

# Doing business in Kazakhstan

An introductory guide  
to tax and legal issues







# Preface

This publication is intended to provide a useful practical summary of some of the legal and tax issues that investors may face when starting and building a business in Kazakhstan. We hope that it will help investors to avoid common pitfalls and highlight areas where some forethought and planning can prevent problems from arising. Kazakhstan offers many opportunities and is strongly committed to encouraging foreign investment in key sectors of the economy.

This guide is split into five sections:

1. Welcome to Kazakhstan
2. Our top 10 tax and legal tips for prospering in Kazakhstan
3. Getting started
4. An overview of tax rules in Kazakhstan
5. An overview of other laws affecting business administration.

This guide is a high-level summary of the rules in force as of 1 January 2021. It is not a substitute for comprehensive professional advice, which should be sought before engaging in any significant transaction. It should also be noted that this guide does not cover all taxes in Kazakhstan (of which there are more than 30). Here, we cover only the most important taxes, so advice should be sought as to the actual taxes applicable to any particular business.

We wish you every success in this exciting and dynamic environment.



# Contents



<b>Welcome to Kazakhstan</b> . . . . .	<b>4</b>
Highlights . . . . .	5
System of government . . . . .	8
Time . . . . .	8
Business hours . . . . .	8
Kazakhstan fact sheet . . . . .	9
<b>Our top 10 tax and legal tips.</b> . . . .	<b>10</b>
Tax tips . . . . .	11
Legal tips . . . . .	13
<b>Getting started</b> . . . . .	<b>16</b>
Arriving in Kazakhstan . . . . .	17
Post-arrival procedures . . . . .	18
Types of legal entities . . . . .	19
Establishing a legal presence . . . . .	20
Incentives for investors . . . . .	25
<b>Overview of tax rules in Kazakhstan.</b> . . . .	<b>30</b>
Personal income tax (“PIT”) . . . . .	31
Social tax . . . . .	34
Corporate income tax (CIT) . . . . .	38
Withholding tax (WHT) (other than PIT) . . . . .	40
Value added tax . . . . .	42
Subsurface use taxes . . . . .	46
Tax administration . . . . .	46

<b>Overview of other laws that affect business administration</b> . . . . .	<b>50</b>
Transfer pricing . . . . .	51
Employment regulations . . . . .	51
Import and export formalities and customs duties . . . . .	53
Licensing . . . . .	54
Banking regulations . . . . .	56
Currency regulations . . . . .	57
Currency regimes . . . . .	59
<b>EY in Kazakhstan</b> . . . . .	<b>64</b>
About EY . . . . .	65
Encouraging investment. . . . .	65
Supporting our clients in the dynamic landscape . . . . .	65
Office locations. . . . .	66
EY Kazakhstan at social media . . . . .	66
<b>Appendix</b> . . . . .	<b>68</b>
Double tax treaties . . . . .	69
List of countries with preferential tax regimes . . . . .	70
Key macroeconomic indicators of Kazakhstan . . . . .	71

# 1 Welcome to Kazakhstan





## Highlights

- ▶ Kazakhstan posted an annual average GDP growth rate of 5.2% from 2005 to 2019, with GDP in 2019 reaching US\$180.2 billion (US\$9,731.2 per capita). In the first 9 months of 2019 the growth rate accelerated to 4.5% from 4.1% in 2019.<sup>1</sup> The country's GDP shrank by 2.6% in 2020 as it took a heavy hit from the coronavirus pandemic. In October 2020, the Ministry of National Economy of Kazakhstan announced an updated GDP forecast for 2021, predicting a real GDP growth rate of 2.8% in 2021.<sup>2</sup>
- ▶ Foreign direct investment (FDI) inflows into Kazakhstan have been strong in recent decades. Kazakhstan's success in attracting FDI may be attributed to its vast natural resources and the commitment of the country's leadership to welcoming FDI and promoting the country's stable economic growth, as well as to developing non-extractive sectors such as agriculture, renewable energy, infrastructure, logistics and transport. In 2019, Kazakhstan posted gross FDI inflow of US\$24.1 billion compared to US\$24.3 billion in 2018.
- ▶ Kazakhstan is ranked 25th for Ease of Doing Business in the World Bank's Doing Business 2020 report. The country has moved up three positions compared with the previous year.<sup>3</sup>
- ▶ On 1 January 2015, the Treaty on the Eurasian Economic Union (EAEU) entered into force. The union of Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia comprises a market of 184 million consumers.
- ▶ In December 2012, the former President of Kazakhstan, Nursultan Nazarbayev, in his annual address to the nation, unveiled the Kazakhstan 2050 Strategy, which aims to make Kazakhstan one of the world's 30 most developed countries. The strategy is to be realized through a number of key initiatives: a comprehensive and pragmatic economic policy (infrastructure development, modernized systems for managing state assets and natural resources, accelerated industrialization, modernization of agriculture and new policies on water resources), the development of a culture of entrepreneurship, new social policies, targeted development of knowledge and professional skills, further strengthening of state governance and democracy, consistent and predictable foreign policy, and a new national patriotism.
- ▶ The Nurly Zhol (Shining Path) infrastructure development program was launched in November 2014 with the aim of creating an efficient transport and logistics infrastructure in Kazakhstan.<sup>4,5</sup>

US\$24,263  
million

gross FDI inflows recorded  
by Kazakhstan in 2018

---

184

million consumers  
make up the EAEU market

---

November 2014

Infrastructure development  
program launched in Kazakhstan

---

1 World Bank Data.

2 The Ministry of the National Economy of Kazakhstan.

3 Doing Business 2020, the World Bank, October 2019.

4 Official Information Source of the Prime Minister of the Republic of Kazakhstan, 22.10.2019,

<https://www.government.kz/en/news/realizaciya-novoy-gosprogrammy-nu-ryly-zhol-na-2020-2025-gody-pozvolit-sozdat-bolee-550-tys-rabochih-mest>

5 Astana Times, 24.10.2019, <https://astanatimes.com/2019/10/kazakh-government-estimates-nurly-zhol-programme-will-cost-16-91-billion-over-next-five-years/>

# KZT 5.8 trillion

was invested in Kazakhstan's transport industry

---

# 3,000 km

of republican roads were built or rebuilt

---

# 1,400 km

of new railways were commissioned

---

# 6 runways

were upgraded at the airports

- ▶ KZT 5.8 trillion was invested in Kazakhstan's transport industry under the Nurlı Zhol program in 2015–2019. Of this, 56% was funded with the involvement of the private sector, the rest by the state
- ▶ 3,000 km of republican roads were built or rebuilt, including completion of the Western Europe – Western China international transport corridor
- ▶ 1,400 km of new railways were commissioned: Zhezkazgan–Beineu (1,040 km), Arkalyk–Shubarkol (214 km), Borzhakty–Yersai (14 km) and the second track of the Almaty–Shu section (111 km)
- ▶ 6 runways were upgraded at the airports of Uralsk, Petropavlovsk, Almaty, Semey, Kostanay and Balkhash.

The program will include the following projects: completion of 3,800 km of roads; rebuilding of the runways at Kostanay and Balkhash airports; modernization of the Dostyk–Moynty railway line and electrification of the Moynty–Aktogay railway line; development of water transport through the purchase of 48 ships, including six merchant fleets, and major repairs to locks.

- ▶ In June 2015, in line with the Kazakhstan 2050 Strategy, former President Nursultan Nazarbayev set out 100 steps for the implementation of five institutional reforms aimed at promoting a modern and professional

civil service, rule of law, industrialization and economic growth, a unified nation, and the transparency and accountability of the state. The new President of Kazakhstan, Kassym-Jomart Tokayev, has continued the course and confirmed institutional reforms as a key priority in accelerating Kazakhstan's economic development.<sup>6</sup>

- ▶ The 'Digital Kazakhstan' state program was launched in 2017. It aims to accelerate economic development and improve the quality of life of the people of Kazakhstan with the aid of digital technologies.
- ▶ The first wave of privatization in Kazakhstan laid the foundations of the market economy in the 1990s. At the end of 2015, Kazakhstan announced a new privatization plan that seeks to shrink state ownership of the national economy from more than 40% to around 15%. However, real progress has been slow.
- ▶ On 30 November 2015, the World Trade Organization (WTO) welcomed Kazakhstan as its 162nd member. Kazakhstan has successfully negotiated arrangements on sensitive economic issues, including support for agriculture, financial services and telecommunications, and has coordinated its WTO and EAEU commitments in line with national interests. Kazakhstan became an associate member of the OECD Investment Committee in 2017

---

<sup>6</sup> Official website of the President of the Republic of Kazakhstan, [https://www.akorda.kz/ru/official\\_documents/strategies\\_and\\_programs](https://www.akorda.kz/ru/official_documents/strategies_and_programs)



and a participant in the Public Governance and Environmental Policy Committees in 2019. The country has also joined the OECD's Base Erosion and Profit-Shifting (BEPS) Project, an initiative involving over 100 countries in an effort to tackle tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low- or no-tax locations<sup>7</sup>.

- ▶ The New Silk Road is an ambitious transport infrastructure project that will enable goods to be delivered from the Pacific coast to Europe. Redirecting cargo traffic to the mainland is no easy task, as the current sea route is significantly cheaper. However, the new overland route through Kazakhstan allows delivery times to be reduced from 40-60 days to 13-14 days. A railway corridor connecting the Pacific coast of China to the Caspian Sea is already in operation. It will provide access to many major markets when integrated with the Kazakhstan – Turkmenistan – Iran and Azerbaijan – Georgia – Turkey railway systems. A joint industry and investment cooperation program is underway between Kazakhstan and China. It comprises 51 projects worth more than US\$27b and infrastructure forms an important part of it.<sup>8</sup>

- ▶ The annual PowerExpo Almaty international exhibition presents the latest equipment, technologies and services for the energy industry. It has become an established platform for business meetings, exchange of experience and negotiations. 118 enterprises from 13 countries, including Austria, Azerbaijan, Belarus, Germany, Italy, Kazakhstan, China, Poland, South Korea, Russia, Singapore, Ukraine and the Czech Republic, took part in the exhibition in 2019, with national stands presented by companies from China, Russia and Poland<sup>9</sup>.

- ▶ In July 2018 Kazakhstan officially launched the Astana International Financial Centre (AIFC) on the site of the EXPO-2017 exhibition. It is set to serve as a financial hub for Central Asia, the Caucasus, the Eurasian Economic Union and Mongolia. The centre has a special legal regime which differs from the legislation of Kazakhstan and is based on the principles of English law and best practices of world-leading financial centres. Participants enjoy special tax, currency and visa regimes, as well as a favourable framework for attracting foreign labour. Tax incentives include a nearly 50-year exemption from corporate income tax and VAT for

providing certain financial services on the territory of AIFC, and personal income tax on income of foreign employees. As of 2021, more than 700 companies from 42 countries have been registered in the AIFC. They represent the United Kingdom, the USA, China, Russia, Estonia, Latvia, Italy, Finland, South Korea, Singapore, Malaysia, India, the United Arab Emirates, Turkey and other leading economies.

- ▶ The Khorgos-Eastern Gate special economic zone (SEZ) comprises a dry port, a logistics and industrial zone, a railway station and the Altynkol Kazakh-Chinese Khorgos International Centre of Boundary Cooperation. In July 2015, the country's first dry port, with an area of 149 hectares and planned capacity of 500,000 twenty-foot equivalent units (TEU), was launched in the SEZ. Thanks to the dry port, shipments that used to take up to 40 days by sea from Asia to Europe can now be transported in just 10 days. In 2018, Khorgos processed 311 container trains along the China-Europe transport route and more than 1.2 million people visited the duty-free trade zone. So far, over US\$1.4 billion has been invested in the project<sup>10</sup>.

7 OECD, <https://www.oecd.org/eurasia/countries/kazakhstan/>

8 Belt and Road News, 09.06.2019, <https://www.beltandroad.news/2019/06/09/kazakh-chinese-one-belt-one-road-cooperation-discussed-in-astana/>

9 Official website of PowerExpo Almaty, <https://www.powerexpo.kz/en/exhibition/about-the-exhibition>

10 Forbes, 14.03.2019, <https://www.forbes.ru/biznes/373183-baraholka-s-oborotom-eu18-mlrd-novaya-mekka-chelnokov>

## System of government

The Republic of Kazakhstan gained independence on 16 December 1991. Under the constitution adopted on 30 August 1995, Kazakhstan is a democratic, secular, legal and social state. State power is divided into legislative, executive and judicial branches. Kazakhstan is a unitary state with presidential rule. Legislative functions are performed by the Parliament of Kazakhstan, which is the supreme representative body and consists of two chambers, the Senate and the Majilis. The Government of Kazakhstan acts as the supreme executive body, headed by the Prime Minister. Judicial authority is vested in the Supreme Court.

## Time

Kazakhstan's time zones range from five hours ahead of Greenwich Mean Time (GMT) in the western part of the country to six hours ahead of GMT in the other regions. Nur-Sultan and Almaty are six hours ahead of GMT.

## Business hours

Kazakh offices are generally open from 9:00 am to 6:00 pm Monday to Friday, and closed Saturdays and Sundays.

## Public holidays and days off

The following table presents Kazakhstan's official public holidays and days off.

Holiday	Date
New Year holidays	1-2 January
Orthodox Christmas	7 January
International Women's Day	8 March
Nauryz Meyrami	21-23 March
Kazakhstan People's Unity Day	1 May
Defender of the Fatherland Day	7 May
Victory Day	9 May
Capital Day	6 July
The first day of Kurban Ait	20 July in 2021 (observed in accordance with the Islamic Calendar)
Constitution Day	30 August
The First President of Kazakhstan Day	1 December
Independence Day	16-17 December





# Kazakhstan fact sheet

Capital	Nur-Sultan
Administration	Kazakhstan is divided into 14 provinces and 3 cities of national significance: Nur-Sultan, Almaty and Shymkent
Bordering countries	Russia, China, Uzbekistan, Kyrgyzstan and Turkmenistan
Land area	2,724,900 km <sup>2</sup>
Population (November 2020)	18.8 million
Urban population, % (November 2020)	59% of the total population
Age structure (2020)	0-15 years (29.9%); 16-62 years (59.1%); 63 and above (11.0%)
Languages	Kazakh (official language), Russian (interethnic communication)
President	Kassym-Jomart Tokayev (since 20 March 2019)
Prime Minister	Askar Mamin (since 25 February 2019)
Nominal GDP (2019)	US\$181.666 billion
GDP growth (2019)	4.5%
GDP per capita (2019)	9,731.2
GDP composition by sector (2019)	Agriculture (55.5 %); industry (33 %); services 4 %
External debt as a percentage of GDP (Q2 2020)	89.6%
Labour force (2020)	9.06 million
Unemployment rate (December 2020)	4.55%
CPI inflation (November 2020)	7.5%
Stock exchange	Kazakhstan Stock Exchange (KASE)
Central Bank	National Bank of Kazakhstan
Corporate income tax rate	20%
Individual income tax rate	10%
State value added tax	12%
Major cities	Nur-Sultan, Almaty, Shymkent, Karaganda, Atyrau, Aktau
Currency unit	Kazakhstan tenge (KZT)
Annual average exchange rate (2020)	US\$1=KZT 416.7; EUR1=KZT 477.98; RUR1=KZT 5.69; CNY1=KZT 60.8
Exchange rate as of 1 December 2020 <sup>11</sup>	US\$1=KZT 425.05; EUR1=KZT 509.29; RUR1=KZT 5.58; CNY1=KZT 64.66

Sources: Official website of the President of the Republic of Kazakhstan; the National Bank of Kazakhstan; the Statistics Agency of Kazakhstan.

11 Hereafter in this guide, all calculations in US\$ are made based on the exchange rate as of 1 December 2020

# 2 Our top 10 tax and legal tips





In this section we set out our top tax and legal tips for prospective investors.

Should you need more information on any of these issues, EY is happy to assist you in the following areas:

- ▶ Tax planning and compliance, both in Kazakhstan and internationally
- ▶ Business accounting and payroll
- ▶ A full range of legal consulting services in Kazakhstan, as well as tax litigation services
- ▶ Transaction advisory services and legal and tax due diligence
- ▶ Immigration support and performance and reward planning
- ▶ Assurance services

## Tax tips

### 1

---

Recent years have shown that Kazakh law is subject to frequent changes. This makes it important to have robust tax planning to enable businesses to cope with changes in the law and implement structural changes as required without significant tax costs.

### 2

---

Corporate and personal income tax rates in Kazakhstan are low by international standards, but penalties for non-payment and non-reporting, whether intentional or not, are high. The first focus of tax planning in Kazakhstan should be to confirm that all tax that ought to be paid in Kazakhstan is paid and reported. In addition, Kazakhstan is a documentation-driven country, and keeping documentation in order (including supporting documentation) is of paramount importance

### 3

---

The scope of withholding taxes (WHTs) on cross-border payments is wide, and rates are high (sometimes even when the recipient has never entered Kazakhstan). However, Kazakhstan has tax treaties with many countries which allow for withholding taxes to be reduced or avoided if all the necessary documentation is in place (though, the MLI provisions, which entered into force in Kazakhstan from 1 October 2020, should be considered and properly supported). Otherwise, tax will be withheld, and obtaining a refund may be a complex and time-consuming process with an uncertain outcome. Moreover, Kazakhstan has a unique position on transfer pricing whereby all cross-border transactions may potentially be inspected for transfer pricing compliance, regardless of whether the parties are in any way related.

### 4

---

There are many downsides to dealing with tax havens when structuring cross-border investments or transactions in Kazakhstan. Thus, tax havens should not usually form part of tax planning in Kazakhstan.

# 5

The rules for determining whether a business dealing with Kazakhstan has a taxable presence for corporate income tax (CIT) purposes in Kazakhstan (a permanent establishment) are very broad and can apply collectively to whole groups of companies if they have been in the country for over six months. Some, but not all, of Kazakhstan's tax treaties (with MLI limitations) protect against this. Therefore, if more than one group entity is used to do business in Kazakhstan, the position of all entities involved should be reviewed collectively.

# 6

Deductibility of interest on investor loans is subject to a debt-to-equity ratio of 4:1 (7:1 for financial organizations). At best, an investor will pay 10% WHT on cross-border interest (under a double tax treaty) and be able to claim a CIT deduction of 20%, while for certain borrowings accrued interest expense may be deducted only when paid. Furthermore, exchange gains and losses on loans are recognised for tax purposes.

# 7

There is a safe harbour allowing an entity that second staff to Kazakhstan to avoid a taxable presence. Provided the arrangements are properly structured, this is likely to be more tax-efficient than using the same staff to provide consulting or other services.

# 8

Branch profit tax applies to all permanent establishments of foreign legal entities at a standard rate of 15%. It is usually reduced by tax treaties. There is an equivalent tax on dividends at the same standard rate, which may also be reduced by treaties (with MLI limitations). In the case of dividends, the rate is zero after an investment has been held for three years (except for investments in oil and gas or mining operations (unless a certain portion of minerals is refined), dividends paid to entities registered in tax havens and investments in certain CIT-exempt entities).

