan's attractiveness to investors, creating barriers to investment and the introduction of new technologies into Kazakhstan.

There are three major problems in the field of international taxation that need to be resolved in order to stimulate foreign investment for Kazakhstan.

The first problem is ignoring tax treaties with respect to double taxation. These treaties give the right to tax income to the government on whose territory the business activity is conducted and the corresponding income is received. In recent years, Kazakhstan tax authorities have taxed income earned by non-residents exclusively outside Kazakhstan in foreign countries based only on the presence of these non-residents in Kazakhstan. This contradicts the norms of tax treaties and international practice, negatively affecting Kazakhstan's investment image. However, this problem can be resolved through appropriate amendments to tax legislation.

Second, tax treaties governing taxation of royalties are ignored in Kazakhstan. The reason is the incorrect interpretation of the concept of "royalty" by the tax authorities when applied in practice, which contradicts the norms of tax treaties. This significantly reduces the usage of sophisticated technologies in Kazakhstan. Apart from contravening international best practices, in most CIS countries non-resident incomes are not taxed in the importing country for new technologies, sophisticated equipment, and software products.

It should be noted that Kazakhstan strives to develop its own sophisticated technologies, but there is still a need to acquire these technologies abroad. It is therefore recommended to resolve the problem of royalty taxation by bringing Tax Code norms into conformity with the provisions of the relevant tax treaties in order to interpret and apply these norms without ambiguity.

Third, new problems are emerging for international companies due to recent changes in tax legislation. Thus, restrictions were introduced to reduce taxable profit on expenses related to the acquisition of various specialized services (management, consulting, engineering) and intellectual property rights from interrelated parties within the group. This new restriction greatly disturbed the foreign business community and may reduce international business in Kazakhstan. This in turn will negatively affect jobs and tax revenues to the country's national budget. Instead of these restrictions, we propose to more effectively implement existing methods of control over intra-group international transactions in transfer pricing legislation.

In our opinion, all of the above steps on the part of the tax authorities to increase tax revenues for Kazakhstan produce only a short-term effect.

We should note that international taxation policy is becoming even more important in light of the current relocation of international business to Kazakhstan. According to statistics, relocating business to Kazakhstan to a certain extent compensates for the volume of medium-sized businesses in the country's economy that has decreased in recent years. This relocation of foreign business to Kazakhstan may have a long-term positive effect.

KPMG tax experts previously submitted tax reform recommendations to the government, among which the following recommendations may be of particular interest for reform of the Tax Code:

- **Integration of tax policy with Kazakhstan's investment policy**
- **Creating a new perception of Kazakhstan's tax system as fair and transparent, thus creating trust between businesses and the government**
- **Increasing the transparency of tax legislation and decision-making through digitalization**
- **Tightening control over the local tax authorities and increasing responsibility for illegal actions**
- **Hiring international experts to analyze and implement best international practices in the field of tax policy and administration**



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TAX POLICY: COMMENTARY AND RECOMMENDATIONS

by Ambassador Alan Hamson
Ambassador of Canada to Kazakhstan

Canada welcomes the Prime Minister's initiative to ensure that investors' views are taken into account in the development of the Kazakhstan economy. Canada recognizes the work of the Government of Kazakhstan on its project of reform of the Tax Code. The challenge of improving tax administration is a key priority.

Tax Code complexity

Canada recognizes that tax codes are often complex, as they must contend with many spheres of the economy. Nonetheless, we would encourage the government to limit cross-referencing the tax code with subsidiary laws and norms as it makes it difficult to reach clarity and provide room for interpretation.

Kazakhstan's Tax Code is particularly complex as it has 1,379 references to other laws and norms, while 18,821 references in other laws and norms are made to the Tax Code.

Risk Management System

Canada also observes that the *Tax Code's Risk Management System* seems to lack clarity on how businesses will be assigned a specific risk category. While the general criteria for assignment of risk categories are known (e.g. their activities and possible risk of fraudulent activities), there is no clarity how this risk will be determined and assigned to each company.

The fact that the attribution is confidential also raised some concerns in terms of transparency. Similar activities could be assigned different levels of risks without apparent reasons. Which categorization is assigned to a company has significant impacts on companies, as different levels of risk imply different levels of actions, including in some cases sanctions.

Any lack of clarity with such impactful designations creates uncertainty in the business environment and discourages investment. If such risk management should be implemented, there should be clear criteria on the process for determining into which category a company should be placed, including clear and unambiguous criteria with as little room for interpretation as possible, as well as clarity on the implications and sanctions associated with different scenarios.



Value-Added Tax (VAT)

Canada believes that there could be improvements on the process of requesting and retrieving VAT. We suggest to simplify the process, with greater information available on VAT procedures, and clear explanations of why a given VAT retrieval request may be rejected.

At this time, it is very difficult for exporters to retrieve VAT, and there is a lack of transparency on which exporters have returned how much and which companies have been rejected.

Interpretation

As much as possible, Canada encourages Kazakhstan to remove interpretive steps from the administration of the Tax Code so that there are fewer opportunities for error or for difficult discussions between tax authorities and businesses which raise other risks. This applies to the return of VAT, to payment of land tax and personal property tax, and likely other areas. A code that has zero or very little room for interpretation would provide more certainty and clarity to investors and would stimulate investment.

Minerals Extractive Tax (MET) on mineral raw materials

Somewhat distinct from the Tax Code, but still related to taxation, the *Minerals Extractive Tax* is also an area of investor attention. While there are some residual issues with the previous change in the *Mineral Extractive Tax*, Canada welcomes the transition to international standards (*CRIRSCO*) of accounting for mineral resources as discussed in the previous meeting of the Investment Council. The object of taxation of mineral extraction tax on mineral raw materials will be actual production, and not extinguished reserves. The amendments make appropriate changes to the conceptual apparatus and the procedure for calculating tax liabilities for MET.

Complex oil and gas projects

Canada also welcomes the project of an alternative tax rate for complex oil and gas offshore projects and exemption from corporate income tax for onshore gas projects, which will help stimulate investment. We further welcome the provision by which subsoil users on complex offshore projects will be able to carry forward losses for 10 years when calculating an alternative tax on subsoil use, and similar measures which ensure that subsoil users who develop gas projects onshore are exempt from corporate income tax. These measures will be beneficial to the investment environment in this sector.

While not directly linked to this taxation, we hope there will also be incentive for use of greener and cleaner technologies in the extractive sector. This will help Kazakhstan to achieve its ambitious *Net Zero Plan* and other international agreements.

Tax on dividends

Instead of a zero tax rate on dividends, the Ministry of National Economy proposed a single 10% tax rate on dividends (the standard rate is 15%). It should be noted that the 10% tax rate on dividends does not look like a preference that stimulates deep processing, since for most countries with which Kazakhstan has agreements on avoidance of double taxation, the tax rate on dividends is 5% by virtue of these agreements. Therefore, establishment of a single rate of 10% will only stimulate structuring of the subsoil user's holding companies in foreign jurisdictions.

Conclusion

Canada remains available to share its experience and to work closely with tax authorities on investment topics to deliver the economic growth that Kazakhstan hopes for now and into the future.



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GOING PLACES TOGETHER

UPDATING THE TAX CODE: REFLECTIONS AND RECOMMENDATIONS

by Ambassador Kathy Leach
U.K. Ambassador to Kazakhstan

Summary

Predictable, transparent and fair tax regimes are the foundation of investor confidence. Consultation with business over changes, phasing in change and consistency with best international practice should be key elements in the development of the future Tax Code. Equally important is to look at fair and transparent processes to address inconsistencies or lack of clarity in legislation.

A further consideration is how to use the tax regime to incentivise investment in clean, innovative technology to underpin green transformation and economic diversification. The following article introduces some examples from the UK on how investment has been transformed into new sectors and green technology over the past 20 years.

