

Tax Alert

Overview of potential Tax Code changes that may affect your business

Dear friends,

In this Alert we provide an overview of potential amendments to Code No. 120-IV *On Taxes and Other Obligatory Payments to the State Budget* (the “Tax Code”) that are currently under discussion. Since such changes have been discussed many times over several years, we expect them to be considered and introduced soon.

The changes are currently with the Mazhilis for consideration.

State of emergency-related property loss and damage

Following the state of emergency imposed in Kazakhstan in January 2022, changes are due to be made to the Tax Code

regarding costs incurred as a result of the damage or loss of goods, and the receipt of material aid and compensation.

CIT. Taxpayers included in a special list or register created by the relevant local executive body are entitled to:

- adjust annual aggregate income (AAI) with respect to:¹
 - cash received from foundations and/or the budget if the recipient is a small or medium-sized business, to compensate for property damage
 - four times the amount of confirmed damages if a natural monopoly (large business) applies a deduction for regulatory technical losses

¹ Article 241.1(28) and 241.1(29) of the Tax Code

- apply a tax deduction with respect to:²
 - confirmed damages incurred by a large business as a result of the damage or loss of goods, but not more than their book value

** Due to come into effect from 1 January 2022 - 1 January 2023*

VAT. At the same time, taxpayers may not reduce input VAT previously offset for goods damaged or lost during the state of emergency.³

PIT. Individuals will be entitled to adjust their taxable income in reference to the value of property in the form of compensation for material damage incurred.⁴

Excise duties. In the event of the damage or loss of:

- excisable goods - excise duties are not paid.⁵
- means of identification issued to import tobacco products, accounting-control stamps - excise duties paid are subject to recalculation.⁶
- means of identification issued for tobacco products - excise duties are not paid.⁷

** Due to come into effect from 1 January 2022*

Tax registers

VAT payers should prepare a tax register indicating the following details for damaged and lost goods:⁸

- the name of the goods;
- input VAT;
- the book value of the goods;
- details of the document used as the basis to claim an input VAT credit (name, number, date), as well as the value of the goods net of VAT (taxable turnover).

** Due to come into effect from 1 January 2022*

Taxation of purchases from non-resident related parties

Non-deductible expenses with respect to the following purchases from non-residents regarded as related parties have been extended to cover:⁹

- marketing, consulting, auditing, design, legal, accounting, advocate, advertising, marketing, franchising, financial, engineering and agency services
- services to provide and/or process information, royalty

² Article 243.1 of the Tax Code

³ Article 404.2(2) of the Tax Code

⁴ Article 341.1(17) of the Tax Code

⁵ Article 468.1 of the Tax Code

⁶ Article 469.2 of the Tax Code

⁷ Article 469.3 of the Tax Code

- access to information or Internet resources, software and software updates; the transfer of rights to use intellectual property

For the purposes of this article, related parties include:

- individuals and entities as per the definition of “related parties” in article 1.2 of the Tax Code
- legal entities from the same group of companies (commercial and non-commercial organisation structure that includes a parent company and other companies, as well as the shares, stakes and other equity instruments held directly or indirectly by that parent company)
- individuals and/or legal entities, when their relationship shows signs of interconnectedness, regardless of the conditions specified in this provision.
If a taxpayer fails to recognise interconnectedness, the tax authorities are entitled to establish it in court.

Further, taxpayers are entitled to claim a taxable income reduction for the above-mentioned purchases incurred in a tax period within the limit of 3%.¹⁰

** Due to come into effect from 1 January 2023*

Taxation of dividends

CIT. Taxpayers are entitled to exclude the following types of income as an AAI adjustment:¹¹

- dividends on securities that on the accrual date are officially listed on KASE and AIFC
- dividends received by a permanent establishment of a non-resident legal entity in Kazakhstan
- dividends paid by legal entities reducing CIT by 100%

WHT. The following types of income payable to non-resident legal entities¹² will no longer be fully exempt from WHT and, therefore, subject to 10% taxation:

- dividends on securities officially listed on KASE on the accrual date¹³
- dividends of resident legal entities
- dividends of legal entity subsoil users