# 9

In many cases, exemption from capital gains tax may be obtained upon withdrawal from an investment in Kazakhstan provided that the correct structuring was used when the investment was first made. The complexity of the structuring depends on the nature of the asset.

# 10

According to currently enacted tax law, income received by foreign individuals (cash and in-kind) for work performed in Kazakhstan (regardless of where the income is paid) is treated as Kazakh-source income and is subject to Kazakh personal income tax (PIT). Generally, Kazakh-source income is reported and taxed in Kazakhstan using one of the following methods: (i) self-assessment via an annual PIT return or (ii) at source via a local company acting as a so-called "tax agent". In most cases, the law places tax and reporting obligations for Kazakh-source income of foreign individuals on the local tax agent (e.g., a foreign legal entity with a registered presence in Kazakhstan (a branch or representative office) or a local entity that uses services of a non-resident employer delivered through foreign employees).



# Legal tips

1

Most investors use a Kazakh limited liability partnership (LLP) as their investment vehicle.

2

Settlements between residents of Kazakhstan (Kazakh legal entities, branches/representative offices of foreign non-financial entities, and Kazakh citizens) must be made in KZT (with a few exceptions – e.g., branches of non-financial entities may transact with each other in foreign currency). Settlements between non-residents (foreign legal entities and citizens) and Kazakh residents may generally be made in any currency but may have to be reported to the National Bank if they hit certain thresholds.

3

There is an extensive range of business and professional activities that are subject to licensing requirements, and it is important for investors to determine in advance whether they need a licence. The penalties for failure to obtain a licence can be significant, including potential criminal liability.

4

Kazakhstan often takes a formalistic approach to procedural matters. In most cases, a company's representatives must have a detailed power of attorney and will regularly be required to refer to it – for example, when signing contracts.

5

Compliance with local content requirements is very important for mining and oil and gas companies and their subcontractors and is constantly monitored by government authorities.

6

The process of hiring foreign employees is complex and strictly regulated in Kazakhstan. Immigration and labour law has undergone numerous changes resulting in frequent inspections of companies that employ foreign workers and increased penalties for violations of labour and migration rules (including discriminatory remuneration terms and payment of salaries in foreign currency).

7

Kazakhstan generally permits foreign law to be the governing law for commercial contracts, except for subsurface use contracts with the state, foundation agreements of a Kazakh legal entity, agreements on the transfer of participating interests in a legal entity and transactions involving immovable property. Regulatory acts of the AIFC governing relations between AIFC participants may be based on the “principles, norms and cases” of the law of England and Wales and standards of international financial centres.

# 8

---

In certain cases, Kazakh law requires approval to be sought from government authorities for the acquisition of shares/participating interests in legal entities operating in fields covered by competition and natural monopoly regulations and by legislation relating to subsurface use. It is therefore important to analyse the requirements of Kazakh laws on a case-by-case basis before entering into such transactions.

# 9

---

Disputes between Kazakh legal entities are resolved either through amicable procedures (mediation, amicable settlement and participatory procedure) or by courts and local arbitration, as well as by international courts if a provision allowing such dispute resolution is contained in the relevant agreement between the parties. Public disputes with Kazakh government authorities can be resolved either in court or through a pre-litigation procedure.

# 10

---

At the same time, Kazakh legal entities have access to the AIFC's court and international arbitration centre, whose decisions are recognised and enforced in Kazakhstan in a similar way to decisions of arbitration and international courts.







# 3 Getting started



# Arriving in Kazakhstan

The Kazakh authorities issue the following categories of visa:

- ▶ **Category A:** diplomatic, official and investor
- ▶ **Category B** (short-term stay): business visa, visa for international road haulage, visa for crew members of aircraft, marine and river vessels and trains, visa for religious events, visa for practical training or internships, visa for permanent residence in Kazakhstan, private visa, visa for adoption of Kazakh citizens, tourist visa, transit visa and exit visa to leave Kazakhstan
- ▶ **Category C** (long-term stay): visa for permanent residence in Kazakhstan (for ethnic Kazakhs), family reunion visa, work visa, visa for missionary activities, humanitarian visa, study visa, private visa (for ethnic Kazakhs), visa for minors and medical treatment visa.

Visas of the above categories may be issued for single or multiple entry depending on the category and type of visa. Exit visas are issued only for single use.

Business visas (Category B) are issued to foreign individuals arriving in Kazakhstan for business purposes (e.g., negotiations, conclusion of contracts, provision of consulting or audit services, provision of installation, repair or maintenance services and attendance of conferences, symposiums, forums, exhibitions and concerts).

Work visas (Category C) are issued to foreign individuals entering or staying in Kazakhstan for employment and members of their families. In general, a work visa is issued based on a work permit. See the “Work permits” section for details.

In Kazakhstan, visas are issued by the Ministry of Internal Affairs (MIA) of Kazakhstan. Elsewhere, they are issued by Kazakh consulates (for example, the Consular Department of the Embassy of Kazakhstan). Business and work visas are issued based on a letter of invitation issued by a local Kazakh company or a branch or representative office of a foreign company. The state duty for the execution of invitations is 0.5 times the monthly calculation index (MCI).<sup>12</sup> The fee for issuing a visa ranges from US\$20 to US\$1,000 depending on the country of residence of the invited party and the type of visa requested. A visa should be issued within five business days.

An individual may obtain certain types of official business and private visas without a letter of invitation by submitting a written application to the Kazakh consular establishment in the respective country if he or she is a citizen of one of the following countries:

▶ Australia	▶ Lithuania
▶ Austria	▶ Luxembourg
▶ Belgium	▶ Malaysia
▶ Brazil	▶ Malta
▶ Bulgaria	▶ Monaco
▶ Canada	▶ Netherlands
▶ Croatia	▶ New Zealand
▶ Cyprus	▶ Norway
▶ Czech Republic	▶ Oman
▶ Denmark	▶ Poland
▶ Estonia	▶ Portugal
▶ Finland	▶ Qatar
▶ France	▶ Romania
▶ Germany	▶ Saudi Arabia
▶ Greece	▶ Singapore
▶ Hungary	▶ Slovak Republic
▶ Iceland	▶ Slovenia
▶ Ireland	▶ Spain
▶ Israel	▶ Sweden
▶ Italy	▶ Switzerland
▶ Japan	▶ United Arab Emirates
▶ Jordan	▶ United Kingdom
▶ Korea (South)	▶ United States
▶ Latvia	
▶ Liechtenstein	

12 The MCI was established by the Law of the Republic of Kazakhstan «On the Budget of the Republic for 2021-2023» Effective on 1 January 2021, 1 MCI = KZT 2,917 (approximately US\$7)



Kazakhstan has a visa-free regime with certain countries based on international agreements (for example, Belarus and the Russian Federation).

Kazakh migration law allows citizens of the following countries to enter and exit Kazakhstan without visas:

- |                  |                        |
|------------------|------------------------|
| ▶ Australia      | ▶ Luxembourg           |
| ▶ Austria        | ▶ Malaysia             |
| ▶ Bahrein        | ▶ Malta                |
| ▶ Belgium        | ▶ Mexico               |
| ▶ Bulgaria       | ▶ Monaco               |
| ▶ Canada         | ▶ Netherlands          |
| ▶ Chile          | ▶ New Zealand          |
| ▶ Columbia       | ▶ Norway               |
| ▶ Croatia        | ▶ Oman                 |
| ▶ Cyprus         | ▶ Philippines          |
| ▶ Czech Republic | ▶ Poland               |
| ▶ Denmark        | ▶ Portugal             |
| ▶ Estonia        | ▶ Qatar                |
| ▶ Finland        | ▶ Romania              |
| ▶ France         | ▶ Saudi Arabia         |
| ▶ Germany        | ▶ Singapore            |
| ▶ Greece         | ▶ Slovak Republic      |
| ▶ Hungary        | ▶ Slovenia             |
| ▶ Iceland        | ▶ Spain                |
| ▶ Indonesia      | ▶ Sweden               |
| ▶ Ireland        | ▶ Switzerland          |
| ▶ Israel         | ▶ Thailand             |
| ▶ Italy          | ▶ Turkey               |
| ▶ Japan          | ▶ United Arab Emirates |
| ▶ Korea (South)  | ▶ United Kingdom       |
| ▶ Kuwait         | ▶ United States        |
| ▶ Latvia         | ▶ Vatican              |
| ▶ Liechtenstein  | ▶ Vietnam              |
| ▶ Lithuania      |                        |

Under this visa-free regime, citizens of the above countries may enter Kazakhstan without a visa for a period not exceeding 30 calendar days from the date of crossing the border and not more than 90 calendar days in total in any 180-calendar day period. If a foreign individual wishes to stay in Kazakhstan for a longer period, he or she may apply for a single-entry business or investor visa while in Kazakhstan. Investor visas are issued to certain categories of business immigration applicants (managers of companies that carry out investment activities in Kazakhstan and members of their families) and provide certain privileges.

It should be noted that, due to the coronavirus pandemic, the visa-free regime with the above-listed 57 countries has been suspended until 1 May 2021.

In view of the pandemic and related quarantine measures, obtaining entry to Kazakhstan is currently a more challenging and complex process for foreigners. A separate written approval from the Interdepartmental Commission ("IC") chaired by the Deputy Prime Minister of the Republic of Kazakhstan is required for foreign individuals to enter the country. This means that, when a foreign individual seeks entry to Kazakhstan for work, business or other purposes, the inviting company must first prepare an official request addressed to the head of the administration of the respective city (the city governor). That request must set out the reasons why the company needs the foreign employee in question.

The letter will then be forwarded to the IC for further consideration. The IC will consider requests on a case-by-case basis within 5 working days (although it may take longer in practice). In the event of a favourable decision, the IC will issue a protocol containing the name of the company and the foreign individual and he/she will be able to enter Kazakhstan based on that protocol provided that all other visas and work permits are in place.

## Post-arrival procedures

Until 10 January 2020, foreign individuals arriving in Kazakhstan for more than five calendar days were normally required to register with the Ministry of Internal Affairs (MIA). However, this has been replaced by an obligation on the part of the inviting party to obtain a temporary stay permit for the foreign citizen.

In addition, the inviting party must notify the MIA within three working days of the arrival of the foreign individual in Kazakhstan.

Immigration records are kept by the MIA based on information from inviting parties and by the National Security Committee of Kazakhstan based on information from Kazakh border control authorities.

A temporary stay permit allows a foreign individual to stay for a definite period (e.g., the length of an employment agreement) and must be obtained by the inviting party. A temporary stay permit is issued based on applications from:

1. Individuals inviting foreign individuals for family reunion
2. Individuals or legal entities that have concluded an employment agreement with a foreign individual
3. Educational organizations
4. Medical organizations
5. Religious organizations
6. Local authorities inviting individuals to engage in entrepreneurial activities (business immigrants).

However, foreign individuals in possession of a visa issued after 1 July 2018 do not need to obtain a temporary stay permit. Relevant data will be automatically recorded in the Berkut electronic database based on information provided in the letter of invitation. For foreigners entering Kazakhstan under a visa-free regime, the new rule described above will apply. The period of stay in Kazakhstan ends upon the expiry of the visa or, for visa-free visitors, after 30 calendar days or the period indicated in the temporary stay permit.

Starting from 2020, the temporary stay of foreign individuals arriving in Kazakhstan under a visa-free regime (including the 57 countries listed above) must not exceed 30 calendar days from the day of crossing the Kazakh border and must not exceed 90 calendar days in any 180-calendar day period unless otherwise provided in an agreement between Kazakhstan and the foreign country concerned or decided by the Government of Kazakhstan. This rule does not apply to individuals who have a temporary stay permit as described above.

Various sanctions are prescribed for non-compliance with immigration requirements. Please refer to the relevant section for details.

---

*Should you require assistance in planning and managing your human capital needs, EY can assist with business and work visas, work permit applications for foreign employees, tax registration, tax and legal compliance for expatriate individuals and the drafting of secondment agreements.*

---

## Types of legal entities

Under the Civil Code, foreign and local investors may use a number of organizational forms to do business in Kazakhstan, including simple partnerships, limited liability partnerships, additional liability limited partnerships, production cooperatives and joint stock companies.

In this section we give details of those types of business vehicles that are most widely used in practice.

### Joint stock companies (JSCs)

A JSC is a legal entity that issues shares in order to attract investments to finance its activities. A JSC is separate and distinct from its shareholders, i.e., shareholders are not liable for the JSC's liabilities. It may have one or more shareholders. The minimum capital required for a JSC is 50,000 MCI (approximately US\$350,000).

### Limited liability partnerships (LLPs)

The main difference between a JSC and an LLP is that an LLP does not issue shares; instead, participants hold interests in the partnership. An LLP may be formed by one or more participants. Generally, the participants in an LLP are not liable for the LLP's debts beyond the value of their contributions. There are a number of exceptions to this rule under Kazakh law.

The minimum capital requirement for an LLP is 100 MCI (approximately US\$694), with the exception of small businesses, for which the minimum is set at zero. Participants' interests are proportional to their contributions to the charter capital, unless the foundation documents provide otherwise. Participants have pre-emptive rights to each other's interests.

Importantly, LLPs in Kazakhstan are separate legal entities that are distinct from their participants. As a legal entity, an LLP is subject to state registration and taxation in its own right, i.e., it is not tax-transparent.

In addition, Kazakh law allows a foreign company to establish branches and representative offices. Under the Civil Code, branches and representative offices are not considered separate legal entities.

### Representative office

A representative office is established to represent a foreign entity's interests in Kazakhstan. A representative office protects and represents the interests of the foreign legal entity and carries out preparatory and auxiliary activities,



such as marketing and advertising. Generally, a representative office may not engage in commercial activities.

### **Branch**

A branch is a subdivision of a foreign legal entity that performs all or part of the foreign entity's functions. In particular, it may engage in commercial activities.

Should you require more information on the nature and uses of the various types of business entities in Kazakhstan, EY offers tax and legal advice on how to structure a business, as well as a full range of company formation and registration services.

## **Establishing a legal presence**

As a rule, all legal entities, branches and representative offices in Kazakhstan must be registered with the state. It is important to determine whether any specific approvals and/or consents must be obtained from government authorities before proceeding with state registration.

### **State registration**

State registration in Kazakhstan follows a "one-stop shop" principle: all registration documents must be submitted to a single government authority, the Government for Citizens. Under the law on state registration, the procedure should take from 1 to 5 business days. In practice, general registration can take up to one month.



The law prescribes a standard set of documents that must be submitted for the state registration of a company. Having all the right documents is key to a successful registration process. It is essential to ensure that the documents have been duly signed, sealed, notarized and legalized, or apostilled if they were executed abroad; otherwise, the registration process may be considerably delayed.

The state registration fee is currently 6.5 MCI (approximately US\$43).

### **Location (legal address)**

A legal entity's location is the address indicated in its foundation documents (e.g., its charter). Under Kazakh law, a legal entity is located in the same place as its permanently operating governing body (i.e., its director or board of directors). Location plays an important part in a legal entity's registration and other legal events, such as the determination of the court with which an appeal against such entity should be filed (usually a court in the defendant's location) and the state revenue authority to which tax and other payments must be made.

Under Kazakh law, government authorities, including state revenue authorities, require legal entities, branches and representative offices ("entities") to be present at the legal addresses indicated in their foundation documents and registration records. The state revenue authorities may visit them at their legal address under the so-called "observation procedure".

If entities are not actually present at their legal address, i.e., the state revenue authorities cannot find anyone representing an entity at the time of observation, they may be penalized. Specifically, they may be deregistered for VAT purposes or their bank accounts may be frozen. It is therefore important for entities to be actually present at the legal address stated in their foundation documents and registration records, or at least to ensure that, if the authorities visit (or if they send correspondence or call the contact telephone number), there is someone who can confirm the validity of the legal address.

Kazakh law stipulates that entities that are not present at their registered address for one year or more may be liquidated/deregistered based on a court decision.

### **Opening a bank account (legal entities and individuals)**

Bank accounts may be opened with a local bank in Kazakhstan in the national currency and/or in a foreign currency. Branches and representative offices of foreign legal entities may opt to use offshore (foreign) bank accounts.

Kazakh legal entities are permitted to hold bank accounts outside Kazakhstan without restrictions.

Under currency law, the rules for notifying the National Bank of Kazakhstan of the opening of a bank account with foreign banks are as follows:

- ▶ Kazakh legal entities, branches and representative offices of Kazakh legal entities are required to notify the

National Bank of Kazakhstan of the opening of a bank account abroad by applying for a registration number to be assigned to the bank account by the National Bank of Kazakhstan

- ▶ Kazakh legal entities, branches and representative offices of Kazakh legal entities are required to provide the National Bank of Kazakhstan with information on any transactions on bank accounts held with foreign banks
- ▶ Kazakh legal entities, branches and representative offices of Kazakh legal entities are required to notify the National Bank of Kazakhstan of the closure of or changes in details of bank accounts held abroad.

See the "Banking regulations" and "Currency regulations" sections for more details.

### **Categories of work immigrants, work permits and secondment**

The Law of the Republic of Kazakhstan on Population Migration, adopted on 22 July 2011, establishes the following categories of immigrants entering the country for employment purposes:

- ▶ Foreign immigrant workers, i.e., persons who come to Kazakhstan to engage in independently arranged employment in high demand occupations in priority economic sectors (business areas), and persons who are engaged by employers to work in Kazakhstan, including by intra-corporate transfer
- ▶ Business immigrants, i.e., persons who come to engage

in entrepreneurial activities in accordance with Kazakh law

- ▶ Seasonal foreign workers, i.e., immigrants hired to perform seasonal work during specific periods (seasons) determined by climatic or other natural conditions, but not for more than one year
- ▶ Labour immigrants who come to Kazakhstan as domestic workers to perform household-based work (services) for individuals (employers) under a labour immigrant permit.

### Work permits

There are two types of permits allowing foreign individuals to work in Kazakhstan:

- ▶ A permit to engage foreign labour
- ▶ A permit issued to a foreign individual who independently came to Kazakhstan to work in a particular occupation. The Kazakh government approves the list of such occupations.

As in many other countries, employers in Kazakhstan must obtain a permit to employ foreign citizens.

There is a reasonable amount of flexibility in the process of hiring foreigners in Kazakhstan. Unlike many countries where employers are required to sign employment contracts with foreign nationals to hire them as local employees, Kazakhstan offers different options, including (i) employing a foreigner directly as a local employee, (ii) engaging foreign specialists through a service contract with a foreign contractor not present in Kazakhstan (including secondment

agreements, which are commonly used around the world) and (iii) transfer of a foreigner to a local branch/representative office/subsidiary from a parent company based in a WTO country (intra-corporate transfer). A work permit is obtained by submitting documents to the local authorities under one of two procedures: the standard procedure or intra-corporate transfer. The latter option is available as a result of Kazakhstan joining the World Trade Organization (WTO).

### Standard procedure

Work permits are issued by local authorities within the quota allocated by the Ministry of Labour and Social Protection on an annual basis. The quota is the maximum number of foreign individuals who can be hired to work in Kazakhstan in particular regions. Quotas are determined mainly on the basis of annual applications from employers, which must be submitted by 1 October.