The United Kingdom welcomes consideration of the important issue of tax policy and practice. At the *UK-Kazakhstan Annual Intergovernmental Commission on Trade and Investment* in London on 7 February, Kazakhstan's Deputy Foreign Minister Aidarov and Lord Johnson, Minister for Investment from the Department of International Trade, discussed a number of issues on this subject that impact the business environment. We highly value these opportunities for dialogue, which are critical for giving feedback from the international business community and ensuring that Kazakhstan's tax policy and practice is consistent, as far as possible, with best international practice.

Predictable, transparent and fair tax regimes are the foundation of investor confidence. Proper consultation – not just with domestic business but with international business – before decisions or changes are made is essential to maintain confidence and avoid inadvertent counterproductive effects. We welcome the opportunity for business to be involved in discussion of the upcoming revision of Kazakhstan's Tax Code.

In the past, we have given a number of examples of tax issues which exemplify some of the current problems for international business in regard to tax policy and practice:



- **Sudden reinterpretation of longstanding agreements or laws, with retroactive application of tax and penalties.** The 1997 Karachaganak PSA – after 25 years – has in the past year been interpreted by the Tax and Customs authorities as having application to a wider group of suppliers. SME suppliers are now being pursued through the courts for retroactive payment of customs duties at the higher rate stipulated in the PSA plus penalties.

If the courts enforce this new interpretation after 25 years, there are over 20 companies – often small and medium sized enterprises that have invested in offices and staff in Kazakhstan over many years – that find themselves with unplanned bills to pay. In some cases, this unexpected cost may put them out of business and force their withdrawal from Kazakhstan.

If a change in interpretation is made, or where there has been ambiguity and differing legal opinions over the application of a tax regime to a wider group, we strongly advise that any change in rate should only apply to future tax obligations. This will allow companies to adjust their pricing and reclaim the higher costs from the company they are supplying. We also believe there should be consistent practice in interpretation across all PSAs.

- **Sudden change in tax rates** (e.g. the *Mineral Extraction Tax*). Although industry was aware that MET rates were likely to increase, the scale of the increase (30-50%, including 50% for traded metals like copper) came as a surprise. Even though tax exempt periods are offered for exploratory mining companies, a sudden and large increase in a

tax rate creates the impression that future tax policy may not be stable, a negative message for international companies considering long-term, expensive investments in critical sectors.

- **Sudden changes in legislation leading to a financial outcome that could prevent a business or franchise being viable.** The most recent example here is changes to rules on offsetting intercompany charges against corporate income tax – companies can now only offset up to 3% of the total corporate income tax bill. For international companies purchasing business services from a parent company registered abroad, which many franchises are mandated to do, this may make their business unviable in Kazakhstan.
- **A combination of taxes, subsidies and other practices that create a barrier to higher spec technology manufactured overseas.** Agricultural machinery imports currently have VAT, import duties, recycling fees, and subsidy disparities with domestically produced goods. Different tax and incentive regimes for imported goods vs domestic goods may be challenged under WTO rules as discriminatory. The distortion on pricing will also have the effect of driving away *Best Available Technology* from a sector urgently needing modernisation. This is a good example of how mechanisms designed for one purpose (to increase domestic manufacturing) may have an overall negative impact on the technology available to make an important sector of the economy more efficient and competitive.
- **Outdated, hands-on control mechanisms unsuitable and inefficient in a modern economy.** A good example of this is cider production. During bottling of cider, a representative from the tax office must be present to open (remove the seals) and close (replace the seals) the bottling line every day (7am and 10pm), due to regulations originally designed to stop the siphoning off and bootleg production of hard spirits. These control measures are not relevant or logical for cider production and add huge additional costs.

The key messages are the need for consultation, transparency and predictability, and alignment with international best practice. Where changes are made, these should be flagged well in advance to allow business to adjust. Retroactive reinterpretation of long-standing contracts and demands for retroactive taxes and penalties should be avoided. Instead, agreement should be sought on a new interpretation going forward to allow businesses to plan and build these new costs into future contracts.

The government is making strong efforts to improve tax policy and practice to remove unnecessary burdens on business. Innovations in the tax system such as horizontal monitoring are welcome. As with all innovations, work is needed to build confidence and demonstrate a willingness and flexibility to deal with unforeseen consequences.

Finally, in the development of the next Tax Code, a really important consideration is how to use tax policy to promote the green transition. The *UK's Climate Change Committee* – our independent *Committee of Experts* who advise the government on the soundness of its plans to reach *Net Zero* by 2050 – has said that the UK will need £50bn a year of investment between 2030-2050 to deliver *Net Zero*, with most of that investment to be delivered by the private sector. Getting the policy framework right – including tax policy – is essential to incentivise private sector investment.

At the basis of green tax policy should be a number of key principles:

- **The polluter pays.** Energy companies and energy intensive industries need to pay a carbon tax at a rate that will drive meaningful behaviour change and investment in better and green technologies. There are different ways of applying a carbon tax. In the UK, depending on the sector we have used a range of tools, including an emissions trading scheme based on caps on emissions; a direct tax per tonne of fossil fuels burned; a specific tax on power companies called the '*Renewables Obligation*', in which energy companies are required to source an increasing amount of their electricity from renewable sources, either directly or by 'buying' renewables certificates from other companies producing renewable energy.

The highest marginal rate of tax on fossil fuels in the UK is currently paid by drivers. Tax rates on petrol and diesel are considerable (around £0.60 a litre), to drive investment into energy efficient and low-carbon technology, as well as into other mitigations like car sharing and public transport. This 'fuel duty' raises around £30bn of tax a year. This, together with suspending other excise duties on electric vehicles, has helped to drive the take up of electric vehicles, to over a quarter of all new vehicles sold in the UK today.

Recycling in the UK has also been driven strongly by a 'landfill tax' which local authorities have to pay for every tonne of rubbish they put into landfill waste disposal. This incentivises local authorities to find ways to reduce the amount of solid waste which is thrown away.

- **Reward 'green' behaviour.** Green solutions should have tax breaks to drive take-up and create new markets. In the UK, energy saving products are taxed at a lower rate, e.g. products like insulation and heat pumps currently do not have VAT (currently applied at 20% in the UK).

In addition, tax breaks can help to incentivise investment in green and cutting-edge technology. In the UK, companies pay a reduced rate of 10% corporation tax on income from qualifying patented inventions and other forms of qualifying IP. This measure was brought in to incentivise companies to keep IP in the UK, incentivise them to register IP and reward the companies for doing so. Capital allowance mechanisms can also be used to incentivise 'green' capital investment.

Improving the energy efficiency and energy performance of buildings is particularly important in reducing emissions. In the UK, direct GHG emissions from buildings (largely for heating) were around 17% of all UK emissions in 2019. Including indirect emissions (from electricity use) means that buildings accounted for 23% of the UK total.

The tax system can incentivise improvements in energy efficiency in buildings by reducing the property tax rating for more energy efficient buildings or extending exemptions on any increase in tax rates due to an increase in the capital value due to green investments.



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TAX CODE REFORM: IDEAS FROM CANADA FOR A SOUND INVESTMENT AND GROWING ECONOMY

by Ambassador Alan Hamson
Ambassador of Canada to Kazakhstan

Taxation is among the most important issues for investors, and Canada applauds the initiative of the Prime Minister to engage his Investment Council regularly on issues of taxation. Communication between the Government, investors, and other stakeholders is the best way to ensure that the investment climate delivers economic development to meet the needs of the people of Kazakhstan.

The following comments will focus on several recent developments in the taxation environment of interest to Canada.

Tax exemption for new mining projects: Canada was encouraged by some news that the Government is considering instituting a regime of tax exemption for new mining projects. We agree that a tax exemption regime would encourage exploration and development in this important sector and would be welcomed by investors. We would welcome clarification on the duration of the exemption for each new project, as well as any other parameters for the planned regime.