For dividends payable by resident legal entities and legal entity subsoil users, income previously taxed by CIT shall be the taxable base for 10% WHT that is calculated as follows:

- taxable income, including the reduction and tax loss carry forward (Articles 288 and 300 of the Tax Code),

⁸ Article 215.7-1 of the Tax Code

⁹ Article 264.1(23) of the Tax Code

¹⁰ Article 288.1(3-1) of the Tax Code

¹¹ Article 241.2(2)-(4) of the Tax Code

¹² Article 645.9 of the Tax Code

¹³ Article 646.6 of the Tax Code

minus

- calculated CIT liability (without advance CIT payments)

Income previously taxed by CIT is determined for tax period for which dividends are distributed.

When distributing and paying dividends before the end of the corresponding tax period, tax agents may not apply 10% WHT. Further, tax agents may amend WHT reporting after the reporting period has ended and, if they have an WHT overpayment, they are entitled to a tax offset and/or refund according to the generally established procedure.

We believe that dividends paid in excess of income previously taxed by CIT will be subject to WHT in accordance with the generally established procedure.

PIT. The following dividends have been removed from the income adjustment:¹⁴

- dividends on securities that on the accrual date are officially listed on KASE
- dividends paid by resident legal entities

Further, dividends received from a Kazakhstan source are now subject to the standard 10% PIT instead of the lower 5% rate.¹⁵

Non-resident PIT. The following income paid to non-resident individuals will no longer be fully exempt from PIT:¹⁶

- dividends on securities officially listed on KASE on the accrual date
- dividends of resident legal entities

** Due to come into effect from 1 January 2023*

VAT

Payment of import VAT by offset (metod zacheta)

With respect to the following use of the imported goods for which import VAT has been paid via by offset (metod zacheta), the Law replaces “statute of limitation” restriction on the period by a “five-year period”:¹⁷

- for goods released for domestic consumption
- for goods being sold

¹⁴ Article 341.1(7)-(8) of the Tax Code

¹⁵ Article 320.1 of the Tax Code

¹⁶ Article 654.3 and 654.4 of the Tax Code

¹⁷ Article 427.4-427.5 of the Tax Code

¹⁸ Article 434.3 of the Tax Code

Simplified VAT refund procedure

In the simplified VAT refund procedure for taxpayers converting 50% of foreign currency sales, the term “*business entities making conversions*” has been changed to “*exporters of raw materials*”.¹⁸

** Due to come into effect from 1 January 2022*

Digital mining fee

Digital mining fees are to be increased based on average electricity prices for the reporting period:¹⁹

Range of average electricity price	Rate
• 5-10 KZT	• 10 KZT
• 10-15 KZT	• 7 KZT
• 15-20 KZT	• 5 KZT
• 20-25 KZT	• 3 KZT
• 25 KZT and above	• 1 KZT

At the same time, digital mining fee for renewable energy sources used for such mining purposes, regardless of the cost of electricity, is 1 KZT per kilowatt-hour.

** Due to come into effect from 1 January 2023*

Radio communication charge

An annual radio communication charge of 1 monthly calculation index (MCI) will be introduced in Kazakhstan for satellite communication using non-geostationary communication satellites (for a reception band width of 2 MHz/2 MHz for transmission, per interface station transmission device).²⁰

** Due to come into effect from 1 January 2023*

Excise duties on tobacco products

The Law introduces new excise duty rates^{21 22}:

EAEU FEA CN Code, excisable goods	Rates from 1 Jan-2023-1	Rates from 1 January 2024-
• From 2402 - cigarettes with a filter	14,100 KZT /	15,900 KZT /
• From 2402 - cigarettes without a filter, cigarettes	1,000 pieces	1,000 pieces
• From 2402 - cigarillos		
• From 2403 – pipe, smoking, chewing, sucking, sniffing, hookah and other tobacco, packed in consumer packaging and intended for final consumption, except for	12,950 KZT / kg	14,150 KZT / kg