The government may decide to reduce the overall quota for a particular year (for instance, the quota for 2020 was reduced by 40% compared with 2019).

For the purposes of work permits issued under the standard procedure, foreign individuals are divided into the following categories:

- ▶ **Category 1** – CEOs and deputy CEOs of companies
- ▶ **Category 2** – Leaders of business divisions/department
- ▶ **Category 3** – Professionals
- ▶ **Category 4** – Skilled workers

There is, however, a restriction on the number of foreign employees that may be hired by a Kazakh employer/local host entity – the so-called “ratio requirement”. Currently, the total number of foreign employees of a Kazakh employer/local host entity must not exceed:

- ▶ 30% of the total number of Category 1 and 2 employees
- ▶ 10% of the total number of Category 3 and 4 employees

An exemption from the ratio requirement applies for small businesses, state enterprises and agencies, self-employed foreign individuals, permits issued within the quotas for particular countries of origin and branches and representative offices of foreign legal entities with no more than 30 employees.

To obtain a work permit, each foreign individual must meet the set qualification requirements.

A work permit under the standard procedure is issued for the following durations:

- ▶ **Category 1** – 1, 2 and 3 years with annual extension by 1, 2, or 3 years
- ▶ **Category 2** – 12 months with annual extension by 12 months, but no more than 3 times
- ▶ **Category 3** – 12 months with annual extension by 12 months, but no more than 3 times
- ▶ **Category 4** – 12 months with no option to extend

An employer is charged a state duty for the issuance or extension of a work permit. The amount of the duty is established by the Kazakh government and depends on the type of business of the employer and the category of the foreign employee. The amount of state duty ranges from approximately US\$950 to US\$3500 depending on the sector and the category of the employee.

### **Intra-corporate transfer**

An intra-corporate transfer (ICT) is a temporary transfer of a foreign individual from a legal entity established in the territory of a WTO state other than Kazakhstan to a branch, subsidiary or representative office in Kazakhstan. For the purpose of obtaining a work permit under ICT, foreign individuals are classified into:

- ▶ Specialists
- ▶ Managers
- ▶ Executives

Under the ratio requirement for ICT, the number of foreign employees must not exceed 50% of the total number of managers and specialists. No ratio requirement applies in relation to executives. A foreign individual engaged under ICT remains employed by the home company but must comply with the requirements of the host employer in terms of work schedule and health and safety requirements. The foreign individual must meet relevant qualification requirements and have at least one year of work experience with the entity based in a WTO member state. Local authorities issue a work permit under ICT for

the transfer period, but not more than 3 years (36 months) with the option to extend it once by 1 year (12 months).

ICT-based work permits are issued free of state duties and are not subject to the foreign labour quota.

However, before hiring a foreign specialist to work in Kazakhstan under ICT, the local host entity must carry out a search for suitable candidates on the Kazakh labour market and obtain a work permit only if no suitable candidates are found. For each manager or specialist work permit received under ICT, the employer must fulfil one of a number of special conditions (e.g., creation of

new jobs for Kazakh citizens, retraining of Kazakh citizens, etc.). No special conditions are imposed on the host company when hiring executives.

### **Work permit exemptions**

To encourage foreign investment, Kazakhstan offers various exemptions from the requirement to obtain work permits for foreign workers. Exemptions apply, for instance, to

- ▶ Business immigrants who come to Kazakhstan to engage in entrepreneurial activities





- ▶ CEOs of local branches or representative offices of foreign companies and CEOs and deputy CEOs of local wholly foreign-owned companies
- ▶ CEOs of companies that have entered into agreements with the Government of Kazakhstan to invest more than US\$50 million in the country, and CEOs of local companies running investment projects in key industries under agreements with local competent authorities
- ▶ Nationals of member countries of the Eurasian Economic Union regardless of their position or the duration of their employment in Kazakhstan
- ▶ Foreign nationals engaged by participants or bodies of the Astana International Finance Centre (AIFC)
- ▶ Individuals working in the Astana Hub international technology park or hired by park participants in the positions of managers and specialists with a higher education
- ▶ Managers and professionals with a higher education working either with local companies that have entered into contracts to implement investment projects in priority areas or with companies in the architectural, town-planning and construction industries contracted by such an investor, for the period until the end of the first year after the commissioning date of the project facility, or as skilled workers in accordance with the list of occupations and employee numbers approved as part of investment contracts
- ▶ Employees of companies registered in one of Kazakhstan's 10 free economic zones (FEZs) to implement projects worth more than KZT 2.917 million (in 2021) or companies contracted by an FEZ resident, for the period of construction and installation work in the FEZ and during the first year after the commissioning date of the project facility, in accordance with the list of employee categories and numbers adopted by a special committee of competent authorities
- ▶ Individuals working in a national managing holding company in positions not lower than heads of departments, holding a higher education and possessing the required supporting documents, and individuals hired by a national managing holding company as members of the board of directors
- ▶ Employees sent on business trips for a period or periods totalling no more than 120 calendar days in the course of a calendar year.

### **Sanctions for non-compliance with immigration legislation**

Kazakh law imposes severe sanctions on inviting parties and foreign citizens for non-compliance with immigration legislation. Administrative sanctions imposed on a company may be as high as US\$6,900 (per foreign individual per violation). In the worst-case scenario, the individual may be subjected to administrative detention for up to 15 days or administrative deportation from the country and the company may be banned from hiring foreigners for up to 1 year, i.e., no work permit will be issued and invitations from the company will not be accepted for visa applications.

In addition, a foreign individual must personally attend the administrative court in connection with an immigration offence. Such foreign individuals are not allowed to enter Kazakhstan for 5 years after administrative deportation from Kazakhstan.

### **Residence permits**

Kazakhstan issues residence permits. There is no quota system for immigration into Kazakhstan under residence permits.



## Family members

The spouse of a holder of a Kazakh work permit does not automatically receive the same type of work permit. If he or she wishes to take up employment, a work permit application must be filed independently.

## Secondment

The secondment of foreign personnel is currently a major issue on the Kazakh job market.

The Tax Code provides a safe harbour whereby a foreign entity providing secondees from outside Kazakhstan may avoid being taxed in Kazakhstan. Certain conditions must be met for this to apply.

Under secondment, the local host company acts as a tax agent in relation to the income of the seconded personnel and is responsible for shadow payroll tax calculation and reporting, including personal income tax and social tax liabilities. However, it is important to note that, besides tax legislation, the secondment must also comply with relevant Kazakhstan labour law requirements.

---

### *EEY can assist with*

*(i) the structuring of a secondment arrangement that meets the applicable legislative requirements;*  
*(ii) drafting secondment agreements and other mandatory documents;*  
*(iii) application for required permits, registration, etc. in Kazakhstan*

---

## Incentives for investors

With the aim of creating a favourable investment climate, Kazakhstan provides various benefits for investors depending on their area of activity.

### Investment contract

In order to enjoy certain investment incentives, the investor must enter into an investment contract with the Investment Committee of the Ministry of Foreign Affairs of the Republic of Kazakhstan (the “Committee”). The form of investment contract is approved by a Government Resolution.

It is important to note that the investment contract must be concluded with a Kazakh legal entity, which may be a subsidiary of a foreign company. The term of the investment contract is determined by the effective period of the investment incentives to be provided.

The Entrepreneurial Code of Kazakhstan specifies three types of projects that may be implemented under investment contracts:

#### 1. Regular investment projects

involving the creation of new or expansion and upgrading of existing production facilities, including facilities created, expanded and/or upgraded through public-private partnerships, including concession projects.

2. **Priority investment projects** involving the creation of new production facilities with investments of no less than US\$13,858,177 or the expansion and upgrading of existing production facilities with investments of no less than US\$34,645,443
3. **Special investment projects** implemented by legal entities registered as participants of special economic zones, or by owners of a free warehouse, or by legal entities that have entered into an agreement on the industrial assembly of motor vehicles.

All such investment projects must fall within the list of priority areas of activity approved by the Kazakh government. Below we outline types of incentives provided to investors depending on the type of investment project:

1. Regular investment projects
  - exemption from customs duties
  - exemption from import VAT
  - in-kind grants (free land lease, title to land plots and equipment) up to a value not exceeding 30% of total investment
2. Priority investment projects
  - exemption from customs duties
  - in-kind grants (free land lease, title to land plots and equipment) up to a value not exceeding 30% of total investment

- ▶ tax incentives, and specifically:
  - ▶ 100% CIT relief for up to 10 years for new production facilities and 3 years for the upgrading of existing production facilities
  - ▶ zero rate land tax for up to 10 years
  - ▶ zero rate property tax for up to 8 years
  - ▶ investment subsidies if the investments are no less than US\$34,645,442 (compensation of up to 30% of expenditure on construction works and procurement of equipment during the implementation stage).

### 3. Special investment projects

- ▶ exemption from customs duties
- ▶ exemption from import VAT

### **Agreement on the processing of solid minerals**

The Subsurface Use Code currently provides investment incentives for subsurface users that implement a priority investment project involving the processing of solid minerals in Kazakhstan and have concluded relevant agreements with the Committee.

To enjoy investment incentives, subsurface users must invest no less than US\$48,503,620 and apply to the Committee to conclude an agreement on the processing of solid minerals through a negotiation and appraisal process. It should be noted that only one processing agreement may be

concluded for one and the same mineral processing project or production facility.

Furthermore, the state grants investment incentives based on the principle of reciprocity, i.e., the subsurface user may be required to fulfil a number of social and investment obligations, such as:

- ▶ the creation and preservation of jobs for citizens of the Republic of Kazakhstan in the extractive and/or processing industries
- ▶ the creation, expansion and/or upgrading of processing facilities
- ▶ obligations relating to the volume and level of processing of solid minerals
- ▶ obligations relating to the volume of products sold as raw materials to entities operating on the domestic market
- ▶ the financing of programs of Kazakh educational institutions for the training of specialists in environmental protection and applied sciences
- ▶ the financing of the construction and/or reconstruction of social and/or cultural facilities

The termination of an agreement on the processing of solid minerals also entails the termination of investment incentives granted.

### **Special economic zones**

Special economic zones (SEZ) are specialized territories of Kazakhstan with defined boundaries and a special regulatory regime designed to support certain priority activities. The list of priority activities is set by an Order of the Minister for Investment and Development. The Order specifies priority activities for 13 (thirteen) different SEZs in Kazakhstan:

1. **Astana, New City (Nur-Sultan)** – construction of industrial facilities and infrastructure
2. **National Industrial Petrochemical Technopark (Atyrau region)** – manufacture of petrochemical products and construction of industrial facilities
3. **Morport Aktau (Mangystau region)** – metallurgy, construction of industrial facilities
4. **Innovative Technologies Park (Almaty)** – IT services
5. **Ontustik (South Kazakhstan region)** – production of textile and other materials
6. **Saryarka (Karaganda region)** – metallurgy, construction of industrial facilities
7. **Khorgos Eastern Gates (Almaty region)** – production of food, textiles, non-metallic minerals and other materials
8. **Pavlodar (Pavlodar)** – manufacture of chemical and petrochemical materials and construction of industrial facilities





9. **Taraz Chemical Park (Taraz)** – manufacture of chemicals and non-metallic minerals
  10. **Astana-Technopolis (Nur-Sultan)** – production of food, pharmaceuticals, machinery and other products and construction and commissioning of infrastructure facilities
  11. **Turkistan (Turkistan)** – construction of infrastructure, industrial and social facilities
  12. **ICBC Khorgos (Almaty region)** – development of cross-border trade and economic cooperation,
  13. **Qyzyljar (Petropavlovsk)** – production of food, electronics, mechanical engineering and medical services
- Companies registered as participants of an SEZ enjoy the following benefits:
- ▶ the SEZ territory is classed as a free customs zone
  - ▶ free land lease
  - ▶ tax incentives (subject to certain criteria), and specifically:
    - ▶ 100% relief on land tax/land use fees
    - ▶ 100% property tax relief
    - ▶ 100% CIT relief
    - ▶ 0% VAT on supplies of goods to the SEZ
    - ▶ VAT exemption for supplies of goods in the territory of the SEZ
    - ▶ 100% social tax relief (only for the Innovative Technologies Park)
  - ▶ simplified procedures for engaging foreign labour.

## Astana Hub International Technology Park

The Astana Hub International Technology Park was conceived as part of the Digital Kazakhstan national program. The Astana Hub is a designated and equipped area that provides a favourable environment for start-ups, including co-working, exchange of experience, assistance in attracting investors and expert advice.

In order to be registered as a participant in the Astana Hub, Kazakh or foreign legal entities must submit an electronic application together with supporting documents, including a business plan. The applicant must be involved in information and communication technology (ICT) activities.

It should be noted that, until 1 January 2024, Astana Hub participants are not required to be located in the territory of the Astana Hub.

In order to be registered as an Astana Hub participant, an applicant must meet the following requirements:

- ▶ It is a legal entity
- ▶ It does not have branches or separate corporate units (other than representative offices)
- ▶ It does not implement priority or strategic investment projects under an investment contract
- ▶ 50% or more of its shares are not directly or indirectly owned by the government, a national company or subsidiaries of such a company



- ▶ It is not a subsurface user or SEZ participant

- ▶ It is not a payer of excise tax.

Astana Hub participants may enjoy the following benefits:

- ▶ tax incentives (subject to certain criteria), and specifically:
  - ▶ 100% CIT relief until 1 January 2029
  - ▶ PIT exemption for both local and foreign employees of Astana Hub participants until 1 January 2029
  - ▶ exemption from social tax – expected to be applicable only to income of foreign employees of Astana Hub participants
  - ▶ withholding tax exemption for non-residents on royalties and other income paid by Astana Hub participants for consulting,

marketing, engineering and data security services and work connected with the creation of data processing centres (unless payable to non-residents registered in tax haven jurisdictions)

- ▶ 5% (instead of 15%) withholding tax on capital gains and dividends on shares and interests in Astana Hub participants
- ▶ VAT exemption for imports of certain goods and exemption from reverse charge VAT for services acquired by Astana hub participants
- ▶ VAT exemption until 1 January 2029 for goods and services produced and supplied by Astana Hub participants.

## AIFC

The AIFC was established to provide a favourable environment for investors. So far, the AIFC has succeeded in its main mission of becoming a hub for foreign and local investors and various financial, market and ancillary service providers by establishing common law as the governing law within the AIFC and a legal framework similar to those of well-known international financial centres, such as the Dubai International Financial Centre.

There are two options for establishing a legal presence within the AIFC:

- i. registration of a new legal entity or
- ii. recognition of existing legal entities as AIFC participants.

New AIFC legal entities may be registered in forms provided for in common law, such as:

- ▶ Limited Partnership
- ▶ Limited Liability Partnership
- ▶ General Partnership
- ▶ Private Company
- ▶ Public Company
- ▶ Investment Company
- ▶ Special Purpose Company
- ▶ Non-Profit Incorporated Organization
- ▶ Protected Cell Company
- ▶ Restricted Scope Company
- ▶ Foundation

Foreign partnerships and companies may be registered in the AIFC in the following legal forms:

- ▶ Recognised Company
- ▶ Recognised General Partnership
- ▶ Recognised Limited Partnership
- ▶ Recognised Limited Liability Partnership

Certain activities, such as financial services, market activities and ancillary services (legal, audit, accounting, consulting, credit rating), are subject to licensing in the AIFC.

AIFC participants may enjoy the following benefits (subject to certain criteria being met):

- ▶ CIT exemption until 1 January 2066 for certain financial services specified in AIFC law that are provided in the territory of AIFC
- ▶ PIT exemption until 1 January 2066 for expatriate employees of AIFC participants
- ▶ CIT and PIT exemption until 1 January 2066 for dividends and capital gains on securities officially listed on a stock exchange and shares in licensed AIFC participants
- ▶ VAT exemptions for certain financial services specified in AIFC law that are provided in the territory of AIFC
- ▶ Exemption from property tax
- ▶ Exemption from land tax
- ▶ Simplified visa regime for foreign citizens coming to Kazakhstan to work for AIFC participants.

As well as work permit exemptions for foreign workers, the AIFC also provides:

- ▶ Commercial and civil dispute resolution through the AIFC Court or the International Arbitration Centre;
- ▶ An exchange platform – the Astana International Exchange (AIX) – for corporations (listing), state bodies (bond issue) and retail and large investors interested in various financial instruments.

The AIX has quickly drawn attention from other countries in view of its simplified arrangements for the provision of financial services.

The Astana Financial Services Authority (AFSA) offers an arrangement whereby firms may provide financial services on the AIX as a Recognised Non-AIFC Member (RNAM) (i.e., a legal entity located in a jurisdiction other than the AIFC may apply to the AFSA to be recognised as a RNAM). The main advantage of RNAM status is that it enables foreign businesses to avoid a lengthy application process when they only seek access to the AIX as a trading member.



# 4 Overview of tax rules in Kazakhstan



In the sections that follow we outline the most significant taxes in Kazakhstan.

There are a number of other less significant taxes, such as assets tax, land tax, payments for the use of various resources such as radio frequencies, environmental taxes and a number of taxes on “subsurface users”, i.e., oil, gas and mining companies. It is important to carry out a thorough review of any proposed business activity to determine the actual taxes that apply to it.

## Personal income tax (“PIT”)

### Payers

Residents are taxed on their worldwide income. Non-residents are taxed on Kazakh-source income only, regardless of where it is paid. Income is deemed to be from a Kazakh source if it is derived from work performed in Kazakhstan. Kazakh-source income also includes interest income from residents and non-residents that have a permanent establishment in Kazakhstan and dividends from resident legal entities.

For tax purposes, individuals are considered residents if they are present in the country for not less than 183 days in any consecutive 12-month period ending in the current tax year.

There is a separate investment residency program offered by the AIFC whereby individuals may qualify as AIFC investment residents if they meet the program requirements and are present in the country for not less than 90 calendar days (including the days of arrival and departure) in any consecutive 12-month period ending in the current tax period.

Kazakh citizens or holders of residence permits are always considered residents of Kazakhstan if their centre of vital interests is located in Kazakhstan. An individual is deemed to have his or her centre of vital interests in Kazakhstan if all the following conditions are simultaneously met:

- ▶ The individual is a Kazakh citizen or has permission to live in Kazakhstan on a permanent basis
- ▶ The individual has a spouse or close relatives who reside in Kazakhstan
- ▶ The individual and/or his or her spouse and/or members of his or her family own, or otherwise have at their disposal, immovable property in Kazakhstan that is permanently available for residence.

Double tax treaties may lay down different rules for determining tax residency.

### Taxable income

The tax treatment of various types of income is described below.

#### *Employment income*

Employment income consists of all compensation received by an employee, whether in cash or in kind (including employee shares), subject to minor exceptions, regardless of where the income is paid.

Under Kazakh law, any income paid for work performed in Kazakhstan (regardless of whether it is paid from inside or outside Kazakhstan) is deemed Kazakh-source income subject to statutory payroll taxation in Kazakhstan by the tax agent (i.e., a Kazakh entity or a branch or representative office of a foreign entity which is responsible for calculating, withholding and remitting payroll-based taxes/social payments).