Mineral Extraction Tax (MET): In May 2022, the Kazakh Parliament proposed an increase in the Mineral Extraction Tax by 50% for the exchange traded minerals (including, *inter alia*, copper, gold, nickel, tin, aluminium, and zinc) and by 30% for other metals and minerals. This plan raised significant concerns from foreign investors, and uncertainty also exists on whether this increased tax would apply only to new projects or also to existing investments. Changes in the tax regime for existing investments is often detrimental to investor confidence overall.

An additional key issue is the methodology of calculating this tax. The MET is applied in Kazakhstan according to an older method which links the amount due to be paid to the quantity of the mineral that is extracted from the ground, rather than to the quantities sold.

Indeed, at present, the MET is calculated on extraction stage, based on production losses and part of the reserve contained in the production volume. Those two numbers (production losses and reserve) are approved by the *Geology Committee* and the *State Reserves Commission*. Therefore, the MET is based on **subjective** and **evaluative** factors and is actually administrated by the *Geology Committee* and not by the tax authorities.



This has several disadvantages: First, it could hinder the development of deposits with lower recoveries.

Second, given the subjectivity of the determinations above, this calculation risk generates high and unwelcome legal risk for investors, including the risk of disputes with tax authorities, as well as the potential other risks associated with a subjective decision-making regime.

Third, the linking of taxation with the assessment of reserves, based on GKZ reserves data, a state-owned commission, actually blocks the use and transition of investors to a single world format for estimating reserves according to the international *CRIRSCO* system, since the fiscal authorities trust only the GKZ data.

In order to increase the transparency and completeness of tax payment in the extraction of solid minerals, Canada strongly recommends to revise the existing approaches to the MET with the transition to direct simple tax administration by the fiscal authorities using objective indicators of the content of minerals or substances in sold products. This will also make it possible to decouple taxation from the reserves assessment system, and to instead implement only one, based on the *CRIRSCO* international standard, according to which the state will keep records and understand the real investment picture of its resource base.

Canada would be happy to work closely with tax authorities and with authorities in the mining sector on providing technical information and/or best practices for their consideration, if there is an interest in considering the proposal above.

Dividends tax: Until now, shareholders were exempt from dividend withholding tax if they have owned their shares in local companies for more than three years. From January 2023, this exemption is replaced with a preferential tax rate (10% vs. 15%) if the previous conditions (including the three-year holding

period) are satisfied. Non-residents were exempted from dividends taxation but they are included as of January. This may be less attractive for investors, both domestic and foreign. It may impact Canadian companies too: for example if a Canadian mining firm was to seek Kazakhstan investors for its project, potential local investors would be disincentivized knowing that their dividends will be now taxed by 10%.

Canada would instead suggest to keep the *status quo* for foreign investors. By applying this tax, Kazakhstan may lose some potential investors, crucial at a time when the country needs investments for discoveries of new deposits and for the development of these discoveries.

“Google Tax”: Following the example of a number of countries, Kazakhstan has introduced a value-added tax (VAT) on e-services and e-commerce in goods (colloquially known as the “Google Tax”). The tax will be calculated and paid on electronic services provided by foreign firms to Kazakhstani consumers, and on foreign companies, through the Internet platforms of which Kazakhstani individuals purchase goods.

Second-tier banks and payment organizations are under an obligation to provide tax authorities with information on payments in favor of the relevant foreign companies. However, it is not yet clear how the tax authorities will use the information received.



While Canada is not necessarily a sector leader in electronic services in Kazakhstan, we see that the “Google Tax” could disincentive Kazakhstani consumers from using foreign online platforms.

Conclusion

Canada remains available to share its experience on taxation and connect Kazakhstan and Canadian tax experts on relevant issues of mutual interest. We look forward to working together on taxation issues and other investment-related issues to deliver the economic growth that Kazakhstan hopes for now and into the future.



Toronto Skyline

TAX STABILITY, CLARITY, UNIFORMITY, JUDICIAL PROTECTION

by Aset Shyngyssov
Managing Partner
Bakhytzhan Kadyrov, Partner
Morgan Lewis Law Firm

While it is universally agreed that taxation is a key driver of the investment attractiveness of Kazakhstan's economy, the most important principles of effective taxation need to be clearly outlined. This is the objective of the present article.

Effective taxation is a complex concept that covers the following:

- **Tax rates**
- **Stability of tax legislation**
- **Clarity of legal norms**
- **Uniform administration**
- **Effective judicial protection**

Variety of Tax Regimes

We note that the Government has introduced various legal and tax regimes that aim to improve the investment climate, namely:

- **Investment Contracts**
- **Special Economic Zones**
- **Astana International Financial Centre (AIFC)**

It's worthwhile to especially note two recent innovations that contain both legal and tax features:

- **Agreement on Investments**
- **Improved contracts for exploration and production of hydrocarbons for complex projects (offshore and gas fields, complex onshore projects)**

The Pace of Reforms and Correlation with Investment Growth

Global competition for investments and the need to respond promptly to new challenges have increased. Kazakhstan ranks well in the ratings, but there is still room for improvement (64th place in the rating of "paying taxes" in *Doing Business 2020*).

One would argue in favor of a slowing of the pace of reforms and corresponding adjustment in direct investment volume. On the one hand, finding the right balance between the interests of the state and

the investor is important. On the other hand, it is important to see the "big picture" (i.e., the goal is to attract investment by creating a favorable tax regime) and simultaneously resist the temptation of excessive guardianship and over-regulation.

As examples of excellent initiatives which, according to some investors, arguably haven't delivered the fully expected result, two precedents can be cited:

- ***Packages of legislative changes related to the introduction of legal institutions of the agreement on investments and an improved model contract for subsurface use for complex hydrocarbon projects.***

For the sake of objectivity, one should recognize these initiatives' innovative and large-scale nature. Unfortunately, these legislative packages were somewhat "bogged down" in the cycle of approvals by numerous state bodies.

During the approval process of the Improved *Model Contract*, some important proposed tax improvements (for example, *comprehensive tax stability, the absence of time limits on the application of tax preferences, VAT benefits, exemption from import customs duties*) were rejected in exchange for minor concessions.

When elaborating the *Agreement on Investments*, the investors proposed a wider range of instruments, including those not currently envisaged in the law (based on the *freedom of contract principle*), broader tax stability, extension of the term of preferences for the entire term of the *Agreement on Investments*, liberalization of *forex regulation* in exchange for large investments. As a result, investors believe there is an inherent risk that these innovations (*Improved Model Contract* and *Agreement on Investments*) regrettably may not meet fully the government's expectations for a significant increase in new investments.



Issues of Stability and Clarity of Tax Legislation

There is a failure to comply with the requirements of the Tax Code regarding adopting norms that change taxation conditions:

- ***For example, according to Article 3 of the Tax Code, laws amending the expansion of categories of tax agents can be adopted no later than July 1 of the current year***
- ***However, on December 21, 2022, the law on amendments to the Tax Code was adopted, according to which the list of tax agents was expanded: individuals were added (when acquiring shares from non-residents)***

Over the past five years, the important concept of the "controlled foreign corporations" (CFC) has changed several times.