¹⁹ Article 606-3 of the Tax Code

²⁰ Article 595.2 (9-1) of the Tax Code

²¹ Article 463.4(1) of the Tax Code

²² Article 43.6 of the Law on introduction of the Tax Code

pharmaceutical products containing nicotine		
• From 2402 - nicotine-containing liquid in cartridges, reservoirs and other containers for use in e-cigarettes	53 KZT / ml of liquid	55 KZT / ml of liquid
EAEU FEA CN Code, excisable goods		Rate (KZT / 1 kg tobacco mix)
From 2403 - Heated tobacco products (heated tobacco sticks, heated tobacco capsules and others)		
• From 1 January 2023		12,925
• From 1 January 2024		14,218
• From 1 January 2025		15,640
• From 1 January 2026		17,204
• From 1 January 2027		18,924
• From 1 January 2028		20,816
• From 1 January 2029		22,898
• From 1 January 2030		25,188
• From 1 January 2031		27,707
• From 1 January 2032		30,478

* Due to come into effect from 1 January 2023

Mineral extraction tax (MET)

MET rates for mineral raw materials will be changed (see the table on the next page).²³ Further, MET will be charged at 0% on:

- all minerals and mineral raw materials extracted from non-commercial (off-balance) deposit reserves, except for the sale of minerals and mineral raw materials extracted from non-commercial (off-balance) deposit reserves, including after primary processing (enrichment);
- subsoil users operating under a license to explore / extract solid minerals for the period until they achieve 15% profitability, but no more than the exploration period and first 120 months of extraction if the following conditions are met simultaneously:
 - the license to explore/extract solid minerals was issued after 31 December 2022 under the Subsoil Use Law
 - the solid mineral exploration/extraction license territory is not related to a territory for which subsoil use rights were granted before 1 January 2023 in line with the Subsoil Use Law; 15% profitability means reaching a level where the AAI for tax periods from the start of licensed exploration/extraction activities exceeds tax deductions for the same period by 15% or more, net of income/deduction adjustments.

If there have been no sales of uranium extracted from productive solutions since the moment a contract goes live,

the taxable base (value) is the weighted average price per kilogram of uranium in the form of natural uranium concentrate (U₃O₈) calculated as the product of average monthly price quotations per pound of U₃O₈ uranium in foreign currency for each month of the tax period, converting pounds into kilograms in accordance with the approved coefficient and arithmetic average of the foreign exchange market rate for the relevant tax period according to the formula below.

For the purposes of this provision, the price quotation per pound of U₃O₈ uranium is the monthly spot price for the last day of the month in foreign currency based on information published by Ux Consulting LLC (USA) in "Ux Weekly" and by TradeTech LLC (USA) in "Nuclear Market Review".

If no price quotations are available for one of the above sources, the price stated in the other source is used. If price quotations are not available in any of the above sources, the price used is based on other sources determined by the Transfer Pricing Law.

The weighted average price per kilogram of uranium in the form of natural uranium concentrate is determined by the following formula:

$$S = \frac{P1+P2+P3}{3} * K * E, \text{ where}$$

- S - weighted average price per kilogram of uranium in the form of natural uranium concentrate for the tax period;
- P1, P2, P3 – average monthly price quotation from sources for each month of the tax period;
- K - conversion factor for pounds to kilograms, set at 2.59978.
- E - average market foreign currency exchange rates for the relevant tax period.

The average monthly price quotation (P_n) is determined as follows:

$$P_n = \frac{C_n + D_n}{2}, \text{ where}$$

- C_n - monthly quotation price per pound of natural uranium concentrate on the last day of the corresponding month of the reporting period as stated in "Ux Weekly"
- D_n - monthly quotation price per pound of natural uranium concentrate (Exchange Value) on the last day of the corresponding month of the reporting period as stated in The Nuclear Market Review;