In order to comply with local requirements, host companies must run a shadow payroll to enable tax reporting

of income paid abroad for work done in Kazakhstan. Under the shadow payroll mechanism, foreign income is reported for Kazakh tax purposes only while net pay is received from the home-country employer.

Companies that engage freelancers (not registered as individual entrepreneurs) are obliged to act as tax agents (as defined above) and withhold PIT, pension contributions and social medical insurance contributions from income paid to them.

### *Self-employment and business income*

Income of Kazakh citizens engaged in self-employment activities (individual entrepreneurs) is subject to income tax. Tax is levied on an individual's annual business income, which consists of gross income less expenses incurred in earning that income. To be able to deduct expenses, individual entrepreneurs must be registered with the tax authorities and provide supporting documentation for the expenses concerned. The tax rates for self-employment income are the same as those for employment income as shown in the "Rates" section, except for individual entrepreneurs who apply a special taxation regime.

### *Investment income*

Investment income is normally included in taxable income. The tax rates are shown in the "Rates" section.

Some types of investment income are exempt from tax (see the "Exempt income" section).

### *Exempt income*

Certain items are exempt from tax, including the following:

- ▶ Business trip per diems within set limits and reimbursement for certain business trip expenses
- ▶ Accommodation and meal expenses within set limits for shift workers while they are at work
- ▶ The excess of the market value of shares covered by a stock option at the time of exercise over the exercise price of the option
- ▶ Alimony
- ▶ Medical expenses within set limits
- ▶ Dividends and interest on securities if, at the time of the accrual of such dividends or interest, the securities are on the official list of a stock exchange operating in Kazakhstan
- ▶ Dividends and capital gains on shares held for over three years if certain other conditions are met
- ▶ Capital gains derived from securities that are listed on a stock exchange operating in Kazakhstan at the date of sale
- ▶ Interest income on deposits paid to tax resident individuals by licensed organizations in Kazakhstan
- ▶ Income from Kazakh state securities
- ▶ 90% of the taxable income of an employee if that income is less than 25 MCI (KZT 66,275/approximately US\$173) per month

### *Capital gains*

The Kazakh Tax Code defines a capital gain as the difference between the sale price (disposal value) and the acquisition price (base cost), supported by documents.

Income derived from the disposal of shares acquired through the exercise of a stock option equals the positive difference between the sale price and the acquisition price. The acquisition price includes the exercise price of the option and the option premium.

In the case of sales of property located in blacklisted low-tax jurisdictions, the taxable amount is determined as the full sale price (i.e., the cost of acquisition is non-deductible).

Capital gains are subject to tax at the rates shown in the "Rates" section of this guide.

Since capital transactions of individuals are not currently adequately addressed in Kazakh tax legislation, it is not possible for capital losses to be deducted from capital gains for tax purposes or for capital losses to be carried backward or forward to other tax periods.

Consequently, income recognised for tax purposes may significantly exceed income recognised in financial statements prepared by a financial institution.

### *Controlled Foreign Company (CFC)*

Tax resident individuals who directly, indirectly or constructively control non-resident legal entities and/or other types of organizations subject to certain



conditions are liable to 10% PIT on the CFC's retained earnings and are subject to separate tax reporting obligations. See the "Controlled Foreign Company (CFC) rules" section for more details.

**Deductions**

The taxable amount of a tax resident individual's income may be reduced by the minimum monthly wage, which has been set at KZT 42,500 (approximately US\$100) for 2021. If an employee's taxable income for a particular month is below the minimum monthly wage, the unused part of the deduction may be carried over to later months within the year. This does not apply where an individual changes workplace during a tax period, i.e., the individual may not offset an excess arising at the previous workplace against income earned at the new workplace.

Other deductions include the following:

- ▶ Compulsory pension fund contributions
- ▶ Compulsory employee social medical insurance contributions
- ▶ Voluntary pension fund contributions made by the individual for his or her own benefit or by a tax agent under Kazakh pension law
- ▶ Medical expenses supported by documents within set limits
- ▶ Payments on mortgages with specific banks

**Rates**

The following tax rates apply for resident and non-resident individuals depending on the type of income:

Type of income	Tax rate
Employment income of residents and non-residents taxed by the local employer/host company	10%
Income of residents who receive income under a service agreement	10%
Income of lawyers and private notaries	10%
Capital gains, interest and winnings of residents	10%
Dividends received by residents from Kazakh companies	5%
Capital gains, dividends, interest and royalties paid to non-residents by Kazakh legal entities	15%
Any other Kazakh-source income paid to non-residents that is not received from a tax agent (local legal entity)	20%

Income received in foreign currency is converted into tenge at the exchange rate current on the last business day preceding the date of payment.





### Tax registration of foreign nationals in Kazakhstan

The most common cases in which a foreign national must be registered as a taxpayer in Kazakhstan are as follows:

- ▶ When opening accounts with local banks
- ▶ On receiving Kazakh-source income not taxed at source in Kazakhstan
- ▶ On acquiring Kazakh tax resident status.

Tax registration must take place at the foreigner's location of residence. A range of documents must be submitted. By law, tax registration should take three business days; in practice, it may take up to a week..

### Social tax

Social tax is payable by employers. It is an additional direct tax imposed on employers that is not reserved for the payment of social benefits to employees.

The tax base for social tax is the amount of income paid by the employer to its employees. Exclusions include:

- ▶ Payments made by way of grants
- ▶ Compulsory pension fund contributions
- ▶ Compulsory employee social medical insurance contributions

Employers must calculate social tax at a flat rate of 9.5% of gross income, less exempt amounts. The minimum tax base for social tax per employee is the minimum monthly wage.

Monthly social tax liability is reduced by the monthly amount of compulsory social insurance contributions (see the "Social insurance contributions" section).

Social tax must be remitted to the state budget on a monthly basis by the 25th of the month following the tax period.

### Mandatory pension fund contributions

An employer must withhold and pay pension fund contributions on a monthly basis at the rate of 10% on the gross salaries of employees (local citizens and foreigners holding a residence permit).

In 2021, pension fund contributions are not charged on monthly income in excess of 50 times the minimum monthly wage (KZT 2,125,000/ approximately US\$5,550). Pension fund contributions are deductible for PIT and social tax purposes.



The Kazakh Law on Pension Provision also requires employers to pay additional professional pension fund contributions at their own expense for employees working in certain occupations in 17 industry sectors, including mining, oil and gas, pharmaceutical and consumer goods manufacturing. The contributions are payable at the rate of 5% on the gross salaries of such employees.

Tax agents who pay income to individuals under civil contracts must, in addition to 10% PIT, withhold and pay 10% pension fund contributions on the gross amount of that income.

### **Social insurance contributions**

Employers must pay social insurance contributions, which form part of social tax, at the rate of 3.5% of income paid to employees (Kazakh citizens and foreigners holding a residence permit).

In 2021, social insurance contributions are not charged on monthly income in excess of 7 times the minimum monthly wage (KZT 297,500/approximately US\$780). The minimum monthly tax base for social insurance contributions per employee is the minimum monthly wage. Social insurance contributions are expected to be charged at a flat rate of 5% starting from 2025.

Under the Eurasian Economic Union Agreement of 29 May 2014 between Armenia, Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation, employers that employ citizens of Eurasian Economic Union member states under employment contracts are required to pay social insurance

contributions at their own expense at 3.5% of the gross salaries of the employees concerned, whether or not they have a Kazakhstan residence permit.

### **Mandatory social medical insurance**

Employers must make employer contributions to the Social Medical Insurance Fund on a monthly basis at the rate of 2% (3% from 2022) of income paid to employees (applicable to Kazakh citizens, repatriated ethnic Kazakhs, citizens of the Eurasian Economic Union and foreign citizens holding a residence permit).

In addition to making employer contributions, starting from 2020 employers must withhold employee

contributions to the Social Medical Insurance Fund from income paid to employees (Kazakh citizens, repatriated ethnic Kazakhs, citizens of the Eurasian Economic Union and foreign citizens holding a Kazakhstan residence permit). These employee contributions are deductible for PIT and social tax purposes.

Contributions must be withheld monthly at the rate of 2% of the employee's income.

In 2021 income subject to employer and employee contributions to the Social Medical Insurance Fund is capped at 10 times the minimum monthly wage (KZT 425,000/approximately US\$1,110) per month.





## **Tax filing**

### *Tax filing by a tax agent*

As mentioned above, any employment income, including benefits in kind, paid for work performed in Kazakhstan (irrespective of the place of payment) must be taxed and reported by the local tax agent.

A tax agent must withhold PIT, pension fund contributions and employee medical social insurance contributions on a monthly basis no later than the date on which income is paid. PIT, pension fund contributions, professional pension fund contributions and employer and employee medical insurance contributions must be paid no later than 25th of the month following the month in which employment income was paid. Social tax and social insurance contributions must be paid by the 25th of the month following the month in which employment income accrued.

The tax agent must file a PIT and social tax declaration (Form No. 200.00) on a quarterly basis by the 15th of the second month following the reporting quarter. The form also includes pension fund contributions, professional pension fund contributions, mandatory medical insurance contributions and social insurance contributions.

There is also a special set of rules regulating the taxation of foreign nationals in situations where a foreign service provider sends an employee to a Kazakh customer for a short period of time. Essentially, for the first 183 calendar days (i.e., up to the point

at which Kazakh tax residency status arises), the foreign individual must report earnings attributable to working days in Kazakhstan, even if it is only a few days. For this purpose, the individual concerned would be required to obtain an Individual Identification Number in Kazakhstan and file a personal income tax return in which he or she may claim a treaty exemption (if there is a double tax treaty with Kazakhstan). If that threshold is exceeded, i.e., if the foreign individual spends 183 or more calendar days in Kazakhstan, the local customer will become responsible for taxing the foreign employee's salary and must run a shadow payroll (i.e., whereby the local company processes salary paid outside Kazakhstan through local payroll for Kazakh tax purposes). In this case, the local customer would need to obtain all required supporting documents. Should it fail to obtain those documents, it would be obliged to apply PIT to 80% of the service fee charged by the foreign service provider whose employees come to Kazakhstan.

### *Tax filing by individuals*

Where there is no tax agent in Kazakhstan, or where specifically provided in tax law, resident and non-resident individuals are responsible for calculating PIT obligations and filing a Kazakh tax return. The filing deadline for a Kazakh tax return is 31 March of the year following the reporting year, and any income tax liability must be settled within 10 calendar days of the filing deadline.

Kazakh tax returns must be filed by the following tax resident individuals:

1. Individual entrepreneurs
2. Individuals engaged in private practice, such as notaries, lawyers and enforcement officers
3. Individuals who receive property income
4. Tax resident individuals who receive income not taxed at source in Kazakhstan, including income from outside Kazakhstan
5. Tax residents who are Kazakh citizens, repatriated Kazakhs or individuals holding a residence permit where they have the following types of property:
  - ▶ real estate, if the real estate itself or rights therein or transactions involving the real estate are subject to state or similar registration/reporting requirements under the laws of a foreign state
  - ▶ securities whose issuers are registered outside Kazakhstan
  - ▶ equity interests in legal entities registered outside Kazakhstan.

## **Administrative sanctions for individuals**

Failure to submit a PIT return on time:

- ▶ **First time** – a warning
- ▶ **Repeat violation within a year** – a fine of 15 MCI (KZT 43,755/ approximately US\$100)

Concealment of taxable items:

- ▶ **First time** – a fine of 200% of tax payable on each concealed taxable item
- ▶ **Repeat violation within a year** – a fine of 300% of tax payable on each concealed item

Concealment of information about property outside Kazakhstan and funds in foreign bank accounts:

- ▶ **First time** – a fine of 100 MCI (KZT 291,700/approximately US\$685)
- ▶ **Repeat violation within a year** – a fine of 200 MCI (KZT 583,400/approximately US\$1,370)

Failure to pay tax and other mandatory payments owing to a failure to submit a tax return or the submission of a tax return with knowingly false information if this caused tax to be underpaid by more than 20,000 MCI (KZT 58,340,000/approximately US\$137,200):

- ▶ A fine of up to 3,000 MCI (Approx. US\$20,600), or
- ▶ Correctional labour to the same amount, or
- ▶ Community service for up to 800 hours, or
- ▶ Restriction of liberty for up to 3 years, or
- ▶ Imprisonment for up to 3 years

#### **Administrative sanctions for payroll violations**

Understatement of taxes in tax returns – up to 50% of the understated amount of PIT and social tax

Non-withholding or incomplete withholding of taxes – up to 50% of the PIT not withheld

Failure to submit PIT returns on time:

- ▶ **First time** – a warning
- ▶ **Repeat violation within a year** – a fine of 70 MCI (KZT 204,190/US\$480)

Failure to remit, withhold or pay mandatory pension fund contributions in full and on time:

- ▶ **First time** – a warning
- ▶ **Repeat violation** – up to 50% of the amount of contributions not remitted, withheld or paid on time.

Failure to remit or pay social insurance contributions and mandatory medical insurance contributions in full and on time:

- ▶ **First time** – a warning
- ▶ **Repeat violation** – up to 50% of the amount of contributions not paid or remitted on time.

Concealment of taxable items:

- ▶ **First time** – a fine of 200% of tax payable for each concealed taxable item
- ▶ **Repeat violation within a year** – a fine of 300% of tax payable for each concealed item





## Corporate income tax (CIT)

CIT is imposed on the worldwide income of resident entities and Kazakh-source income of non-resident entities. The basic principles are consistent with those applied in most developed economies. However, the required standards of supporting documentation are particularly high in Kazakhstan.

### Payers

Residents are taxed on their worldwide income, non-residents on income from Kazakh sources. Non-residents doing business in Kazakhstan through a permanent establishment (PE) are taxed on the PE's profits, which are calculated in essentially the same way as for residents. Non-residents that derive Kazakh-source income otherwise than through a PE are taxed by withholding (see the "Withholding tax" section below).

For certain activities (sea freight shipping, bareboat charter and time charter services, trading of goods via the Internet, screening of national films in cinemas, activities under priority investment projects or in special economic zones, etc.), CIT may be reduced by 100% (see the "Incentives for investors" section for details).

### Taxable income

Taxable income is calculated as aggregate annual income after certain adjustments minus statutory deductions. Aggregate annual income includes practically all forms of income, including capital gains.

Certain types of income are excluded from taxable income, including dividends and capital gains on shares held for over three years if certain other conditions are met.

Deductions include all business-related and profit-oriented expenses plus a number of other minor items. In addition to normal operating expenses, examples of deductible expenses include interest (up to the thin capitalization limit or the amount actually paid for certain borrowings), foreign exchange losses, certain entertainment expenses up to a limit of 1% of taxable payroll and charitable expenses (up to 4% of taxable income). This list is not exhaustive. Losses on entrepreneurial activities and from the sale of Group I fixed assets (such as buildings) may be carried forward over the following 10 calendar years inclusively and offset against taxable income for those years. Capital losses from the sale of securities and other non-depreciable assets may generally be offset against corresponding capital gains (with certain exceptions).



### Tax depreciation

To qualify as a fixed asset for tax purposes, an item must be defined as such in the entity's IFRS accounts (with certain exceptions).

For tax depreciation purposes, fixed assets are split into four groups. Assets may be depreciated at any rate (stated in the entity's tax register) up to the maximum rates indicated in the table below.

The following items are not classed as amortizable fixed assets:

- ▶ Land
- ▶ Intangible assets with an indefinite useful life
- ▶ Construction in progress, etc.

Expenses actually incurred for the use, repair, maintenance and liquidation of fixed assets are defined as "subsequent costs" and are generally deductible in the tax period when they are actually incurred (unless capital in nature).

Tax legislation provides incentives in the form of tax depreciation allowances for fixed assets. For example, the value of production buildings and facilities, machinery and equipment that are brought into operation for the first time in Kazakhstan and are to be used in business activities for at least three years may be depreciated before the commencement of operation when construction expenses are incurred or in equal amounts during the first three years of operation. Capital costs for the modernization and reconstruction of such fixed assets may be deducted when they occur. These incentives do not apply to participants in special economic zones or producers of alcohol, tobacco or agricultural products, or to assets used in subsurface development activities or priority investment projects. However, subsurface users may apply double depreciation rates to assets brought into operation for the first time provided they will be used in business activities for at least three years.

Group	Type of fixed asset	Maximum depreciation rate
I	Buildings and structures (except for oil and gas wells and transmission facilities)	10%
II	Machinery and equipment (except for machinery and equipment for oil and gas production, computers and data processing equipment)	25%
III	Computers, software and data processing equipment	40%
IV	Fixed assets not included in other groups, including oil and gas wells, transmission facilities, and machinery and equipment for oil and gas production	15%

### Tax rates and compliance

The standard rate of CIT is currently 20% of taxable income. In addition, net income (after the deduction of CIT) of a non-resident's PE (branch) in Kazakhstan is subject to branch profit tax at the rate of 15%. This is usually reduced by tax treaties.

The tax period is a calendar year. The CIT declaration deadline is 31 March of the year following the reporting period. As a rule, all taxpayers (with certain exceptions) are subject to the CIT advance payment procedure, which requires them to estimate their tax liability for the year and pay tax in monthly instalments no later than the 25th of the current month.

*EY offers the following services in the area of CIT:*

- ▶ *Helping companies with all aspects of tax compliance*
- ▶ *Tax accounting and risk advisory services*
- ▶ *Drafting and review of mandatory tax accounting policies*
- ▶ *A comprehensive tax litigation service, including, where permitted, representation of taxpayers in court*

## **Controlled Foreign Company (CFC) rules**

Kazakh tax law has controlled foreign company (CFC) rules that affect the Kazakh taxation of groups ultimately owned by Kazakh residents. Under the rules, a Kazakh resident must report any CFC (as defined below) to the Kazakh tax authorities and an appropriate part of the CFC's profit for the reporting period must be included in the resident's aggregate annual income for Kazakh income tax purposes (CIT or PIT accordingly). The CFC rules prescribe certain deductions, exemptions and tools for the elimination of double taxation.

Under the Kazakh Tax Code, an entity (a legal entity or another form of business activity, such as a trust) is treated as a controlled foreign company if (i) 25% or more of interests or shares in the entity is directly, indirectly or constructively owned by a Kazakh resident, or if a Kazakh resident has direct, indirect or constructive control over the entity; (ii) the effective tax rate of the entity is less than 10% according to financial statements for the current and two previous periods, or if the entity (or a legal entity responsible for keeping accounts of its income and expenditure or managing its assets) is registered in a blacklisted jurisdiction.

Under amendments to the Kazakh Tax Code effective from 2021, an entity is not regarded as a CFC if it is registered in a country that has a tax treaty with Kazakhstan and in which the nominal income tax rate is greater than 15%. The list of such countries is to be approved by the relevant authorized body no later than December 31 of the year following the reporting period.

Also excluded from the definition of a CFC are foreign entities that have a total income of less than about USD 1 million, are in a loss-making position or are owned by AIFC participants.

There are also new reliefs, including an exemption for CFC profits in which active income accounts for at least 80% and the reduction of CFC profits by amounts of Kazakh-sourced income.

Some of the above reliefs are available retrospectively (e.g., from 2018 or 2020).