- ***The main question is whether a company in a "white/normal" jurisdiction falls under the concept of a CFC. It currently does not apply if there is a convention and the tax rate is no less than 75% of the Kazakhstan corporate income tax (there is a list of such countries)***

- ***However, the legal drafting technique could be better because the wording of the articles on the CFC is still quite ambiguous and difficult to comprehend, even for a trained audience***

Conclusion

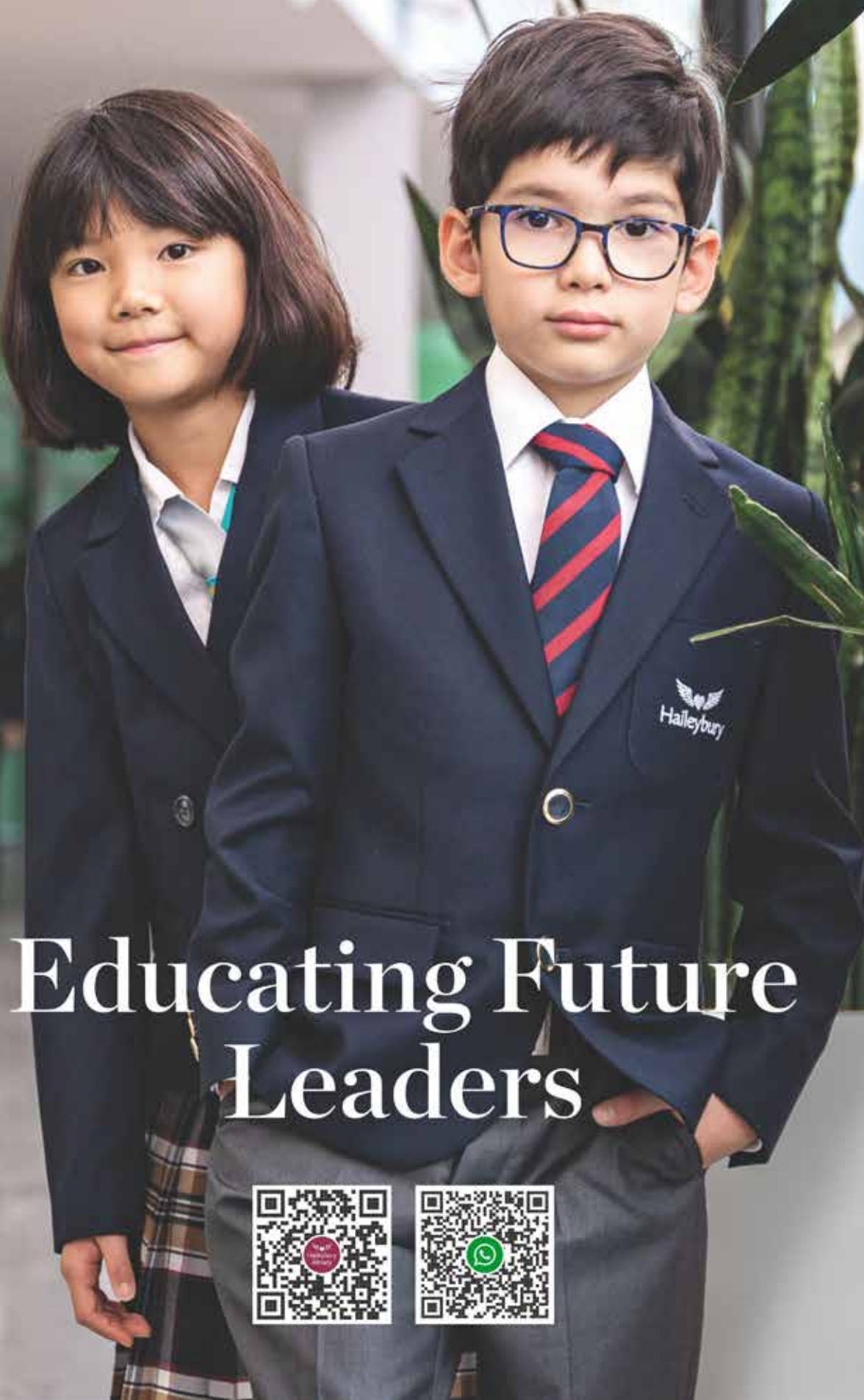
The Government is working proactively in order to effectively improve the investment attractiveness through effective taxation and reform tools. However, due to inherent overzeal and fear of innovation on the ground, we face somewhat "half-baked" tax preferences and regimes that might not yield the full intended benefits.

It is therefore important to continue the on-going dialogue between the Government and the expert community, including the American Chamber of Commerce, as an effective and objective means of exchanging information with investors. Reforming the Tax Code requires consideration of the above issues to clarify and increase understanding and trust between the investment community and Kazakhstan's tax authorities. This is critical to improving the country's investment attractiveness to both existing investors and new investors considering investing in Kazakhstan.





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THE NEW TAX CODE AND THE CONCEPT OF TAX REFORM: BASIC PRINCIPLES – A CONSIDERATION

by **Erlan Dosymbekov**
Managing Partner
EY Kazakhstan, Central Asia and the Caucasus

As has been often been discussed, some of the previously introduced or proposed amendments to the Tax Code caused concern on the part of taxpayers due to their potential increase in the tax burden and negative impact on Kazakhstan's investment environment. In the long term, these changes could reduce tax revenue in the state budget. Business reactions indicate that some of the proposed or introduced amendments may not have been thoroughly analyzed from the point of view of their compliance with Kazakhstan's general development strategy, as well as with best international tax practices.

It should be noted that international experience considers it appropriate to develop and coordinate the concept of changes along with their short- and long-term impact on taxpayers and the budget before such changes come into force. The proposed amendments are developed and considered as a priority in the form of a concept (for example, the concept of tax reform), and only after the concept's discussion with the business and civil communities can direct formulations of amendments to the legislative acts be proposed.

We welcome the fact that the Government of Kazakhstan is beginning to develop the Concept of a new Tax Code. We therefore propose reflection on the Tax Code Concept (this can be expanded beyond the new Tax Code to to the Concept of Taxation in Kazakhstan as a whole) and the basic principles of tax rules, based on which the new Tax Code will be drawn up and adopted. It is essential that any further changes to the Tax Code fully comply with the basic principles.



The Concept should contain such fundamental principles as the fairness of taxation and other principles. It may also require compliance with applicable tax rules in best international practices. This is important for all major taxes (Individual income tax, corporate income tax, value-added tax) and is especially important in terms of international taxation, whose norms should not be contradicted. These norms include basic OECD principles and agreements on avoidance of double taxation.

Another example may be inclusion in the Concept of the principle that only positive economic results can be taxed (for example, individual income tax, corporate income tax, value-added tax), as well as the use of limited resources or harmful products (for example, land tax, mineral extraction tax, and excise taxes). Thus, if in the future the state considers it necessary to reduce the tax burden on business and the population, then this may include reducing and even gradually abolishing the Social Tax, which is a tax on expenses, and not on the positive economic result. It might also include reducing or abolishing Property Tax, which is a tax on real estate, but not a limited resource or an eternal asset.

Alternatively, abolition of the property tax with a simultaneous proportional increase in the land tax on land plots settlements (for the fair and rational use of land as a limited resource) may also be considered. By analogy, it is possible to cancel the tax on owners of motor vehicles with a simultaneous proportional increase in excise tax gasoline and diesel taxes (for fair taxation based on the amount of consumption and pollution). There may be other proposals in this regard.

In general, we propose to make the Concept a kind of Constitution, which establishes the basic principles for the Tax Code and any tax reform.

This initiative may be especially relevant at the present time in view of the geopolitical crisis and the negative economic consequences of such a crisis for the entire region, including an increase in inflation and the expected significant slowdown of economic growth. On the other hand, as has been repeatedly noted, some international companies leaving the Russian market are considering various options for relocating their offices to nearby countries, including in the Central Asian region. Undoubtedly, stable and predictable tax legislation that does not contradict

international standards will be one of the key factors for attracting such investors.

Thus, in the current situation, it is necessary to thoroughly analyze potential changes in taxation, as well as their consequences and risks of implementation, and to prevent changes that could worsen investment attractiveness and potentially cause the choice of other countries to open the regional offices of foreign companies.

To solve this problem, we propose to establish that any proposed amendments must fully comply with the Concept and be agreed upon with the business community before their actual implementation.



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THE ADVANTAGES OF HORIZONTAL MONITORING

by **Erlan Dosymbekov**

Managing Partner

EY Kazakhstan, Central Asia and the Caucasus

Horizontal monitoring is a breakthrough project in the field of tax administration, among the main functions of which it is important to note:

- *increasing transparency of taxpayers*
- *reducing tax uncertainty*
- *building trusting and predictable relationships with tax authorities*

In the form of benefits from horizontal monitoring, the state receives a reduction in conflict and an increase in the effectiveness of tax control. Taxpayers, in turn, receive the necessary predictability and certainty in the tax sphere. Similar horizontal monitoring modes (or *Cooperative Compliance*) have been successfully implemented in more than 50 countries worldwide. It is worth noting separately the effectiveness of these projects in increasing investor confidence in the state.