* Due to come into effect from 1 January 2023

²³ Article 746 of the Tax Code

Minerals and mineral raw materials, including those that have undergone only primary processing		Current version	New version	
1.	Ferrous, non-ferrous and radioactive metal ores	Chrome ore (concentrate)	16.20%	21.06%
		Manganese, iron-manganese ore (concentrate)	2.50%	3.25%
		Iron ore (concentrate)	2.80%	3.64%
		Uranium (extracted from productive solutions, mine method)	18.50%	6%
2.	Metals	Copper	5.70%	8.55%
		Zinc	7.00%	10.50%
		Lead	8.00%	10.40%
		Gold, silver	5.00%	7.50%
		Platinum, palladium	5.00%	6.50%
		Aluminium	0.25%	0.38%
		Tin	3.00%	3.90%
		Nickel	6.00%	7.80%
3.	Mineral raw materials containing metals	Vanadium	4.00%	5.20%
		Chromium, titanium, magnesium, cobalt, tungsten, bismuth, antimony, mercury, arsenic and others	6.00%	7.80%
4.	Mineral raw materials containing rare metals	Niobium, lanthanum, cerium, zirconium	7.70%	7.70%
		Gallium	1.00%	1.00%
5.	Mineral raw materials containing trace metals	Selenium, tellurium, molybdenum	7.00%	7.00%
		Scandium, germanium, rubidium, caesium, cadmium, indium, thallium, hafnium, rhenium, osmium	6.00%	6.00%
6.	Mineral raw materials containing radioactive metals	Radium, thorium	5.00%	5.00%
7.	Mineral raw materials containing rare metals	Lithium, beryllium, tantalum, strontium	7.70%	7.70%
8.	Mineral raw materials containing rare earth metals	Praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium, yttrium	6.00%	6.00%
Mineral raw materials containing non-metallic solid minerals				
9.	Fuel, chemical and agronomic minerals	Coking coal, anthracite	2.70%	4.05%
		Hard coal (except for coking coal), brown coal, oil shale	2.70%	2.70%
		Phosphorites	4.00%	4.00%
		Borates, including boric anhydrite	3.50%	3.50%
		Potassium and potassium-magnesium salts	6.00%	6.00%
		Barite	4.50%	4.50%
		Talc	2.00%	2.00%
		Gypsum	5.60%	5.60%
		Sulphur	6.00%	6.00%
		Fluorites	3.00%	3.00%
		Volastanite	3.50%	3.50%
		Shungite	2.00%	2.00%
Graphite etc.	3.50%	3.50%		
Gemstone raw materials				
10.	Mineral raw materials containing precious stones	Diamond, ruby, sapphire, emerald, garnet, alexandrite, red (noble) spinel, euclase, topaz, aquamarine and others	12.00%	12.00%
11.	Mineral raw materials containing ornamental (semi-precious) stones	Jade, jasper, jadeite, lapis lazuli, radonite, malachite, aventurine, agate, rock crystal, rose quartz, turquoise, diopside, chalcedony and others	3.50%	3.50%
12.	Mineral raw materials containing technical stones	Technical diamonds, agate, corundum, zircon, jasper, serpentine, asbestos, mica and others	2.00%	2.00%
13.	Others	Other non-metallic mineral raw materials that are not common minerals	4.7%, but no less than 0.02 MCI per volume unit	4.7%, but no less than 0.02 MCI per volume unit

How Deloitte can help:

If you would like to express your opinion on anything you have read in this alert, please reach out to our specialists from Deloitte Tax and Legal Department whose contact information may be found below.

Contact us:

Almaty

+7 (727) 258 13 40

Nur-Sultan

7 (717) 258 04 81/80



Andrey Zakharchuk

Partner

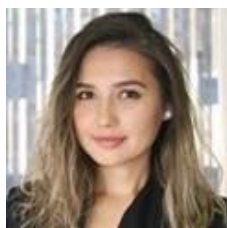
azakharchuk@deloitte.kz



Yeldos Syzdykov

Director

ysyzdykov@deloitte.kz



Aidana Abdaliyeva

Director

aabdaliyeva@deloitte.kz



Gulsara Ryskeldinova

Manager

gryskeldinova@deloitte.kz

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities. DTTL (also referred to as “Deloitte Global”) and each of its member firms are legally separate and independent entities. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our network of member firms in more than 150 countries and territories serves four out of five Fortune Global 500® companies. Learn how Deloitte’s approximately 312,000 people make an impact that matters at www.deloitte.com.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms or their related entities (collectively, the “Deloitte network”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.