While the documentation requirements for claiming CFC tax relief have been tightened, there are also beneficial changes, such as the exclusion of certain types of "paper income" when calculating the financial profit of a CFC.

## **Withholding tax (WHT) (other than PIT)**

WHT applies to most types of Kazakh-source income paid to non-residents that are not registered for tax purposes in Kazakhstan and even to some who are if due care is not taken. The rules are complex and inconsistent, and there are some instances in which WHT could apply to payments that involve no presence in Kazakhstan. It is vital to have a thorough understanding of how WHT may affect your business. There are also significant administrative requirements that must be met in order to enjoy benefits afforded by tax treaties.

### **Payers**

Tax agents withhold tax from a non-resident's gross Kazakh-source income. Any tax-registered entity that pays Kazakh-source income is potentially a tax agent.

### **Taxable income**

Taxable income includes (but is not limited to):

- ▶ Income of non-residents from the sale of goods or performance of work or services in Kazakhstan
- ▶ Income from management, financial (with some exceptions), consulting, engineering, legal (except for representation in court and notary services) and auditing services performed outside Kazakhstan
- ▶ Any income of tax-haven entities, regardless of where the underlying operations take place

- ▶ Capital gains on sales of shares or interests in Kazakh entities or foreign legal entities that derive most of their value from Kazakhstan
- ▶ Capital gains on sales of Kazakh property that is subject to registration.

Certain types of income are exempt from withholding tax, including dividends and capital gains on shares held for over three years if certain other conditions are met.

### Tax rates and compliance

Most double tax treaties (DTTs) concluded by Kazakhstan provide either for exemption from Kazakh WHT or for reduced WHT rates of 5% to 10% subject to certain conditions being met. However, these benefits are also subject to documentation rules laid down in the Tax Code. The rules are very specific as to the documentation required, and it is generally recommended that a tax agent should be in possession of the relevant documentation at the time payment is made (or by the end of the tax year or 31 March of the following year at the latest) if treaty relief is to be applied.

Otherwise, tax must be withheld in full and the payer must subsequently claim

a refund (which is a complex and time-consuming process with an uncertain outcome).

In addition, the Multilateral Instrument (MLI) entered into force in Kazakhstan from 1 October 2020 and should affect all of its 55 DTTs. However, some of those treaties will not be subject to MLI as certain countries did not include DTTs with Kazakhstan in their MLI accession documents (e.g., Germany and Switzerland), while others have not yet signed/ratified the MLI.

Kazakhstan acceded to all the minimum standards of the MLI. In terms of limitation of benefits, Kazakhstan adopted the simplified limitation of benefits (SLoB) provision, which may substantially limit tax benefits for holding and financing structures involving intermediary companies. However, since only a few countries (Russia, Slovakia and India) have decided to apply SLoB as well, most of Kazakhstan's DTTs will be subject to the principal purpose test (PPT).

At the same time, amendments to the Kazakh Tax Code effective from 2021 lay down additional requirements for foreign entities based in treaty partner countries covered by the MLI in terms of exemption

from WHT on remuneration for services: (i) income from the provision of services must not be exempt and must not be deductible from or otherwise adjust the tax base of the entity concerned and (ii) the nominal tax rate in the jurisdiction of its incorporation must be at least 15%. For entities in tax treaty partner countries not covered by the MLI, additional requirements are introduced regarding beneficial ownership of income.

All this means that, whereas previously, the application of treaty benefits to transactions with foreign entities was a relatively straightforward matter, the adoption of the MLI has made it essential to consider additional requirements relating to supporting documents.

WHT is remitted by tax agents. The general time limits for remittance are:

- ▶ For amounts accrued and paid, no later than 25 calendar days following the month in which payment was made
- ▶ For amounts accrued but not yet paid, if they are deducted for CIT purposes, no later than 10 calendar days following the filing deadline for CIT returns
- ▶ For prepayments, no later than 25 calendar days after the end of the month in which income accrued to the non-resident.

Under the Tax Code, tax agents must submit a WHT return by the following deadlines: (i) for Q1-Q3: no later than the 15th of the second month following the quarter in which a WHT obligation arose, (ii) for Q4: no later than 31 March of the following year.

Type of income	Rate of WHT
Interest, dividends, capital gains and royalties	15%
Insurance premiums under insurance risk agreements	15%
Income from international transportation services and insurance premiums under risk reinsurance agreements	5%
Income of an entity registered in a tax haven	20%
Other income, including income from the provision of services	20%





## Value added tax

European Union-style VAT applies in Kazakhstan. The VAT rate has fallen progressively from 20% in the late 1990s to 12% currently.

### Payers and registration

All taxpayers registered for VAT purposes are required to charge VAT on their taxable supplies and calculate and report their VAT obligations.

Taxpayers are required to register for Kazakh VAT purposes if their total turnover in a calendar year exceeds 30,000 MCI (approximately US\$208,000).

The deadline for VAT registration is 10 business days after the end of the month in which the turnover threshold is exceeded.

Even if an entity is not required to register for VAT purposes, it may usually do so voluntarily by applying to the appropriate tax committee.

### Deregistration

A VAT payer may apply for VAT deregistration if the following conditions are simultaneously met:

- ▶ Taxable turnover for the calendar year preceding the year in which the application is submitted did not exceed 30,000 MCI (approximately US\$208,000)
- ▶ Taxable turnover from the beginning of the current calendar year in which the application is submitted did not exceed 30,000 MCI (approximately US\$208,000).

The tax authorities will deregister a VAT payer without notification if (inter alia):

- ▶ A VAT declaration is not submitted within six months of the due date established by the Tax Code
- ▶ The VAT payer fails to submit a written explanation of the reasons for absence at its premises during a tax inspection
- ▶ The sole founder or head of a legal entity or an individual entrepreneur is inactive, has unserved or unexpunged convictions, etc.
- ▶ The VAT payer is declared inactive
- ▶ The registration/re-registration of the VAT payer is declared invalid by a court.

### VATable turnover

For a VAT payer, taxable turnover is the total value of supplies (sale, exchange or gift) of goods, work and services and purchases of work and services from non-registered non-residents. A limited

range of non-taxable and exempt supplies are excluded from this rule.

Definitions:

- ▶ For Kazakh VAT, the term “goods” applies to practically any form of property or property rights
- ▶ Taxable supplies of work or services are any supplies of work or services, both chargeable and free of charge, as well as anything that is done for consideration and is not a supply of goods.

A small number of transactions, such as transfers to a legal entity’s charter capital, are treated as non-taxable.

Goods and services are VATable if, under the place of supply rules, they are deemed to be supplied in Kazakhstan. The place of supply rules are broadly similar to European Union rules; in particular, they treat some supplies that are made outside of Kazakhstan, such as consulting services, as made within Kazakhstan, and therefore taxable.

### **Zero rating**

Turnover taxed at 0% VAT includes:

- ▶ Export sales of goods
- ▶ International transportation services
- ▶ Sales of oil and lubricants by airports when fuelling aircraft of a foreign air carrier engaged in international transportation
- ▶ Sales of certain goods into the territory of a special economic zone which are wholly used for activities that meet the objectives of the special economic zone
- ▶ Sale of refined gold

### **Exempt supplies**

Turnover and imports exempt from VAT include:

- ▶ Turnover relating to residential buildings
- ▶ Certain financial services
- ▶ Transfers of assets under finance leases (insofar as interest is concerned)
- ▶ Certain services rendered by non-profit organizations
- ▶ Certain services in the areas of culture, science and education
- ▶ Goods and services related to medical and veterinary activities
- ▶ Imports of certain assets included in a government-approved list
- ▶ Goods imported by individuals not for entrepreneurial purposes (certain limits apply)
- ▶ Turnover relating to international transportation services
- ▶ Imports of goods from an EAEU member state within the same legal entity (intra-entity transactions).

### **Offsetting of VAT**

VAT paid on goods and services purchased by a VAT payer (i.e., input VAT), including reverse-charge VAT already paid and VAT paid at customs, may generally be offset (credited) when determining the taxpayer’s VAT liability to the budget. However, no offset is granted for VAT incurred on supplies that are exempt or deemed to be made outside Kazakhstan.

### **VAT calculation and offset carry-forward**

A taxpayer’s VAT liability is calculated as output VAT (i.e., VAT charged by the taxpayer) minus input VAT (i.e., VAT paid by the taxpayer to its suppliers, reverse-charge VAT and import VAT) in a given reporting period.

The amount by which input VAT exceeds output VAT may generally be carried forward against future VAT liability. In practice, obtaining a refund (if eligible) is a laborious process, although there are special refund procedures for certain situations (such as continuous exports).

### **Non-recoverable input VAT**

Input VAT on certain items cannot be offset. These include:

- ▶ Goods, work and services not related to taxable turnover
- ▶ Cars purchased as fixed assets
- ▶ Goods, work and services when a VAT invoice is issued that is not in compliance with the requirements of the Tax Code
- ▶ Goods and services purchased out of petty cash in an amount exceeding 1,000 MCI (approximately US\$7,000), irrespective of the frequency of payment
- ▶ Goods, work and services purchased from suppliers declared by courts as inactive entities
- ▶ Goods, work and services where the courts regard them as having been purchased by private business entities without actual intent to carry on entrepreneurial activities.

### **Recovery of excess VAT through the control account**

With effect from 1 January 2019, certain VAT payers that are participants in the tax authorities' official online system, which is used for the receipt and processing of electronic VAT invoices, may open a control account on a voluntary basis. The control account is a bank account with a Kazakh commercial bank for VAT transactions (e.g., payment of VAT to the state budget or to suppliers).

Taxpayers that may recover VAT via a control account include:

- ▶ Taxpayers that use goods acquired/received or leased assets in the production of other goods. The list of goods/leased assets is approved by a designated body
- ▶ Taxpayers that export goods
- ▶ Taxpayers that sell goods into the territory of a special economic zone which are wholly used for activities that meet the objectives of the special economic zone.

### **VAT rate and compliance**

The VAT rate is 12%. The tax period for VAT is a calendar quarter. The filing deadline for VAT returns is the 15th day of the second month following the reporting period. The VAT payment deadline is the 25th day of the second month following the reporting period.

### **Reverse charge VAT**

Under the place of supply rules, certain services are deemed to be supplied where the purchaser of the services belongs (e.g., consulting, auditing, engineering, design, marketing, accounting, advocacy, information processing, etc.). Where such services are rendered by a non-resident not registered for VAT purposes in Kazakhstan, the Kazakh purchaser of the services is required to assess and pay VAT to the budget on its own (similarly to the reverse charge mechanism).

It is the obligation of the Kazakh purchaser of services to pay the reverse charge VAT, which it should be able to offset against output VAT subject to the general rules on VAT offsetting.

### **EAEU**

The Tax Code lays down certain procedures and compliance requirements for exports and imports of goods from/to Kazakhstan to/from EAEU countries (Belarus, Kazakhstan, Russia, Armenia and Kyrgyzstan). Strict documentation and timing requirements apply (failure to observe these may result, for example, in the 0% VAT rate for exports to EAEU countries being denied).

Import VAT on goods is payable by the importer at the rate of 12% in Kazakhstan (certain exemptions apply).

A VAT return for imports of goods into Kazakhstan from other EAEU member states must be filed with the tax authorities and the relevant tax must be paid to the budget by the 20th of the month following the tax period (month).

### **Electronic invoicing**

From 1 January 2019, taxpayers are obliged to issue electronic VAT invoices for their transactions (with certain exceptions).

An electronic VAT invoice can only be issued using the official online system provided by the state revenue committee for the receipt and processing of electronic VAT invoices. Electronic VAT invoices have a prescribed format and must be signed using an electronic signature. Electronic invoices must normally be issued within 15 calendar days from the date of a taxable transaction.

Taxpayers not registered as VAT payers are also required to issue electronic VAT invoices in cases where: (i) goods are sold via the "virtual warehouse" module in the online system and (ii) the value of a transaction exceeds 1000 MCI (approximately US\$7,000).

### **Virtual warehouse**

With effect from 1 January 2019, the "virtual warehouse" module was introduced in the official online system and is obligatory for the reporting of goods included in a



special list (e.g., motor vehicles, certain household devices, sugar, etc.). The “virtual warehouse” allows for the systematization of inventory accounting, automatic calculation of ending inventory and monitoring of the movement of goods from entry into Kazakhstan until sale to the final consumer.

### **Electronic waybills**

Electronic waybills must be generated when there is a movement or supply of certain goods. Starting from 1 January 2020, electronic waybills must be generated for the production and supply of biofuel. Requirements to generate electronic waybills for other goods will be introduced during 2021. The list of goods for which electronic waybills must be generated will be established by the authorities.

---

*EY offers help with identifying VAT risks and calculating VAT compliance costs, as well as with cross-border VAT planning.*

---





## Subsurface use taxes

Please refer to EY's publications dealing with the taxation of oil and gas and mining companies.

## Tax administration

Kazakhstan has complex tax administration rules. Substantial fines and penalties may be imposed even for minor infringements.

### Timing and frequency of Tax Code amendments

A recent legislative amendment addressed concern over the frequency with which changes are made to the Tax Code.

Administrative changes that benefit taxpayers may be adopted more often than once a year, but not later than 1 December of the current year.

New tax obligations and other provisions that are disadvantageous to taxpayers may not be introduced retroactively.

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

### Tax returns

Tax returns (declarations and calculations) are prepared by the taxpayer or the tax agent or by their representatives. Tax returns may be prepared on paper or electronically in the Kazakh or Russian languages.

### Tax accounting policies

Tax accounting policies consist of a document adopted by a taxpayer/tax agent that regulates tax accounting in accordance with the Tax Code. All taxpayers/tax agents must have tax accounting policies.

## Tax audits

Many taxpayers are audited, and it is vital to manage the tax audit process. Tax audits may take the following forms:

- ▶ Comprehensive audit
- ▶ Thematic (targeted) audit
- ▶ Cross-check audit
- ▶ Time study.

Tax audits may be divided into two types: those initiated based on risk assessment procedures, and unscheduled tax audits. The former type may be initiated against taxpayers that have been assigned a high risk profile. Thus, all organizations that have been notified as having a high risk profile should check the "tax audit list" for the first and second half-year periods, which is published on the website of the Prosecutor General's Office of the Republic of Kazakhstan.



Tax audits may cover any period within the statute of limitations. From 1 January 2020, the statute of limitations is generally three years, except in the case of subsurface users and taxpayers subject to tax monitoring, for which it is five years. Tax audits can be intrusive and time-consuming, and may sometimes even result in criminal proceedings, as discussed in the “Penalties and interest” section below.

In the case of certain types of taxpayers (those that have investment contracts, are subject to tax monitoring or have a total tax liability in excess of 20,000 MCI (approximately US\$142,000 in 2021)), the tax authorities issue a preliminary tax audit report setting out the results of a tax audit. The taxpayer has the right to submit objections to the preliminary tax audit findings before the final tax audit report is issued.

### **Standard audit file**

The standard audit file was introduced from 1 January 2019. It is a means for taxpayers to submit accounting data to the tax authorities online on a voluntary basis and enables the taxpayer’s data to be analysed via the tax authorities’ information systems. The submission of a standard audit file enables (i) a tax audit based on risk management procedures to be conducted within 5 calendar days of the delivery of the tax audit order, and (ii) an unscheduled tax audit to be conducted within 10 calendar days after the delivery of the tax audit order.

### **Tax assessments**

Upon completion of a tax audit, the tax authorities usually issue a tax audit report (if no tax violations are found, a statement to that effect is made in the report). Based on the findings of the report, the tax authorities issue a notification of assessments of taxes and other compulsory payments payable to the budget, as well as any penalties and interest. The tax authorities also issue a statement of administrative offences committed, if any, indicating the amount of administrative penalties due.

### **Contesting tax audit or desk (in-house) control reports**

#### *Tax audit report*

After receiving a report on a tax audit, the taxpayer has 30 (thirty) business days to file an appeal against the report. The appeal must be filed with the Ministry of Finance of Kazakhstan.

In some cases, the Ministry of Finance may, after receiving the appeal, carry out additional tax control measures with a view to gathering additional evidence. If, after considering the appeal, the Ministry of Finance issues a decision which does not yield the desired outcome, the taxpayer may appeal against it to the courts of Kazakhstan.

It is essential to point out that an appeal to the court may be filed even without the pre-appeal process described above. The time allowed to file an appeal with a court of first instance is 3 (three) months from the date on which the taxpayer learned of the Ministry of Finance’s decision on its appeal.

### *Desk (in-house) inspection report*

After receiving a desk (in-house) inspection report, the taxpayer has 30 (thirty) business days either to: (a) remedy violations set forth in the report; or (b) file an explanatory letter with the tax authority that issued the report.

It should be noted that once the taxpayer files that explanatory letter, there is no specific timeline within which the tax authority must review it. After reviewing the explanatory letter, the tax authority either voids the desk (in-house) inspection report or issues a decision declaring the taxpayer’s failure to comply with the notice to remedy violations.

That decision may be contested by appealing to either (a) a higher tax authority (i.e., a local tax office), or (b) the Ministry of Finance, within 5 (five) business days. If, after reviewing the appeal, the tax authorities issue a decision with which the taxpayer disagrees, the tax authority must initiate a targeted audit to review the underlying issue in greater detail. It should be noted that the tax authorities do not always initiate targeted audits on time.

### **Horizontal monitoring**

Horizontal monitoring is a regime of co-operative compliance which was introduced in Kazakhstan’s tax legislation on 1 January 2019. It involves the voluntary exchange of information and documents between state authorities and a taxpayer (special requirements must be met). Horizontal monitoring is implemented



from 1 January of the year following the signing of the horizontal monitoring agreement and runs for three years with the option to extend. Taxpayers subject to horizontal monitoring are granted the following benefits:

- ▶ the right to receive an advance clarification from the tax authorities regarding the tax treatment of a planned transaction
- ▶ no tax audits will be conducted for tax periods during which the taxpayer was under horizontal monitoring (subject to certain exceptions)
- ▶ no administrative penalties will be imposed for a tax offence in the following cases:
  - ▶ if the taxpayer agrees with the notification issued as a result of horizontal monitoring procedures and does not file a court appeal against the results of horizontal monitoring
  - ▶ if the offence was discovered as a result of a tax audit for a period in which horizontal monitoring was applied
  - ▶ the right to apply the simplified procedure for refund of excess VAT for the taxpayers under horizontal monitoring – in the amount of no more than 90% of excess VAT amount that was accumulated over the reporting tax period.

The tax authorities have launched a pilot project, running from 14 July 2020 to 31 December 2023, aimed at refining the processes involved in horizontal monitoring. It is hoped that

any irregularities will be ironed out by 31 December 2023, after which the number of taxpayers participating in the horizontal monitoring will increase.

### **Risk management system**

The risk management system is based on risk assessment and includes measures developed and applied by the tax authorities to identify and prevent risk, which is in turn defined as the probability of damage being caused to the state as a result of taxes not being paid in full.