In international practice, horizontal monitoring is usually initiated by large global investors who need an understandable and predictable tax regime to protect investments. For example, horizontal monitoring was launched in the Netherlands in 2005 as a pilot project after conducting an investment attractiveness study. The study showed that the existing tax regime does not provide investors with stability and predictability, nor does it guarantee the safety of investments.

As a response, clear rules were developed for horizontal monitoring together with representatives of large businesses based on the principles of trust, transparency, and cooperation. Since the pilot implementation, horizontal monitoring has shown its effectiveness primarily because the interests of businesses and investors were fully considered during its design.

The expectations of large investors are the same all over the world, regardless of the geography of investments, are namely:

- *predictability and stability of the tax regime;*
- *clear and transparent relations with tax authorities, in particular, predictable (and preferably conflict-free) tax audits;*
- *the certainty of taxation in general and for individual projects;*
- *operational "closure" of tax risks and periods for inspections in order not to create tax reserves in the financial statements*

Horizontal monitoring allows you to address all of the above expectations. In international practice, as a rule, participants are provided with traditional advantages and guarantees:

- *quick closing of the period by verification – due to real-time verification*
- *exemption from sanctions - due to open dialogue with the tax authority and the possibility of self-clarifying obligations*

Taxpayers are also entitled to receive rulings or "reasoned opinions" — legally significant explanations of the tax authority on specific transactions. Such clarifications provide the necessary long-term certainty for the company regarding the correctness of taxation of key transactions and operations. In the presence of such clear advantages, even significant investments in the automation of tax processes, which involves horizontal monitoring, are perceived by investors as justified.

Launching a pilot project on horizontal monitoring in Kazakhstan is one of the most important tax administration projects, positively affecting Kazakhstan's investment attractiveness. The pilot project primarily covered national companies, legislation, and regulatory framework is under development. The progress of the project is being watched with interest by private companies and foreign investors who consider any such project with the state from the point of view of the balance of benefits and costs. Investors will be ready to join it if there are clear, legally fixed "rules of the game" and benefits for participants.

The concept of the project and the set of advantages for its participants are not yet clearly fixed, and it is too early to call them convincing for investors. We are talking about the possibility of reimbursement of 80% of the overpaid VAT, exemption from on-site inspections for the duration of the pilot project, as well as the possibility of obtaining "preliminary explanations" after the pilot project is over.

In order to fully realize the potential and to further increase the attractiveness of horizontal monitoring, it is necessary to clearly formulate and legislate the rules of operation of the regime and its advantages. Together with the business community, it is necessary to formulate the concept and rules of horizontal monitoring and to consolidate them in Kazakhstan's regulatory framework. The concept and rules of horizontal monitoring should take into account the needs of investors and ensure a reasonable balance of benefits and costs for both businesses and the state.

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 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.

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.

INTELLECTUAL PROPERTY RIGHTS AND TAX POLICY – UPDATING THE RELATIONSHIP BETWEEN IP AND TAX

by Donald Townsend
Senior Commercial Officer
U.S. Consulate in Almaty
Advisor, AmCham Intellectual Property Working Group

The concept of Intellectual Property (IP) has been discussed at the Prime Minister's Council for several years in relation to technology, digitalization, and patent protection – particularly with regards to the pharmaceutical and biotechnology industries which require huge initial research and developments costs, and distribution thereof, which must include only legitimate and effective products to ensure patient safety.

However, intellectual property has grown over these past years to become a crucial factor in many industries, and as such has become a factor that must be properly understood in its application to business operations, so as to ensure a positive investment climate across a broad spectrum of innovative businesses.

In the U.S., intellectual property (IP) contributes enormously to our national and state economies. Dozens of industries across our economy rely on the adequate enforcement of their patents, trademarks, and copyrights, while consumers benefit from IP via the assurance that they are purchasing safe, guaranteed products. We believe IP rights are worth protecting, both domestically and abroad.

The U.S. has found that intellectual property:

- **creates and supports high-paying jobs**
- **drives economic growth and competitiveness**
- **protects consumers and families when it is enforced**
- **helps generate breakthrough solutions to global challenges**
- **encourages innovation and rewards entrepreneurs**

Based on this experience, we believe that it is in the interest of Kazakhstan as well to encourage the creation, importation and exploitation of intellectual property for the benefit of its citizens.

A current example of IP issues related to trade is the debate on whether customs duties should be applied to intangible digital products. Recognizing the importance of the global digital economy and its relation to growth and innovation, *WTO Trade Ministers*

at the recent *12th WTO Ministerial* meeting reached agreement on extending the 1998 moratorium on the application of customs duties to digital products.

Digital products now flow freely through the internet, and at the speed of light, which is crucial to modern business. WTO members recognized that delaying transmissions and increasing costs thereof by applying a customs regime to these now crucial products would harm consumers and hamper growth, and thus they chose to extend the current exemption.



This is just one example of issues surrounding the taxation of intellectual property transactions, which includes much more than copyrights related to digital products. Intellectual property transactions may also include patent rights, trademark rights, know-how, trade secrets, and trade dress, and usually a mixture thereof. Such transactions are structured based on the laws and regulations of the localities involved at the time of the transaction.

For example, if a U.S. company is licensing rights to a Kazakh company, the contract will be drafted in accordance with current laws and regulations concerning taxation of the intangible rights being conveyed. Thus, it is important that the localities provide clarity and consistency in such laws and regulations if they wish to attract investment, ensure access of new technology to Kazakhstan, and provide a conducive business climate for innovative companies such as those that they are involved in such IP transactions.

Without a proper understanding of IP royalties and valuations, and determination of related customs duties and taxation, business disputes and litigation will arise that could have been avoided. Further, importantly, uncertainty and unpredictability in this area may lead to higher costs and lowered business and investment climate ratings.

The following two examples are illustrations of the need for the tax authorities to achieve a higher level of understanding of Intellectual Property as it applies to many industry sectors.

First Example: Improving Definition of Royalties in the Tax Code

After the definition of Royalties was changed in Kazakhstan's Tax Code in 2021, misunderstandings and negative changes appeared in the approach to royalties taken by tax authorities. The tax authorities now adjust royalties for contracts where intellectual property is not a factor, for example, remote technical maintenance and access to online services.

The following concerns are central to a consideration of royalties as understood by the tax authorities:

- ***The tax authorities make any user of any device with embedded software subject to royalty payments.***
- ***This approach contradicts international double taxation treaties concluded by Kazakhstan and in fact supports double taxation.***
- ***The tax authorities refer to provisions not corresponding to Kazakhstan's legal framework and this approach is accepted by the courts***

Amendments were proposed, but to date these amendments remain under consideration and the tax authorities continue to use the approach outlined above.

Given the rapid growth of digitalization in all areas of business and the increase in various digital products and services, we believe that if there is no change, the royalties issue will remain an increasing concern not only for the business community in Kazakhstan, but also for international investors and major IT service providers. This will ultimately have a negative effect on Kazakhstan's investment attractiveness.

To date, telecommunication companies face barriers that create restrictions for the development of competition, namely in terms of amendments to the Tax Code from January 1, 2021. These amendments changed and expanded the definition of royalties as payment for granting the right to use not only software copyright, but also payment for the use of a separate copyright object, software rights. The tax

authorities classify as income in the form of royalties even those services in which intellectual property rights are not transferred, for example:

- ***technical support services for software or hardware with embedded software***
- ***services for providing access to online services***

This definition of royalty does not correspond to international practice and to most of the Tax Conventions concluded by Kazakhstan with other countries. Previously, payments for the use of software without the transfer of copyright to such software did not fall under the definition of royalty and therefore should not be subject to taxation as income in the form of royalties.

In addition, taxpayers have already faced the fact that the tax authorities consider under royalties not only the use of the software itself but also receiving technical support services, consulting services, and any other services from foreign suppliers where there is a mention of the software, as well as training using the software, providing information services, using transport funds.

This interpretation contradicts the definition of royalties in the Tax Conventions that should apply legally, as well as in the *Model Convention* and *OECD Recommendations*. The current practice:

- ***Contradicts the international treaties on avoidance of double taxation to which Kazakhstan is a signatory***
- ***The tax authorities refer to provisions that do not conform to Kazakhstan's legal framework and this approach is supported by the courts.***
- ***This approach supports double taxation.***

This definition of the term "royalty" prevents sophisticated technologies, foreign and domestic investments in fixed assets (highly efficient machines and equipment) from entering the country, hinders implementation of the government program "*Digital Kazakhstan*," the main objectives of which are to accelerate the pace of development of Kazakhstan's economy and improve the population's quality of life, as well as creating conditions for the economy's transition onto a fundamentally new trajectory – the digital economy of the future, as evidenced by Kazakhstan's *indicators and rating in the Global Innovation Index*.

Second Example: Intellectual Property: Kazakhstan's Contradictory Tax Code

The company in question is a global leader in retail fashion found in shopping malls worldwide. In Kazakhstan it operates 34 stores, employs 1000+ staff, and has invested 20 billion tenge in its Kazakhstan business. It stresses that the company's Kazakhstani tax burden coefficient is 5-12%, while the average international tax burden for the industry is only 2%. Based on these statistics, the company is holding back further investment in Kazakhstan.

In 2013, the company was assured in writing by the *Customs Control Committee* that specific royalties should not be included in the customs value of goods. Beginning in 2014, the company's goods were therefore imported without including these royalties in their customs value, i.e., royalties for the use of *know-how, software, and commercial designations*. Declarations were registered, and there were no questions or objections from the *State Revenue Committee (SRC) Customs Department*.

However, in 2021, the approach changed dramatically. The SRC demanded that these royalties be retroactively included in the customs value of goods, i.e., royalties for the use of know-how, software, and commercial designation. The SRC conducted inspections, added customs duty, VAT, and penalties, obliging the company to make changes and additions to customs declarations.

The SRC requirements violate the law under the following Codes and Regulation:

- **Customs Code of Kazakhstan**
- **The Customs Code of the EAEU**
- **Regulation No. 20 of the Eurasian Economic Commission**

The above legislation establishes that royalties are included in the customs value of imported goods only if two conditions are met simultaneously:

- **if the royalties relate to imported goods**
- **if the royalties have been paid or must be paid by the buyer as a condition for the sale of imported goods**

Neither of these conditions are met in the case under dispute.



The company imports goods to 95 countries and none of these 95 countries include royalties for the use of *know-how, software, and commercial designation* in the customs value of its goods, except Kazakhstan. This is well-established international practice.

In Russia, customs tried to include these royalties in the customs value of goods, but:

- **The Russian courts ruled the actions of customs were illegal and canceled them.**
- **The same rules apply in Kazakhstan and Russia.**

The current procedural status of the royalties' disputes between the company and the SRC has resulted in several judicial acts contradicting each other.

- **On March 25, 2022, the Specialized Interdistrict Administrative Court declared illegal the actions of customs to include these royalties in the customs value of the company's goods.**
- **On August 18, 2022, the City Court fully upheld the decision of the Specialized Interdistrict Administrative Court.**

However, for two of the company's subsidiaries, the Kazakhstani courts have defended the SRC position, which is clearly contradictory.

Of all the Central Asian countries, the company works only in Kazakhstan. It has considered expanding its business operations into other Central Asian countries but pending a positive resolution to the royalties dispute in keeping with international practice, the company's expansion to other regional countries is on hold. A predictable and stable investment climate is important for the company and for all investors.



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AMCHAM ANNUAL GENERAL MEETING, FEBRUARY 10 2023

REPORT TO THE MEMBERSHIP:

AMCHAM OPERATIONS/ ACTIVITIES 2022

The AmCham Annual General Meeting was held on Friday evening, 10 February 2023 in the Rixos Almaty Hotel's Lotus Restaurant. Annual Reports were published each year during the pandemic, but this was the first AGM meeting with the membership in attendance after a three-year hiatus. The results of the January Board of Directors Election were also announced at the AGM.

A Welcome Address was delivered by U.S. Consul-General Caroline Savage, a frequent AmCham Luncheon Speaker in 2022. Current AmCham Board members delivered sections of the *Annual Report*, a 50-page publication covering the past year's achievements that was distributed to all members at the meeting.

Results from the previous year were solid and surpassed expectations in every respect: membership growth, advocacy sessions with the Prime Minister, publications, working groups, events in five cities, the glamorous, always-awaited *Awards Gala*, and *Family Holiday Celebrations* (U.S. Independence Day, Thanksgiving). The 2022 *Financial Report* was also solid, surpassing projected revenue results.

The Board Election resulted in re-election of four current Board Members (*Bela Ferenczi, Paul Cohn, Saule Zhakayeva, Evgenyi Nastradin*) for another 2-year term, and election of a new Board Member – *David Maghularia, Managing Director of Inditex Retail Group*.

Executive Director Doris Bradbury spoke at some length about the *AmCham Investment Council* meetings with the Prime Minister and Cabinet: topics and results. The Council has now existed for fifteen years, meeting on a monthly basis to discuss and present recommendations for issues of concern both to AmCham members and to the Government.



AGM SUNDOWNER RIXOS ALMATY HOTEL, LOTUS RESTAURANT

The Annual General Meeting and its Report to the Membership is always followed by a Sundowner sponsored by a Board Member. The evening's Sundowner with a buffet dinner and drinks was held on the spacious Rixos Mezzanine outside the Lotus Restaurant. The evening was generously sponsored by Citigroup represented by *Citibank Kazakhstan Chairperson Saule Zhakayeva*.

Citibank has been a Board Member since AmCham was founded and has always served as the backbone of AmCham. Saule Zhakayeva is the first Citibank female President (and the 2022 Winner of the *AmCham Women's Leadership Award*), as well as the first Kazakhstani Head of Citibank. She joined Citi in 2001 and has steadily risen to senior executive positions, appointed the Bank's Chairperson (President) in 2021.



As always, the Rixos Hotel Chef presented an outstanding Buffet Dinner Selection for a large AmCham attendance. The Sundowner guests – whose numbers doubled after the AGM meeting – socialized, networked, and enjoyed the freedom to meet in person again without pandemic restrictions.



MEMBER NEWS



Thomas Brandt – Regional General Manager for Delta Airlines

Thomas Brandt joined Delta Air Lines in Frankfurt in 1987 and moved to Field Sales in 1989. In 1993 he joined Delta's Regional Office in London and held positions of increasing responsibility in pricing, sales & marketing and key account management. As General Manager *delta.com* & self-service international, he led the globalization of *delta.com* with the introduction of a global content strategy in 8 languages and payment options in 52 countries in EMEA, Asia and Latin America.

In March 2007 Thomas Brandt returned to Frankfurt to lead the sales team in Germany. In the following years, he also assumed responsibility for sales in Switzerland, Central and Eastern Europe. His main task is the local implementation of the joint venture with Air France and KLM, the coordination of sales and distribution strategies with the partners, and the full integration of the Air France, KLM and Delta Air Lines sales teams.

Thomas Brandt holds an M.A. degree in Economic Geography and Economic History from Aachen University and a Marketing Diploma from the Chartered Institute of Marketing (CIM) in the UK.



Alok Pandey is Appointed General Manager of Americana Restaurants Kazakhstan

Americana Restaurants is pleased to announce the recent appointment of Alok Pandey to the position of General Manager Kazakhstan. He has over 25 years' of successful experience in Food and Beverage services, QSR operations, and Retail Expansion, building domestic and international expertise across multiple markets.