The tax authorities group taxpayers into low-, medium- and high-risk categories by analysing tax reporting data, information provided by state authorities and local executive bodies and documents and/or other information relating to a taxpayer's business activities. Information on the exact criteria is confidential, except for the following criteria:

- ▶ tax burden
- ▶ average monthly salary per employee
- ▶ amounts of expenses and income stated in tax returns
- ▶ transactions with taxpayers that have dealings with entities that have been deregistered for VAT purposes (including liquidated, inactive and insolvent entities)
- ▶ tax losses reflected in tax returns in multiple tax periods
- ▶ frequent amendment of tax returns already filed

- ▶ violations identified as a result of in-house inspection
- ▶ multiple instances of thresholds set by the Tax Code for the right to apply special tax regimes almost being reached
- ▶ criteria that can reduce the level of risk
- ▶ criteria approved by the authorized body jointly with the authorized body for entrepreneurship
- ▶ criteria used to verify the difference between input and output VAT.

### **Penalties and interest**

The Administrative Offences Code imposes administrative penalties for non-compliance with tax regulations, including the following:

- ▶ under-declaration of taxes – 20% to 80% of the under-declared amount
- ▶ understatement of an advance CIT payment by more than 20% – 20% of the understated tax
- ▶ failure to withhold taxes – 20% to 50% of the non-withheld tax
- ▶ concealment of taxable items – 200% of taxes payable on the concealed amount.

Interest is charged on late tax payments at a rate equal to 1.25 times the National Bank's base rate (currently 9%) for each day of the delay.

Criminal liability may also arise for tax offences in Kazakhstan. An organization is generally deemed to have committed the crime of tax evasion when underpaid



tax exceeds 50,000 MCI (approximately US\$354,000 in 2021). Tax evasion includes failing to submit a declaration, misstating income or expenditure data or concealing taxable items or the actual location of the taxpayer. Such violations trigger investigations by the Economic Investigation Service of the Financial Monitoring Committee and may even result in the prosecution of individuals who are thought to be responsible. The Criminal Code provides for individuals who have committed a tax offence to be exempted from criminal liability if they voluntarily pay taxes and other amounts due to the budget and acknowledge that they are at fault.

### **Clarification letters and rulings**

#### *Clarifications*

Taxpayers have the right to request clarifications regarding tax obligations, and the tax authorities are obliged to provide them. A taxpayer may apply to the tax authorities where it is registered or to a higher body if necessary (certain categories of taxpayers may apply to the

Ministry of Finance). The tax authorities usually provide their opinion on specific tax queries in the form of a letter which is of an advisory nature and is not binding.

#### *Rulings*

The Tax Code also authorizes the Ministry of Finance to issue “advance rulings” in relation to planned transactions at the request of the following categories of taxpayers when submitted in the prescribed manner accompanied by relevant documents:

- ▶ Taxpayers that are subject to horizontal monitoring
- ▶ Taxpayers that have investment contracts for priority projects

The Ministry of Finance may refuse to issue an advance ruling.

Late payment interest is not chargeable on tax assessments made as a result of a tax audit if the taxpayer fulfilled tax obligations in accordance with an advance ruling, unless new facts come to light.

### **Administrative Procedure Code**

On 1 July 2020, the President of the Republic of Kazakhstan signed the new Administrative Procedure Code, which enters into force from 1 July 2021.

The purpose of the Code is:

- ▶ to ensure the protection of the rights and freedoms of persons (individuals and legal entities) against unlawful actions of state authorities
- ▶ to provide a set procedure for contesting the outcome of an appeal.

The Code replaces the Law on Administrative Procedures and the Law on the Procedure for the Consideration of Appeals of Individuals and Legal Entities.

One of the new features of the Code is that it provides, inter alia, for damages to be claimed for losses caused by the defendant (i.e., a state authority) as a result of the issue of an administrative order or an administrative action (omission). Suits must be filed with a specialized district court or an equivalent administrative court.



# 5 Overview of other laws that affect business administration





## Transfer pricing

Kazakhstan's transfer pricing ("TP") legislation has wide applicability to businesses. The TP rules apply to all cross-border transactions even if the parties are unrelated. The TP rules also apply to certain types of domestic transactions if they are related to cross-border transactions, e.g., to domestic sales by subsurface users of hydrocarbons and minerals that are subsequently exported.

The TP law prescribes the following methods for determining a market price:

- ▶ Comparable uncontrolled price method
- ▶ Cost plus method
- ▶ Resale price method
- ▶ Profit split method
- ▶ Net margin method.

Except for transactions involving agricultural products, there is no "safe harbour" for deviation from the market price, although the TP law recognises that there can be a range of market prices. In determining market prices under the comparable uncontrolled price method, adjustments to prices are allowed in at least some cases, except where one of the parties to a transaction is registered in a tax haven.

There are a number of compliance requirements that apply to taxpayers, including subsurface users, depending on the type of taxpayer and its revenue:

1. TP monitoring reporting (the deadline is 15 May of the year following the reporting year)
2. Notification of participation in a multinational group (by 1 September of the year following the reporting year)
3. Three-tier transfer pricing reporting, including:
  - ▶ Country-by-country reporting (within 12 months following the reporting year or upon request)
  - ▶ Master file (within 12 months upon request)
  - ▶ Local file (within 12 months following the reporting year)
4. General TP documentation (upon request).

---

*EY's transfer pricing services include assistance with all types of TP compliance requirements, strategic reviews to identify TP risks, preparation of TP policies and procedures, assistance during TP audits and controversy, ad hoc advisory and all other TP services.*

---

## Employment regulations

The Kazakh Labour Code, which came into force in 2016, applies to employees and employers located in Kazakhstan, including branches and representative offices of foreign legal entities registered under Kazakh law.

Employment relations between an employee and an employer are regulated by an employment agreement. An employment agreement must be concluded with each employee and must reflect the employee's rights and obligations as well as the employer's rights and obligations under the Labour Code. As a rule, an employee's rights under an employment agreement may not be inferior to those established by the Labour Code.

Under the Labour Code, an employer is responsible for the proper execution of an employment agreement, which may be concluded for a fixed or indefinite term. An employment agreement may establish a probation period, which generally should not exceed 3 months.

However, the probation period may be extended to up to 6 months for heads and deputy heads of organizations, chief accountants and deputy chief accountants and heads of branches and representative offices.

Kazakh labour law generally limits the working week to 40 hours. Under the Labour Code, total overtime must not exceed 120 hours per year.

The monthly salary of an employee must not be lower than the minimum monthly salary established for the relevant financial year by Kazakh budget legislation. The minimum monthly salary for 2021 is KZT 42,500 (approximately US\$101). Salary must be denominated and paid in tenge only.

The minimum amount of paid vacation under the Labour Code is 24 calendar days. Additional vacation days must be provided for employees working in dangerous or harmful conditions.

Maternity leave is from 126 to 163 calendar days (70 days before the birth of a child and from 56 to 93 days after the birth). Additional unpaid childcare leave may be provided to one of the parents until the child is 3 years old.

Kazakh law requires an employer to insure its employees against work-related injury within the first ten days of the month following the month in which the employer began work.

The Labour Code provides for secondment arrangements, i.e., where an employee of a legal entity (the secondee) performs work for another legal entity (or branches, representative offices and/or other subdivisions of such an entity) or for branches, representative offices and/or other subdivisions of the same legal entity:

- (i) within a certain field, skill area or position (function) specified in their labour agreement, or
- (ii) within another field, skill area or position (function), subject to certain restrictions imposed by law.

The Labour Code limits secondment only to cases where the host entity is:

- ▶ a legal entity (branch, representative office and/or other subdivision thereof) that is a founder, participant or shareholder of the employer or indirectly owns shares (participating interests) in the employer company (secondment to a parent company)
- ▶ a legal entity (branch, representative office and/or other subdivision thereof) in which the employer entity directly or indirectly owns shares (participating interests) (secondment to a subsidiary)

- ▶ a legal entity (branch, representative office and/or other subdivision therefore) in which shares (participating interests) are directly or indirectly owned by an entity that directly or indirectly owns shares (participating interests) in the employer entity (secondment to a sister company).

It is prohibited to arrange secondment for the following purposes:

- 1) to replace employees of the receiving party who refused to perform work in the cases and in accordance with the rules established by Kazakh labour law
- 2) to perform work where the receiving party has temporarily suspended activities (introduced downtime), the receiving party is implementing bankruptcy procedures, or the receiving party has introduced a part-time working schedule in order to preserve jobs where there is a threat of redundancies.

## Import and export formalities and customs duties

### Customs regulation in Kazakhstan

Kazakhstan forms part of the unified customs territory of the EAEU along with Armenia, Belarus, Kyrgyzstan and Russia. The EAEU, which came into being on 1 January 2015, allows the free movement of goods, services, capital and labour within its borders. EAEU member states apply unified customs legislation and tariff and non-tariff regulations. There are various types of customs clearance procedures with distinct rules for the payment of customs duties and taxes, including release for internal consumption, temporary importation, reimport, customs (bonded) warehouse, free customs zone (for special economic zones and free warehouses) and other procedures.

Goods imported from third countries and customs cleared in an EAEU member state or produced/sufficiently processed in an EAEU member state may be moved without customs control/declaration within the EAEU.

### Customs duties and classification of goods

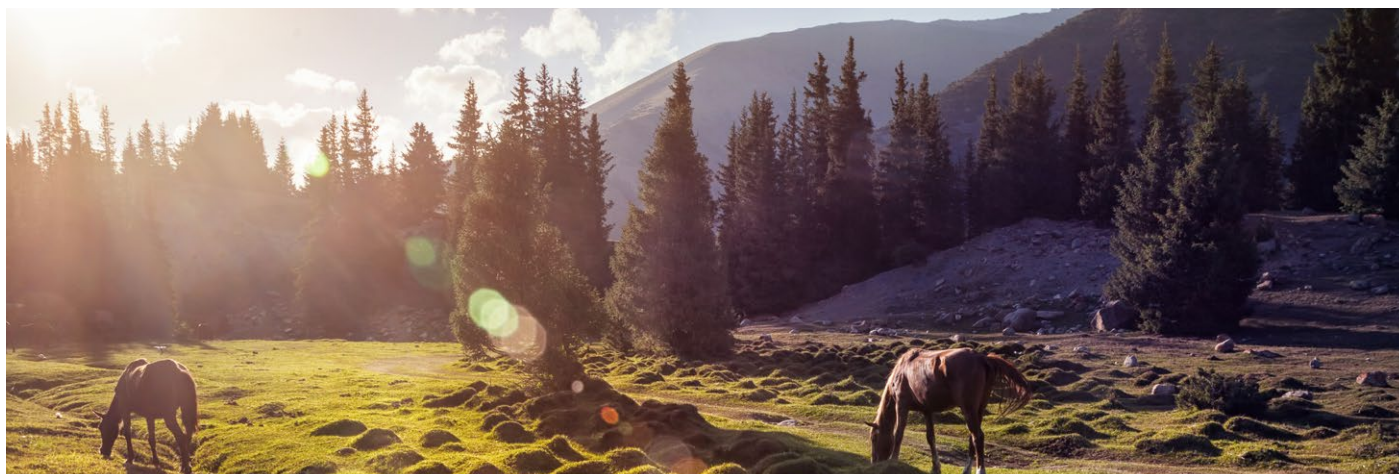
EAEU member states apply the Common EAEU member states apply the Common Customs Tariff to goods imported from third countries. This comprises the classification of goods and the applicable rates of import duty. Import duty rates are expressed as a percentage of the customs value of goods, varying from 0% to 80%, or as a specific amount in US\$/euro per unit of measure.

Each EAEU member state sets its own export duty rates for exported goods. Export duties should be calculated using the rates of the EAEU member state in which goods are placed under the export procedure. Export duty rates in

Kazakhstan vary from 3% to 20% of the customs value or may be set as a specific amount in US\$/euro per unit of measure.

Customs clearance fees are regulated by the domestic laws of EAEU member states. In Kazakhstan, the customs clearance fee is KZT 20,000 (US\$47) per customs declaration.

Some customs procedures allow for the granting of full or partial exemption from customs duties and taxes, for example to members of special economic zones, owners of free warehouses holding special investment contracts, and holders of investment contracts. There are also certain non-tariff regulations, such as those limiting or prohibiting the import or export of certain goods.





# 30 November 2015

Kazakhstan becomes  
a WTO member

---

# 3500

items enjoy decreased  
import duties

## Kazakhstan and the WTO

### *Import duties*

On 30 November 2015 Kazakhstan became the 162nd member of the WTO. According to its schedule of concessions, Kazakhstan undertook to reduce import duties by 2-5% on nearly 3,500 items, and to 0% on some items, within five years after accession to the WTO.

As part of recent amendments to EAEU legislation, Kazakhstan approved a full list of goods (almost 3,500 items) to which reduced rates of import duty may be applied. Under EAEU legislation, goods included in this list that have been imported under the release for domestic consumption customs procedure at reduced rates have the status of conditionally released goods and cannot be exported to other EAEU member states.

### *Export duties*

Kazakhstan reserved the right to continue levying export duties on certain goods that are currently subject to export duty in Kazakhstan (petroleum and related products, remnants and scrap of ferrous and non-ferrous metals, elements of locomotive rolling stock, wool and hides of domestic animals, et al.).

On acceding to the WTO, Kazakhstan undertook to begin calculating the export duty rate for crude oil using a formula based on the monthly average market price of crude oil.

## Licensing

### **Licences for certain activities**

Kazakh licensing legislation categorizes permits/licences based on the risk level of activities to be carried out:

- ▶ High-risk activities require licences referred to as “first-category permits”
- ▶ Medium-risk activities require permits referred to as “second-category permits”
- ▶ Low-risk activities require the relevant government authority to be notified of the commencement/completion of activities.

There is an exhaustive list of activities that require licences, permits or notifications. The list is contained in the Law on Permits and Notifications and includes 79 licences, 226 permits and 54 notifications.

The range of business and professional activities that require permits/licences is extensive. It is important for investors to determine in advance whether a licence, permit or notification is needed. Kazakh law prescribes various types of liability and substantial penalties for failure to comply with permit/licence regulations.

A licensing authority is required to issue a permit/licence within 15 business days of the submission of an application together with all required supporting documents (except for certain permits/licences for which different rules apply),

provided that the applicant meets the relevant requirements. If the applicant does not meet the requirements or fails to provide supporting documents, the licensing authority may issue a substantiated refusal. In this case, the applicant may adjust the application and supporting documents and re-apply. Since the law does not limit the number of submissions, this process may last for a considerable time.

Withdrawal or suspension of a permit/licence may be imposed for an administrative offence committed in carrying out activities authorized by the permit/licence. Withdrawal is imposed by a judge or an authorized body. The period of suspension of a permit/licence may not be less than one or more than six months.

Below we present a summary of the commonest types of licences in Kazakhstan.

### **Construction licences**

These are divided into three categories depending on the complexity of facilities to be assembled and/or constructed. To obtain a licence for assembly and/or construction works, the applicant must meet all the qualifying requirements approved by the Kazakh government. To obtain a first- or second-category licence, the applicant must have 10 or 5 years of experience in assembly, engineering and construction respectively. No experience is required for a third-category licence.

Please note that foreign companies entering the Kazakh market may apply for first- or second-category licences if they have the necessary experience. However, they must apply via duly registered branches in Kazakhstan. A foreign subsidiary in the form of a newly established LLP would be regarded as a separate legal entity, and therefore no foreign experience would be recognised. Such an entity may apply only for a third-category licence.

### **Import/export licences**

The government establishes a list of goods for which importation/exportation is subject to licensing. A licence is issued for each item of goods and must be granted within 30 business days of an application being received. The following types of licences are issued::

- ▶ A general licence, which is issued to a foreign trade participant based on a decision of an EAEU member state and allows a certain item of goods to be exported or imported in the quantity indicated in the licence
- ▶ An exclusive licence, which grants a foreign trade participant an exclusive right to export or import certain goods
- ▶ A one-time licence, which allows a foreign trade participant to export or import a specified quantity of goods under a foreign trade agreement.

Holders of import/export licences are required to submit a report on the use of the licence to the appropriate authorities.

Permit and licence applications and notifications may be submitted online via the website [www.elicense.kz](http://www.elicense.kz).



## Banking regulations

### Banking system

#### *National Bank of Kazakhstan (NBK)*

Kazakhstan has a two-tier banking system. The first tier is the NBK, which is the country's central bank. The main regulators of banking activities are the NBK and the Agency for the Regulation and Supervision of the Financial Market and Financial Institutions (Agency). The NBK, on the one hand, provides traditional banking services to its main client, i.e., the state as represented by its central authorities. On the other hand, it acts as a financial authority (exercising currency control, issuing regulatory acts, granting licences, etc.) and is responsible for the proper functioning of the financial system

as a whole. The NBK has the right to introduce a special regulatory regime in order to ensure financial stability and protect the interests of consumers of financial products for a maximum period of 5 years. In 2019, the NBK conducted an Asset Quality Review (AQR) of 14 major banks located in Kazakhstan, the principal aims of which were to help strengthen and develop Kazakhstan's banking system, increase its ability to withstand crisis phenomena and improve the transparency of the financial system. Although the AQR did not identify a capital deficit at an overall level, a number of banks were requested to inject additional capital. The AQR was conducted at the right time, as the health of the banking system was examined right before the ensuing COVID-19 crisis. S&P Global Ratings and

Moody's also mentioned that the NBK's actions helped to ease the subsequent negative impact on the economy and increased the confidence of outside players in Kazakhstan's banking system in the context of the devaluation of the Kazakh tenge and the worldwide decline in the financial solvency of businesses.

### *Agency*

The Agency is a special government authority which is directly subordinate and accountable to the President of Kazakhstan and is responsible for regulating banks and the financial market. The Agency has also acted to protect users of online banking by passing an order requiring banks, as of 1 January 2021, to create special departments to deal with cyber incidents.



## Second Tier Banks

The second tier includes all other banks except for the Development Bank of Kazakhstan, which has a special legal status. One of the features of the Kazakh banking system is that only private banks operate on the banking services market. The Development Bank of Kazakhstan and the Housing Construction Savings Bank, both with state shareholdings, have special status and perform specific functions in the financial sector to serve national interests. As a rule, banking operations in Kazakhstan must be licensed by the NBK. Foreign banks have been operating in Kazakhstan since 1993. As of 16 December 2020, foreign banks are allowed to open branches in Kazakhstan provided that specific financial and regulatory conditions set by Kazakh law are met, including the provisions of the Tax Code.

## Islamic Banking

Islamic banks are also allowed to operate in Kazakhstan subject to restrictions laid down in Kazakh law. Since the government recognises the potential behind the development of Islamic finance in Kazakhstan, specific provisions for Islamic finance are laid down at legislative level (including in the Tax Code). Islamic banking is subject to licensing by the NBK and must in general be Shariah compliant. Islamic banks cannot participate in the Kazakh deposit insurance system, and deposits of an Islamic bank cannot be insured by the Kazakh deposit insurance system.

## Currency regulations

On 2 June 2018, the President of Kazakhstan signed the Law on Currency Regulation and Currency Control (No. 167-VI – the “Currency Control Law”). The law came into force on 1 July 2019 (except for provisions relating to branches of foreign financial organizations, which came into force in December 2020).

The Currency Control Law imposes certain formal requirements but does not impede most international business operations.