Americana Restaurants is the largest restaurant operator in the MENA region and Kazakhstan in terms of number of restaurants in its countries of operation. Americana operates iconic global brands such as *KFC*, *Pizza Hut*, *Hardee's*, *Krispy Kreme*, *Costa Coffee*, *Peet's* and *TGI Fridays*, along with proprietary brands such as *Wimpy* and *Chicken Tikka* across the MENA region and Kazakhstan for almost fifty years.

In his previous role with Americana, Alok led KFC Operations in several MENA countries (Saudi Arabia, Kuwait, Jordan, Bahrain, Lebanon), where he was instrumental for profitable brand growth and developing strong teams. Prior to joining Americana and moving to the Middle East, Alok was based in India where he was part of companies such as Metro C&C, Domino's Pizza, and FreshMenu.

MEMBER NEWS



Ruslan Gamzaev Appointed Country Manager for Procter & Gamble Central Asia

Ruslan Gamzaev was appointed Country Manager for Procter & Gamble in Central Asia effective March 1st, 2023. He is responsible both for leading the P&G local team and managing the overall business and performance of the P&G portfolio of iconic brands, serving Kazakhstan and Kyrgyzstan since the early 1990s.

He has been with Procter & Gamble since 2007, serving in different roles across Eastern Europe and Central Asia. He started his career in sales, progressing through multiple commercial roles in the region, including senior leadership positions in distributor operations, market strategy and planning, and key account management.

In 2019-2023, he was responsible for one of P&G's core commercial areas in Eastern Europe in his role as Senior Sales Director. Since July 2019 he has also been a member of the P&G Commercial Leadership Team in Eastern Europe and Central Asia.

Ruslan Gamzaev graduated from Nizhny Novgorod State University (Russia) with a degree in Economics in addition to his degree in French and English Studies. He also studied institutional economics and econometrics at Philipps University in Marburg (Germany) and speaks English, German, and French.



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.

ADVOCACY UPDATE JANUARY-FEBRUARY 2023

In light of the Government's intention to undertake a revision of the Kazakhstan Tax Code in 2023, AmCham continued the December Tax Reform session of the *AmCham-Prime Minister's Council to Improve the Investment Climate* at the 17 February Council session, the first session of 2023. The Agenda was Kazakhstan's *Tax Code: Commentary and Recommendations*, allowing for a broad range of presentations addressing tax issues in need of revision or removal from the Code. Many of these issues were long-standing while others are currently pending and in need of reconsideration.

It was particularly encouraging at the end of the February session to have the Minister of National Economy request copies of all the tax presentations delivered by AmCham's diverse speakers at the last two AmCham-Prime Minister's Council sessions. These presentations with their recommendations will be submitted to the *Government Tax Code Reform Working Group* that is now in progress.

Tax problems – in many instances questionable disputes arising from reinterpretation – are perhaps the most difficult obstacles impacting investors and Kazakhstan's investment climate. The disputes are difficult to resolve, and only too often lead to lengthy litigation in the lower courts and finally into the Supreme Court. Past discussions at the Council with international lawyers and judges have elicited their recommendation to resolve these disputes without recourse to the judicial system, instead to negotiate compromises that benefit both sides.

There is too often an assumption that an honest difference of opinion is a deliberate attempt to defraud when this is not the case. An honest effort to find a solution can lead to a rapid and positive conclusion of the dispute. Investors are willing to pay legitimate taxes wherever they may be operating internationally. This is universally recognized as every company's obligation and it is accepted by AmCham investors as their obligation to Kazakhstan.

Predictable, fair, and transparent tax regimes are the foundation of investor confidence. This was a point reinforced by all of the AmCham speakers. Both of the Ambassadors who participated in the February Council – *Canadian Ambassador Alan Hamson* and *U.K. Ambassador Kathy Leach* – reiterated the need to transform investment into new sectors and into green technology. Ambassador Hamson also returned to a theme from the December Council concerning the *Mineral Extractive Tax*, which the tax authorities have taken under review.

Deloitte Partner Anthony Mahon delivered a forceful presentation echoing a constant theme – that although Kazakhstan's continued economic prosperity relies upon its ability to attract new investment from abroad, the investment climate appears to '*target and penalize foreign investors*'. Kazakhstan needs to send a clear signal that it is '*open for business*' with substantial tax reform to generate trust on both sides when differences of opinion arise, rather than relying on the courts to handle disputes that can only discourage investment. The government was also reminded that current geopolitical events and economic uncertainties are not encouraging for investment.

EY Managing Partner Erlan Dosymbekov, who has given serious thought to overall tax policy and the need to change fundamental principles, delivered a presentation on *Horizontal Monitoring (Cooperative Compliance)*, which is increasingly being introduced abroad to increase accuracy and confidence on both sides in the tax system. He strongly recommends that Kazakhstan study and consider applying this new tax administration system in a manner to incorporate international best practices and the specific nature of Kazakhstan's tax system.

KPMG Partner Inna Alkhimova, Head of KPMG Tax and Legal, touched on many of the most recurrent issues requiring reconsideration, reform, or removal from Kazakhstan's Tax Code in order to increase investor confidence and attract new investment. KPMG had earlier submitted recommendations to the government to achieve these goals:

- *Integration of tax policy with Kazakhstan's investment policy*
- *Creating a new perception of Kazakhstan's tax system as fair and transparent*
- *Increasing transparency of tax legislation and decision-making through digitalization*
- *Tightening control over tax authorities and increasing responsibility for illegal actions*
- *Hiring international experts to analyze and implement best international practices in tax policy*

Morgan Lewis Managing Partner Aset Shyngyssov continued to stress taxation's importance as "*a key driver of investment attractiveness*" and focused on requirements for a sound taxation system from a legal point of view:

- *Tax rates*
- *Stability of tax legislation*
- *Clarity of legal norms*
- *Uniform administration*
- *Effective judicial protection*



The February Council session benefited in particular from an *OECD Tax Policy Center* video- presentation from the *Head of Global Relations*. In addition to a comprehensive overview of international tax policy in the context of a fast-changing global environment, the presentation reminded the Government of Kazakhstan's formal commitment to three OECD agreements:

- *The Inclusive Framework on Base Erosion and Profit Shifting*
- *The Global Forum on Transparency and Exchange of Information for Tax Purposes*
- *The Global Forum on the Carbon Mitigation Approaches*

Thus the February Tax Code Council session combined with the December Tax session has provided intensive presentations of thoughts and recommendations from AmCham speakers – *International Financial Institutions, Ambassadors, lawyers, the Big Four accounting firms, and AmCham Corporate CEO members*. These speakers have also made themselves available for follow-up support during the Tax Code revision process in response to the National Economy Minister's request for copies of all the tax presentations to the government at the December and February Council sessions – a rich source of information for substantial reform that will open the way to increased investment in Kazakhstan.



WORKING GROUPS UPDATE JANUARY– FEBRUARY 2023

INTER-MINISTERIAL INTELLECTUAL PROPERTY RIGHTS (IP) WORKING GROUP - January 27, 2023

The Inter-Ministerial Intellectual Property Rights Working Group met online on January 27 chaired by Adilet Nazarbayev, Branch Head, Johnson & Johnson. The Group Advisor, Donald Townsend, Senior Commercial Officer at the U.S. Consulate in Almaty, also attended and led the Group.

The Group discussed results of the meeting with Deputy Justice Minister Akerke Akhmetova and presented proposals for protecting IP rights in pharmacology, specifically the registration of medicines, pointing out contradictions in EEC regulatory acts. The problem of prolongation and revision of national clinical protocols was also presented. It was decided to hold a joint round table with the Ministry of Health and the Ministry of Justice in March.

At the international level, the primary instrument for the protection of IP rights in pharmaceuticals is the *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*, which was negotiated at the *World Trade Organization (WTO)* in 1994. TRIPS sets out minimum standards of IP protection for WTO member countries, including patents, trademarks, and copyrights, and requires that these standards be enforced by national laws.

Some countries, such as Italy and Belgium, restrict National Health Service reimbursement for drugs that infringe third-party patents. In Hungary and Egypt declarations of non-infringement are sought by applicants at the time of filing.