It distinguishes between the following parties to currency transactions:

- ▶ Kazakhstan residents, i.e., (i) Kazakh citizens (other than those who have permanent residency abroad); (ii) foreigners and stateless persons who have permanent residence status in Kazakhstan; (iii) legal entities registered in Kazakhstan, Kazakhstan-based branches/representative offices of such entities and diplomatic, trade and other official missions of Kazakhstan located abroad; (iv) branches of foreign financial organizations which have the right under Kazakh law to engage in banking or insurance activities in Kazakhstan (from December 2020); (v) branches of foreign non-financial organizations which are treated as permanent establishments of those organizations in Kazakhstan (except for branches and representative offices whose

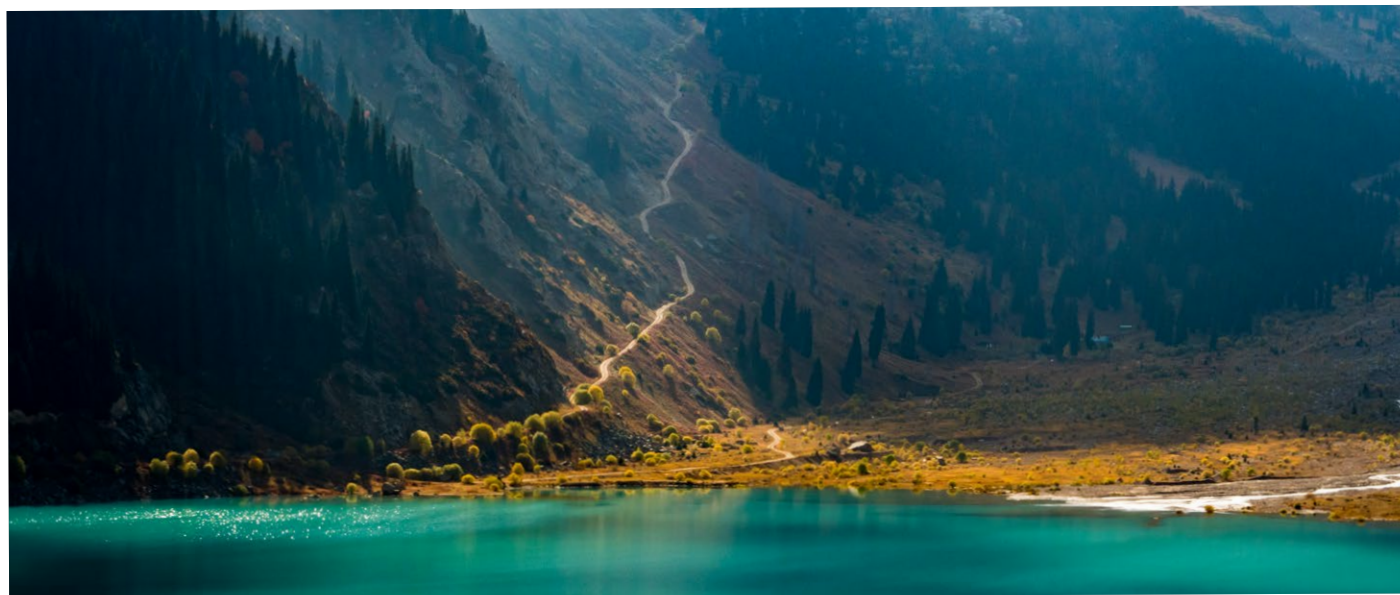
non-resident status is stipulated in international treaties concluded by Kazakhstan prior to the entry into force of the Currency Control Law)

- ▶ Kazakhstan non-residents, i.e. (i) foreign citizens and stateless persons (other than those who have permanent residency status in Kazakhstan); (ii) foreign legal entities and organizations not recognised as legal entities under the laws of foreign states and Kazakhstan-based branches/representative offices of such entities that do not create a permanent establishment of a non-resident in accordance with the Kazakh Tax Code; (iii) branches/representative offices of foreign non-financial organizations that have been accorded non-resident status under Kazakh currency law by agreements concluded on behalf of Kazakhstan with foreign organizations which entered into force before 1 July 2019 (a list of such branches/representative offices is to be established by the Kazakh government); (iv) international organizations, unless otherwise specified by the international treaty governing their establishment; (v) diplomatic and other official missions of foreign states.

Individuals (residents and non-residents) may take foreign currency cash in and out of the country without restrictions subject to the customs legislation of the Eurasian Economic Union and/or Kazakhstan.

The Currency Control Law states that transactions between Kazakhstan residents and non-residents may take place in any currency. However, transactions between residents must only be in KZT, except for:

- ▶ transactions in which one of the parties is the NBK, the Ministry of Finance or an overseas diplomatic office of Kazakhstan
- ▶ transactions in which one of the parties is a resident who has the right to conduct foreign currency transactions
- ▶ transactions involving foreign currency that are classed as banking operations and other operations which banks and authorized organizations have the right to carry out in accordance with a licence issued by the NBK or the Agency for the Regulation and Supervision of the Financial Market and Financial Institutions or under Law No. 262-VI of the Republic of Kazakhstan of 3 July 2019
- ▶ payment for banking services relating to foreign currency transactions
- ▶ transactions involving the acquisition, sale, payment of interest on and/or redemption of securities denominated in foreign currency
- ▶ transactions between commission agents and their clients when services are rendered by commission agents involving the conclusion and execution of export or import contracts with non-residents, including the repayment of foreign currency to the principal
- ▶ the purchase and/or sale of refined gold bullion using national currency
- ▶ the transfer of promissory notes denominated in foreign currency in fulfilment of monetary obligations
- ▶ payments for goods sold in duty-free shops and for goods and services provided to passengers in international traffic
- ▶ transactions between branches (representative offices) of foreign entities
- ▶ transactions involving payment for expenses of an individual in connection with a business trip outside the Republic of Kazakhstan, including hospitality expenses, and transactions involving the repayment of unused advances issued in connection with a business trip outside Kazakhstan



- ▶ gratuitous transfers of money or currency valuables by individuals to other individuals or to legal entities whose statutory activities involve charity
- ▶ bank deposits by individuals in favour of other individuals
- ▶ transactions between professional participants in the securities market acting on behalf of their customers and individuals or legal entities involving the transfer of money and financial instruments from accounts (to accounts) for the recording and storage of money and financial instruments owned by customers by way of the performance and termination of contracts for the provision of brokerage services
- ▶ transactions involving the payment of taxes and other mandatory payments to the budget in cases provided for by the Tax Code
- ▶ operations of the recipient of mineral resources on behalf of the Republic of Kazakhstan connected with the transportation, storage and sale of mineral resources that are transferred to the state in accordance with the Tax Code by way of the in-kind fulfilment of a tax obligation by a subsurface user
- ▶ payments by individuals for goods, works and services in transactions concluded and executed in the territory of a special economic zone whose borders wholly or partially coincide with sections of the customs border of the Eurasian Economic Union.

The range of currency transactions covered by the NBK's monitoring system has increased, with simplified procedures introduced for the collection of transaction information. In order to monitor currency transactions, the NBK (or authorized banks in certain cases) assigns registration numbers to currency contracts under which currency transactions take place, currency contracts involving the movement of capital, accounts held by residents (excluding banks and branches/representative offices of foreign entities) with foreign banks and export or import currency contracts in respect of which payments are made through such accounts.

Authorized banks that process foreign currency payments or transfers are required to notify the NBK of the transactions if the amount is equal to or exceeds a threshold set by the NBK. The NBK is entitled to request a copy of the currency contract and other information on the currency contract from the currency control agents or the resident sender. Please note that various ancillary regulations are currently in the process of being drafted.

## Currency regimes

### **Registration of foreign currency contracts involving capital movement**

According to the Rules on the Monitoring of Currency Transactions approved by Resolution No. 64 of the Board of the National Bank of 10 April 2019 ("the Rules"), the NBK is responsible for monitoring and registering currency transactions and currency contracts.

Registration is required for currency contracts involving capital movement (financial loans, equity participation, transactions involving securities, equity interests and financial instruments, acquisition of real estate, acquisition of exclusive rights to intellectual property, transfers of funds in the context of trust management activities, and gratuitous transfers of funds) where one of the parties is a resident and the contracts reach certain thresholds.

According to the Rules, a capital movement currency contract is subject to registration where it involves:

- 1) the receipt of property/money in the Republic of Kazakhstan and/or an obligation of a resident to return property/money to a non-resident to a value exceeding the equivalent of US\$500,000 (five hundred thousand) (approx. KZT210,000,000)



- 2) the transfer of property/money from the Republic of Kazakhstan and/or an obligation of a non-resident to return property (money) to a resident to a value exceeding the equivalent of US\$500,000 (five hundred thousand) (approx. KZT 210,000,000).

A resident (other than an authorized bank and a branch/representative office of a foreign entity) that is a party to a currency contract must apply to the NBK before obligations under the contract are fulfilled by any parties.

Non-residents may receive and transfer foreign currency from/to their branches (representative offices) in Kazakhstan.

The registration requirement does not apply to capital movement currency contracts whose parties include the NBK or the Ministry of Finance or to currency operations carried out by participants in the Astana International Financial Centre within the territory of the Centre.

### **Notification<sup>13</sup>**

The notification regime requires information to be provided to the NBK on foreign currency transactions exceeding the threshold of US\$50,000 (KZT21,000,000) and on the opening of bank accounts with a foreign bank (for legal entities), as well as information on the purchase and sale of foreign currency on behalf of a client, regardless of the amount.

### **Repatriation**

A Kazakh resident must ensure that currency proceeds under export or import contracts are repatriated to Kazakhstan (i.e., credited to a bank account with a local bank) within the established time limit.

According to the rules for carrying out export-import currency control approved by National Bank Resolution No. 42 of 30 March 2019, as from 1 July 2019 an export or import currency contract is subject to registration if the amount of the contract exceeds the equivalent of US\$50,000 (KZT 21,000,500) or if the contract amount is not specified (framework agreements).

If an export or import currency contract is denominated in a currency other than US\$ and the exchange rate against US\$ is not specified in the contract, the US\$ equivalent of the contract amount should be determined using the market exchange rate at the date of signing of the contract (or failing that, at the date of entry into force of the contract).

The registration of currency contracts where the contract amount is not specified or exceeds US\$50,000 (KZT 21,000,500) and where a contract is amended after 1 July 2019 must take place before obligations begin to be fulfilled by one of the parties, but not later than 30 calendar days from the date on which the currency contract became subject to registration.

Late registration of currency contracts concluded after 1 July 2019 will incur a warning in the first instance. A repeat violation within a year will incur an administrative fine of MCI 100 (Administrative Offences Code, Article 244). In 2020 that amounts to KZT 277,800 (approximately US\$662).

The repatriation requirement is considered to be partially or fully satisfied where:

- ▶ national and/or foreign currency is credited to accounts held by a resident with foreign banks that were opened to fulfil the resident's obligations under the terms of a financial loan received from a non-resident or to support the activities of branches/representative offices opened by the resident abroad
- ▶ foreign currency received by residents from exhibitions and sporting, cultural and other similar events held outside the Republic of Kazakhstan is used to cover costs incurred during those events
- ▶ foreign currency earnings are credited to foreign bank accounts of resident transportation companies in order to pay port dues and other charges outside Kazakhstan and cover expenses associated with the handling of those companies' transport facilities and passengers outside Kazakhstan and the maintenance of branches/

---

13 Notification by a resident is not required for payments and/or money transfers made by participants of the Astana International Financial Centre within the territory of the Centre or through bank accounts held by participants of the Centre with foreign banks.

representative offices of those companies outside Kazakhstan

- ▶ an obligation of a non-resident is terminated by crediting a counterclaim under an export or import currency contract
- ▶ an obligation of a non-resident is terminated by the replacement of the original obligation between a resident and the non-resident with another obligation between the same parties with a different subject-matter or method of performance
- ▶ an insurance payment is received upon the occurrence of an insured event under an agreement on insurance of the risk of non-performance by a non-resident.

### **Submission of information (reports) by branches (representative offices) of foreign non-financial organizations**

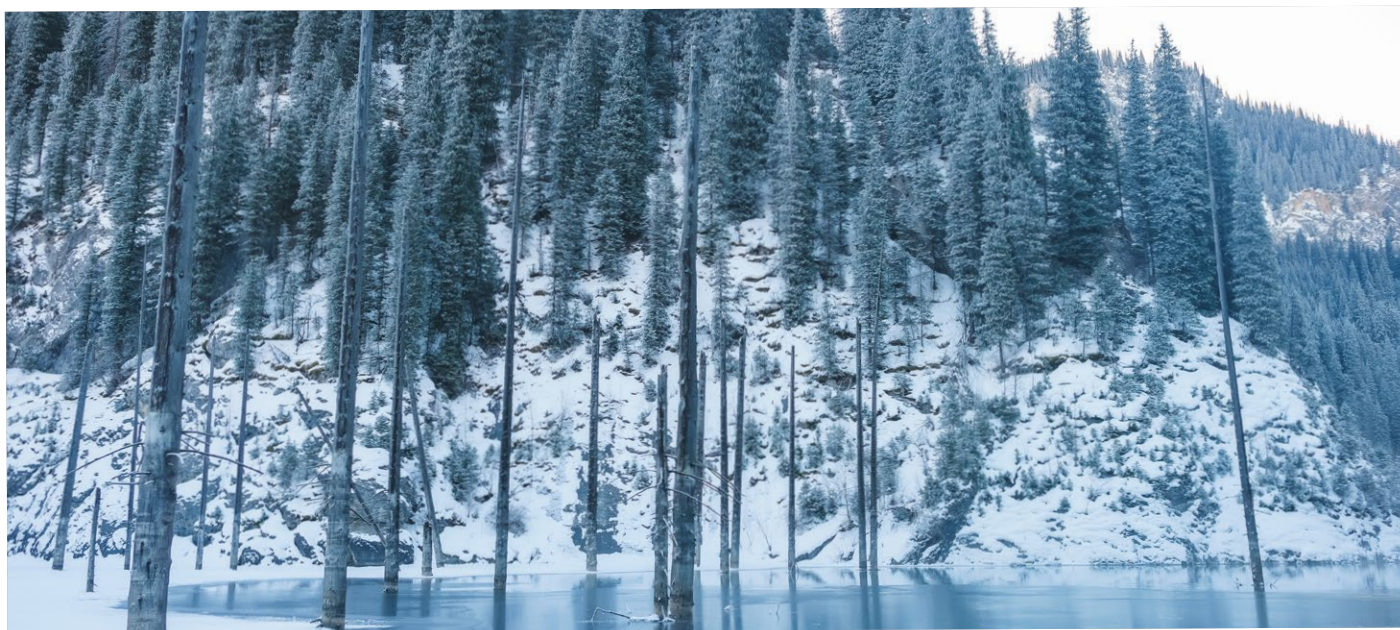
According to the Rules on the Submission of Information by Branches (Representative Offices) of Foreign Non-Financial Organizations, approved by National Bank Resolution No. 41 of 30 March 2019, as from 1 July 2019 branches/representative offices of foreign non-financial organizations operating in the Republic of Kazakhstan for more than one year must submit information (reports) on their activities to the National Bank.

Based on information received, local branches of the National Bank make a list of branches/representative offices that provide information on transactions with residents and non-residents.

That list includes branches/representative offices engaged in the following activities:

1. production of crude oil and natural and associated gas
2. construction services
3. services related to mining
4. architectural, engineering and other technical services
5. research and development work.

Late submission of a report incurs a warning in the first instance. A repeat violation within a year will incur an administrative fine of 10 MCL. In 2020, that amounts to KZT 27,780 (approximately US\$66).



In addition, if a branch or representative office of a foreign non-financial organization submits an incomplete and/or inaccurate report on transactions with residents and non-residents, it will receive a warning the first time. A repeat violation committed within a year will incur an administrative fine of 10 MCI, which currently amounts to KZT 27,780 for 2020 (approximately US\$66).

### **Sale and purchase of foreign currency**

All legal entities may buy and sell foreign currency on the domestic currency market only through authorized banks.

A resident legal entity may purchase non-cash foreign currency up to the equivalent of USD 50,000 (inclusively) at one bank on any given day for “purposes not connected with the discharge of obligations expressed in a foreign currency”. Such purposes include: (i) the transfer of foreign currency to a foreign bank account held by that resident legal entity; (ii) gratuitous bank transfers; and (iii) the transfer of foreign currency to bank accounts held by the entity with Kazakh banks.

For amounts exceeding the equivalent of USD 50,000, a resident legal entity must indicate the purpose of purchasing the foreign currency and provide a copy of the underlying contract or invoice (any payment document) supporting the declared purpose of purchasing the foreign currency. A resident legal entity must also provide an advance

instruction to its bank to sell the foreign currency (i.e., convert it to Kazakhstan tenge) if that foreign currency is not utilized within 10 (ten) business days.

This restriction does not apply to authorized banks and authorized organizations. Individuals may buy and sell currency through foreign currency exchange offices.

### **Special currency regime<sup>14</sup>**

The Currency Control Law authorizes the Government of Kazakhstan, at the recommendation of the National Bank and relevant government bodies, to introduce a special currency regime in the event of a threat to the economic security and domestic currency market of Kazakhstan.

A special currency regime may include, among other things, a requirement for a sum equal to a percentage of the amount of a currency transaction to be deposited with an authorized bank without interest being earned, a requirement to obtain a special permit from the NBK to carry out currency transactions, the mandatory sale of foreign currency received by Kazakhstan residents, restrictions on the use of foreign banks and limits on settlements in foreign currency.

### **Financial monitoring**

It is important to consider the possible implications of the financial monitoring system established by Law No. 191-IV of the Republic of Kazakhstan of 28 August

2009 on the Countering of Money Laundering and Terrorist Financing (the “Anti-Money Laundering Law”). Under that law, certain types of transactions are subject to financial monitoring depending on the amounts involved. This includes gratuitous payments and/or transfers made by individuals and legal entities in favour of other individuals or legal entities amounting to KZT 7,000,000 (approximately US\$16,667) or more, transactions to the value of KZT 10,000,000 (approximately US\$ 23,810) or more entered into by legal entities that have existed for less than three months, and other operations and transactions specified in the Anti-Money Laundering Law.

Monitoring is conducted by the Financial Monitoring Committee of the Kazakh Ministry of Finance.

In addition, the Anti-Money Laundering Law contains the term “suspicious transaction”, meaning a transaction or attempted transaction with respect to which there are grounds to suspect that money and/or property used in the transaction is derived from criminal activity or that the transaction itself is undertaken for the purpose of money laundering or the financing of terrorism or other criminal activity. The Kazakh government sets the list of criteria for characterizing transactions as suspicious, such as inconsistency of a transaction with the nature of a legal entity’s business as specified in its

---

14 A special currency regime is introduced by an act of the Government of the Republic of Kazakhstan based on a joint recommendation of the National Bank of Kazakhstan and relevant authorized bodies.



constituent documents, transactions with non-profit organizations, transactions relating to charitable activities, et al. Furthermore, any transaction may potentially be considered suspicious if an authorized person of a financial monitoring agent decides to treat it as such based on his/her experience and knowledge.