TECHNOLOGY AND INNOVATION WORKING GROUP - January 31, 2023

On January 31, the AmCham Technology and Innovation Working Group met online. Sergey Leschenko, Microsoft Country Manager, chaired the meeting. The Guest speaker was Kendrick White, Vice-Rector for Commercialization at Almaty Management University. The agenda topic was *"Technical Commercialization; Ecosystem of Education & Science, Business, Technology Companies & Startups."*

The presentation focused on Kazakhstan's Innovation Economy. Enterprises need deep science solutions to solve complex problems and are forced to look for and buy "ready" solutions worldwide. The main problems: R&D is locked inside university labs; Industry is focused on exporting raw material rather than

developing value-added products; enterprises BUY their solutions rather than MAKE their own innovative solutions; the local R&D market is weak and offers few career opportunities for young scientists; current university Tech-Transfer offices are unable to assess the commercial value of R&D ideas. The speaker gave examples of *Proof of Concept Centers and the Bayh-Dole Act 1980*.

The next topic of discussion was the *Creation of Technology Commercialization Centers (TCC)* to evaluate and maximize commercial values. AlmaU TCC proposes to provide TCC services to Kazakh science universities to identify solutions to complex industrial problems and maximize the commercial IP value this to business partners and investors.

Case Study: Problems in Kazakhstan's Agriculture Sector:

- *Low investment and falling output in livestock & farming since privatization;*
- *Local farmers use outdated practices inappropriate for modern business needs;*
- *Agriculture must use global best practices to improve profitability;*
- *Govt should invest capital into university R&D to support farmers' real needs.;*
- *Lack of career opportunities for younger generation interested in agriculture*

AMCHAM CSR WORKING GROUP - February 03, 2023

On February 3, a joint meeting of the Almaty/Atyrau CSR Working Group met online. Thomas Jose, Eurasia General Director at Beiersdorf, conducted the meeting. The speaker was Aman Shakenov, Country Director of Borusan Cat Kazakhstan. The Agenda was *"Borusan Social Responsibility Projects."*

The session started with a short introduction to the activities of Borusan. Established in 1944, Borusan is one of the 10 leading companies in Turkey. It operates in 4 spheres: steel manufacture, dealership, logistics, and the power industry. The company has its own Gemlik port in Turkey and works in 10 countries: *Turkey, Kazakhstan, Kyrgyzstan, Azerbaijan, Georgia, Russian Far East, USA, Netherlands, Italy, and Cyprus*. Borusan has 20 representative offices in Kazakhstan with over 1000 employees.

The Company has a dedicated *Young Technician Program*, as well as conducting corporate social responsibility in supporting women under a *Gender Equality Program*. Borusan has also carried out various projects for environmental sustainability, as well as a *Waste Management Project*.

ALMATY HEALTHCARE REFORM WORKING GROUP - February 17, 2023

The Almaty Healthcare Reform Working Group met on February 17 chaired by *Ksenia Babushkina, EY Partner and Head of EY Advisory Practice*. The latest in Kazakhstan's healthcare system was reviewed and a list of the most important issues was created.

Reducing and simplifying the time required for access of innovative medicines to the Kazakhstan market was discussed. The Group then proceeded to the medical pricing deregulation process in Kazakhstan. If certain medicines are not profitable to sell, their prices must be revised or withdrawal from the market will be inevitable.

The following topic was the Preservation of VAT exemptions for medicines. Starting from 19 January 2019, amendments on the exemption from VAT on sales of medicines and medical products came into force.

Discussion then focused on implementing digitalization of Kazakhstan's healthcare system, which includes integrating databases, creating a monitoring system for patients receiving treatment at home, and other issues.



TECHNOLOGY AND INNOVATION WORKING GROUP - February 28, 2023

On February 28, the AmCham Technology and Innovation Working Group met online chaired by *Sergey Leschenko, Microsoft Country Manager*. The Guest speaker was *Saule Zhakayeva, Chairperson of Citibank Kazakhstan*. The agenda topic was *"CITI on digital signature regulation change in Kazakhstan."*

Citi began working in Kazakhstan in 1994 and has become one of the country's largest foreign investors, participating in attracting tens of billions of US dollars in financing to Kazakhstan. Today, Citi is a key partner for international investors, the public sector and the country's largest enterprises. CITI Bank works closely with Kazakhstan's *Agency for Regulation and Development of the Financial Market* and the *National Bank of Kazakhstan*.

In Kazakhstan, digital signatures are regulated under the *Law on Electronic Document and Electronic Digital Signature*, which provides a legal framework for the use of electronic documents and electronic signatures in various transactions, including in business and government.

Digital signatures are considered legally binding in Kazakhstan, provided they meet certain technical requirements and are issued by authorized certification authorities. These requirements include using a secure algorithm and key length and ensuring the signature's confidentiality, integrity, and authenticity.

Under Kazakhstani law, a written signature is not necessarily required for a valid contract - contracts are generally valid if legally competent parties reach an agreement, whether they agree verbally, electronically, or in a physical paper document, albeit most commercial contracts (and all cross-border commercial contracts) must be in written form. A contract executed by way of exchanging electronic documents or electronic messages is deemed to be in written form.

Kazakhstan's *Law on Electronic Documents and Electronic Digital Signature (E-Signature Law)* and *Code of Civil Procedures* specifically confirm that electronic documents authenticated by "electronic digital signatures" compliant with the *E-Signature Law*, which is similar to a QES, are equal to handwritten documents. Because the *E-Signature Law* recognizes only the "electronic digital signature", the admissibility of a document signed electronically with any other form of electronic signature may be left to local court discretion.



2024

3-5 April

Atyrau, Kazakhstan



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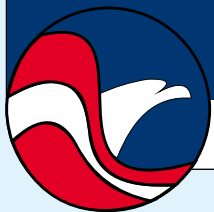
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AMERICAN CHAMBER OF COMMERCE IN KAZAKHSTAN

MEMBERSHIP APPLICATION

ABOUT AMCHAM

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

BENEFITS OF MEMBERSHIP

- ✓ AmCham members participate in an organization existing solely to serve members
- ✓ AmCham actively advocates for reform of the business environment with the Kazakhstan Government at senior levels
- ✓ AmCham members may attend 20 Working Groups in 5 cities plus 3 Inter-Ministerial Working Groups
- ✓ Monthly speaker luncheons with senior government and business leaders are reserved for AmCham members
- ✓ Seminars, conferences, and monthly social networking events are organized for AmCham members
- ✓ AmCham membership contact lists are available exclusively to AmCham members
- ✓ Economic, political, legal, social, and business development information is distributed to AmCham members
- ✓ Member companies provide exclusive discounts on products and services to other AmCham members
- ✓ Access to the Members' Only section on the AmCham Website
- ✓ Publishing opportunities are available in *Investors' Voice*, the *Annual Membership Directory*, and Special Publications

MEMBERSHIP APPLICATION

Company Name:

Industry Area:

CEO Name, Signature, Email:

Contact Individual:

Title(s):

Address:

Tel.: Fax: E-mail:

Please include us in the following Working Groups:

Almaty (7)

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

Atyrau (4)

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

Aktau (3)

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

Astana (4)

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

Shymkent (1)

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

AMCHAM WORKING GROUPS

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

GOVERNANCE

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

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

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MEMBERSHIP CATEGORIES AND ANNUAL FEES

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

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

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

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

| Toyota Professional

Toyota offers flexible solutions for your business needs.

Our operational leasing program gives you countless benefits, which include:

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- extensive geography of service
- less taxes and a fixed payment rate
- no need for an initial deposit
- renewal of your company's car fleet every 2 years.

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Toyota
Financial Services

KiNTO

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NIVEA

ANTI- WRINKLE ACTION

24

GET 24 H*



* One week research with 47 women aged 35-60, Institute for Consumer and Clinical Research, Beiersdorf, Germany, 2020