### **Anti-monopoly regulations**

Anti-monopoly law requires prior permission from or notification of the anti-monopoly authority for mergers and other types of economic concentrations where the deal exceeds 10,000,000 MCI (approximately US\$66,143,000); otherwise, the deal may be invalidated or terminated. Anti-monopoly law prohibits anti-competitive horizontal agreements (cartels) and vertical agreements, concerted practices, abuse of a dominant market position and unfair competition. All types of monopolistic activity (i.e., anti-competitive agreements, concerted practices, abuse of a dominant position) may lead to administrative fines of up to 5% of income with confiscation of monopolistic income for a period of up to a year, or criminal sanctions if actions result in major damage or the receipt of substantial income. Unfair competition incurs an administrative fine of up to 1,500 MCI (approximately US\$9,922).

### **Subsurface use regulations**

As from 29 June 2018, subsurface use in Kazakhstan is regulated by the new Subsurface Use Code. The Subsurface Use Code establishes different regulatory regimes for subsurface companies depending on the types of mineral resources being explored and produced.

Subsurface use rights for the exploration and production of hydrocarbons are granted on the basis of contracts concluded by the competent government authority with winners of auctions, which are determined by the amounts of subscription bonuses proposed by the participants in the auctions. From 1 September 2020 such auctions are held online.

The Subsurface Use Code also envisages the right of the competent government authority to conclude contracts for exploration and production of hydrocarbons and uranium through direct negotiations with national companies of Kazakhstan.

Subsurface use rights for exploration and production of solid mineral resources are granted on the basis of licences issued by the competent government authorities. Such licences are issued on a first come, first served basis, meaning that all applications for

licences for exploration and production of solid mineral resources within the same block are considered in the order in which they are received, and each application is considered only after the preceding application has been rejected.

Under the Subsurface Use Code, the acquisition of subsurface use rights from subsurface use companies (e.g., farmouts) or of shares/participating interests in subsurface use companies is subject to approval by the competent government authority. Furthermore, where such acquisition relates to a subsurface use area of strategic importance, the state has the right of first refusal over the rights or shares/interests being sold. Before subsurface sites can be acquired, therefore, it is necessary to obtain approval from the competent government authority and a waiver from the state confirming that it will not exercise its right of first refusal over the sites.

# 6 EY in Kazakhstan



In 1992, EY was the first international professional services organization to open an office in Kazakhstan. It is part of our EMEA practice, encompassing Europe, the Middle East, India and Africa. In Kazakhstan, EY has three offices: in Nur-Sultan, Almaty and Atyrau.

## About EY

EY is a global leader in assurance, tax, transaction and advisory services. Its combined global revenues for the financial year 2019 were US\$36.4 billion. With a total headcount of over 284,000 people, EY operates in more than 150 countries around the world.

In 1992, EY was the first international assurance and advisory services organization to open an office in Kazakhstan, reaching out to a wide range of clients from various industry sectors, including multinational corporations as well as public and private companies. Today, EY Kazakhstan has 700 employees working in three offices in Nur-Sultan, Almaty and Atyrau. EY Kazakhstan provides over 85 services across all industries, including assurance, tax and law (financial, tax accounting and HR outsourcing solutions, people advisory services, immigration support, etc.), transaction and business advisory services and digital as well as professional education and training delivered by the EY Academy of Business.

## Encouraging investment

EY is committed to enhancing the business and investment environment in Kazakhstan. We organize a variety of professional events and knowledge-sharing sessions in order to promote international leading practices and industry expertise, as well as to advise the investment community on the most recent or anticipated changes to the regulatory environment. EY is involved in the work of the Foreign Investors' Council, chaired by the President of the Republic of Kazakhstan, and co-chairs its working group on Investment Policy. EY is also actively involved in a number of business, professional and industry associations in Kazakhstan.

## Supporting our clients in the dynamic landscape

At EY, we know that businesses in emerging markets need innovative thinking and practical advice in order to succeed. We support our clients by facilitating their sustainable development strategy and helping them create new growth opportunities in today's dynamic economic environment.

**US\$36,4**  
billion

EY global revenues for the financial year 2019

---

**700** employees

work for EY Kazakhstan across three offices in Nur-Sultan, Almaty, Atyrau

---

**85** services

provided by EY Kazakhstan across all industries



## Our major services

- Assurance
- Tax & Law
- Transactions
- Advisory
- Academy of Business

## EY Kazakhstan at social media

Business events, insights and thought leadership, legislative updates and more.

- **Facebook** @EYKazakhstan
- **Instagram** @EYKazakhstan
- **Careers** @EYCareersKazakhstan
- **EY Academy of Business** @EYAcademyKazakhstan

## Office locations

### Nur-Sultan

16 Dostyk street, Talan Towers Offices,  
Nur-Sultan, Z05H9K3  
Republic of Kazakhstan  
Tel.: +7 7172 58 0400  
Fax: +7 7172 58 0410

### Almaty

Esentai Tower  
Al-Farabi Ave., 77/7, Almaty,  
050060, Republic of Kazakhstan  
Tel: +7 727 258 5960  
Fax: +7 727 258 5961

### Atyrau

Satpayev str., 19  
Atyrau, 060000  
Republic of Kazakhstan  
Tel.: +7 7122 55 21 00  
Fax: +7 7122 55 21 01



# Contact information

For more information on how EY can help you find your bearings in Kazakhstan's tax and legal terrain, please contact one of the following EY leaders:

## Tax & Law Services



**Erlan Dosymbekov**

Managing Partner for Kazakhstan and Central Asia

Tel: +7 727 258 5960

[erlan.b.dosymbekov@kz.ey.com](mailto:erlan.b.dosymbekov@kz.ey.com)



**Roman Yurtayev**

Associate Partner, Tax Services, Business Tax Advisory

Tel: +7 727 258 5960

[roman.yurtayev@kz.ey.com](mailto:roman.yurtayev@kz.ey.com)



**Dinara Tanasheva**

Partner, Tax & Law Services Leader for Kazakhstan and Central Asia and Central Asia

Tel: +7 727 258 5960

[dinara.s.tanasheva@kz.ey.com](mailto:dinara.s.tanasheva@kz.ey.com)



**Saltanat Dauletova**

Associate Partner, International Tax and Transaction Services, Financial Sector

Tel: +7 727 258 5960

[saltanat.dauletova@kz.ey.com](mailto:saltanat.dauletova@kz.ey.com)



**Doniyorbek Zulunov**

Partner, Tax Services, International Tax and Transaction Services

Tel: +7 727 258 5960

[doniyorbek.zulunov@kz.ey.com](mailto:doniyorbek.zulunov@kz.ey.com)



**Anuar Mukanov**

Associate Partner, Transfer Pricing Services

Tel: +7 727 258 5960

[anuar.mukanov@kz.ey.com](mailto:anuar.mukanov@kz.ey.com)



**Vladimir Fesenko**

Partner, People Advisory Services

Tel: +7 727 258 5960

[vladimir.fesenko@kz.ey.com](mailto:vladimir.fesenko@kz.ey.com)



**Amangeldy Mussayev**

Partner, Global Compliance and Reporting

Tel: +7 727 258 5960

[amangeldy.mussayev@kz.ey.com](mailto:amangeldy.mussayev@kz.ey.com)

# 7

## Appendix





## Double tax treaties

The following table lists the WHT rates under Kazakhstan's double tax treaties.

No.	Country	Dividends, %	Interest, %	Royalties, %
1.	Armenia	10	10	10
2.	Austria	5/15 (a)	10	10
3.	Azerbaijan	10	10	10
4.	Belarus	15	10	15
5.	Belgium	5/15 (a)	10	10
6.	Bulgaria	10	10	10
7.	Canada	5/15 (a)	10	10
8.	China	10	10	10
9.	Croatia	5/10 (b)	10	10
10.	Cyprus	5/15 (a)	10	10
11.	Czech Republic	10	10	10
12.	Estonia	5/15 (b)	10	15
13.	Finland	5/15 (a)	10	10
14.	France	5/15 (a)	10	10
15.	Georgia	15	10	10
16.	Germany	5/15 (b)	10	10
17.	Hungary	5/15 (b)	10	10
18.	India	10	10	10
19.	Iran	5/15 (c)	10	10
20.	Ireland	5/15 (b)	10	10
21.	Italy	5/15 (a)	10	10
22.	Japan	5/15 (a)	10	10
23.	Korea (South)	5/15 (a)	10	10
24.	Kyrgyzstan	10	10	10
25.	Latvia	5/15 (b)	10	10
26.	Lithuania	5/15 (b)	10	10
27.	Luxembourg	5/15 (d)	10	10
28.	Macedonia	5/15 (b)	10	10
29.	Malaysia	10	10	10
30.	Moldova	10/15 (b)	10	10
31.	Mongolia	10	10	10
32.	Netherlands	5/15 (a)	10	10
33.	Norway	5/15 (a)	10	10
34.	Pakistan	12.5/15 (a)	12.5	15

No.	Country	Dividends, %	Interest, %	Royalties, %
35.	Poland	10/15 (c)	10	10
36.	Qatar	5/10 (a)	10	10
37.	Romania	10	10	10
38.	Russian Federation	10	10	10
39.	Saudi Arabia	5	10	10
40.	Serbia	10/15 (b)	10	10
41.	Singapore	5/10 (b)	10	10
42.	Slovak Republic	10/15 (e)	10	10
43.	Slovenia	5/15 (b)	10	10
44.	Spain	5/15 (a)	10	10
45.	Sweden	5/15 (a)	10	10
46.	Switzerland	5/15 (a)	10	10
47.	Tajikistan	10/15 (e)	10	10
48.	Turkey	10	10	10
49.	Turkmenistan	10	10	10
50.	Ukraine	5/15 (b)	10	10
51.	United Arab Emirates	5/15 (a)	10	10
52.	United Kingdom	5/15 (a)	10	10
53.	United States	5/15 (a)	10	10
54.	Uzbekistan	10	10	10
55.	Vietnam	5/15 (f)	10	10
56.	Non-treaty countries	15 (g)	15 (g)	15 (g)

(a) The lower rate applies to dividends paid to companies owning at least 10% of the payer. The 15% rate applies to other dividends.

(b) The lower rate applies to dividends paid to companies owning at least 25% of the payer. The 15% rate applies to other dividends.

(c) The lower rate applies to dividends paid to companies owning at least 20% of the payer. The 15% rate applies to other dividends.

(d) The lower rate applies to dividends paid to companies owning at least 15% of the payer. The 15% rate applies to other dividends.

(e) The lower rate applies to dividends paid to companies owning at least 30% of the payer. The 15% rate applies to other dividends.

(f) The lower rate applies to dividends paid to companies owning at least 70% of the payer. The 15% rate applies to other dividends.

(g) For payments to entities registered in tax havens (as per the list of countries with preferential tax regimes) the rate is 20%

## List of countries with preferential tax regimes

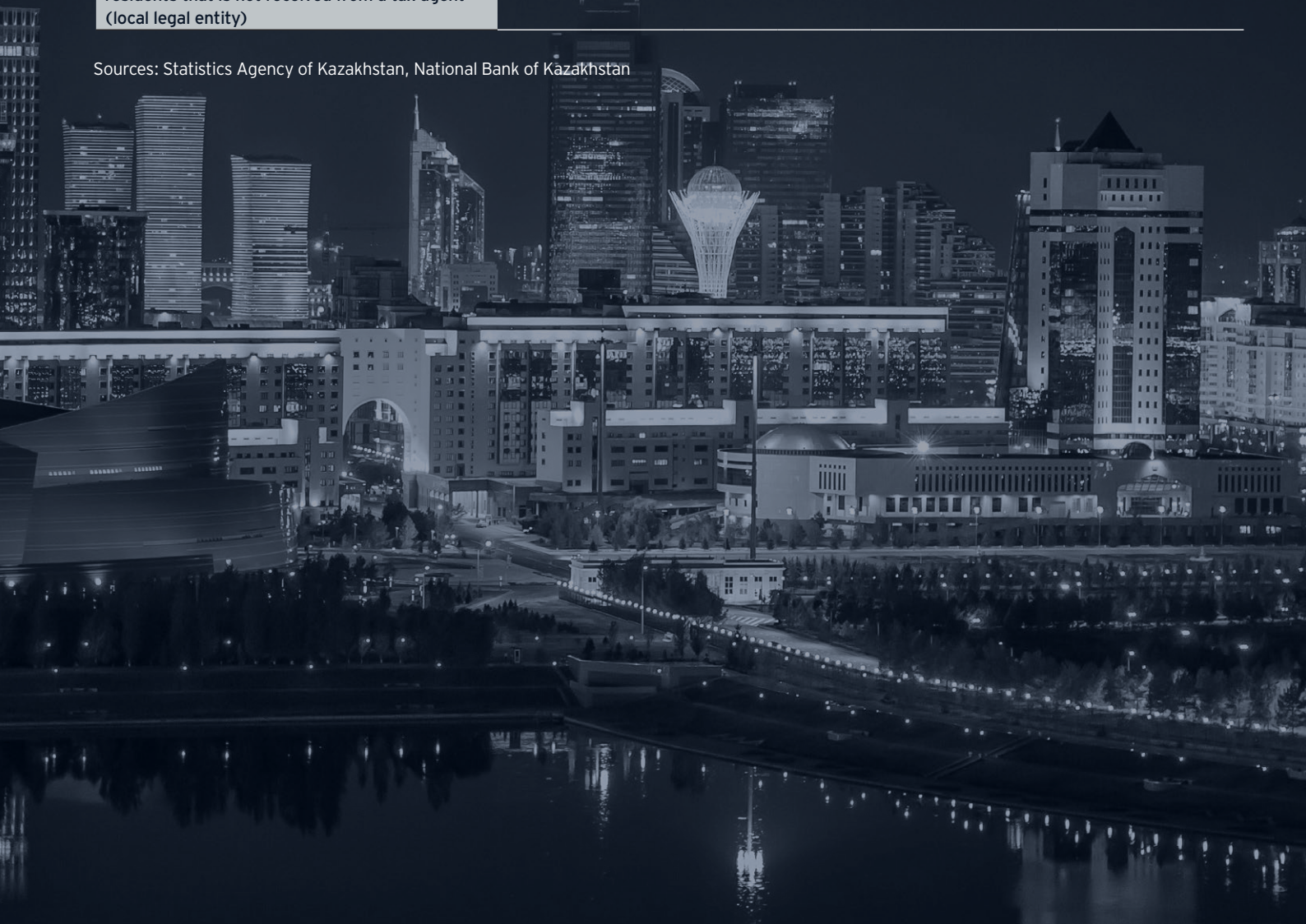
### Approved by Order No. 142 of the Minister of Finance of the Republic of Kazakhstan of 8 February 2018

1. Principality of Andorra
2. State of Antigua and Barbuda
3. Commonwealth of the Bahamas
4. State of Barbados
5. State of Bahrain
6. State of Belize
7. State of Brunei Darussalam
8. Republic of Vanuatu
9. Co-operative Republic of Guyana
10. Republic of Guatemala
11. State of Grenada
12. Republic of Djibouti
13. Dominican Republic
14. Commonwealth of Dominica
15. Kingdom of Spain (only as regard the Canary Islands)
16. People's Republic of China (only as regards the Macao and Hong Kong special administrative regions)
17. Republic of Colombia
18. Federal Islamic Republic of Comoros
19. Republic of Costa Rica
20. Malaysia (only as regards the Labuan enclave)
21. Republic of Liberia
22. Lebanese Republic
23. Republic of Mauritius
24. Islamic Republic of Mauritania
25. Portugal (only with regard to the Madeira Islands)
26. Republic of Maldives
27. Republic of the Marshall Islands
28. Principality of Monaco
29. Republic of Malta
30. Mariana Islands
31. Kingdom of Morocco (only as regards the city of Tangier)
32. Union of Myanmar
33. Republic of Nauru
34. Kingdom of the Netherlands (only as regards Aruba and the dependent territories of the Antilles)
35. Federal Republic of Nigeria
36. New Zealand (only as regards the Cook Islands and Niue)
37. Republic of Palau
38. Republic of Panama
39. Independent State of Samoa
40. Republic of San Marino
41. Republic of Seychelles
42. State of Saint Vincent and the Grenadines
43. Federation of Saint Kitts and Nevis
44. State of Saint Lucia
45. United Kingdom of Great Britain and Northern Ireland (only as regards the following areas):
  - 1) Anguilla Islands
  - 2) Bermuda Islands
  - 3) British Virgin Islands
  - 4) Gibraltar
  - 5) Cayman Islands
- 6) Montserrat Island
- 7) Turks and Caicos Islands
- 8) Isle of Man
- 9) Channel Islands (Guernsey, Jersey, Sark and Alderney)
- 10) South Georgia Island
- 11) South Sandwich Islands
- 12) Chagos Islands
46. United States of America (only as regards the following areas):
  - 1) US Virgin Islands
  - 2) Guam
  - 3) Commonwealth of Puerto Rico
  - 4) Wyoming State
  - 5) Delaware State
47. Republic of Suriname
48. United Republic of Tanzania
49. Kingdom of Tonga
50. Republic of Trinidad and Tobago
51. Sovereign Democratic Republic of Fiji
52. Republic of the Philippines
53. Republic of France (only as regards the following areas):
  - 1) Kerguelen Islands
  - 2) French Polynesia
  - 3) French Guiana
54. Republic of Montenegro
55. Democratic Republic of Sri Lanka
56. Jamaica

## Key macroeconomic indicators of Kazakhstan

	2012	2013	2014	2015	2016	2017	2018	2019
GDP growth, %	4.8	6.0	4.2	1.2	1.1	4.1	4.1	3.8
GDP per capita, US\$	12,387	13,891	12,807	10,510	7,715	9,248	9,813	9,409
Inflation rate, %	6.0	4.8	7.4	13.6	8.5	7.1	5.3	4.6
Gold and foreign currency reserves (US\$ billion)	28.3	24.7	29.2	27.9	29.7	31.0	30.9	29.5
KZT/US\$ annual average exchange rate	149.11	152.13	179.19	221.73	342.16	326.00	344.71	416.7
Any other Kazakh-source income paid to non-residents that is not received from a tax agent (local legal entity)	20%	20%	20%	20%	20%	20%	20%	20%

Sources: Statistics Agency of Kazakhstan, National Bank of Kazakhstan





## **EY | Building a better working world**

**EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.**

**Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.**

**Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.**

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via [ey.com/privacy](https://ey.com/privacy). For more information about our organization, please visit [ey.com](https://ey.com).

EY works together with companies across the CIS and assists them in realizing their business goals. 5,500 professionals work at 19 CIS offices (in Moscow, Ekaterinburg, Kazan, Krasnodar, Novosibirsk, Rostov-on-Don, St. Petersburg, Togliatti, Vladivostok, Almaty, Atyrau, Nur-Sultan, Baku, Bishkek, Kyiv, Minsk, Tashkent, Tbilisi, Yerevan).

© 2021 Ernst & Young LLC.  
All Rights Reserved.

ED None.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global EY organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

**[ey.com/kz](https://ey.com/kz)**