The information given in this document is of a general nature and should be treated as such. Please consult with an expert before taking any action based on it.
Since independence, Kazakhstan has achieved significant results in its efforts to attract foreign investment. Most of that investment has been in the natural resources sector. However, in recent years the government has been seen to be trying to change the emphasis on investment to cover a more diverse range of industries and sectors.

To ensure its goal of sustained long-term growth, Kazakhstan still has a lot of work to do to ensure a fully diversified economy and decrease its dependence on natural resources, which are vulnerable to volatile global commodity prices.

Despite obvious achievements, the government is still interested in improving the investment climate in Kazakhstan, which is why considerable efforts have been made to remove bureaucratic obstacles to making investments (as testified in Kazakhstan placing 77th in the World Bank’s Ease of Doing Business rankings for 189 countries), but attracting direct foreign investment in the hitherto underdeveloped non-extractive sectors remains difficult and will require more than just the elimination of red tape.

The Kazakhstan Constitution affords foreign companies and individuals the same rights and obligations as Kazakhstan nationals. Foreigners may invest in almost all sectors of the economy, but restrictions do exist for specific industries. Foreign investors may also face a number of operational restrictions, although not explicitly discriminatory, that local firms are not subject to (e.g. local content and obligations covering labour, goods and services).

Kazakhstan has signed bilateral investment treaties with many countries, including OECD countries, which guarantee national or most-favoured-nation treatment and stipulate the responsibilities of parties, most notably in the event of expropriation.

Kazakhstan has also established institutions to promote investment, including KazNexInvest and the Foreign Investors’ Council, and an investment ombudsman to help foreign investors address their issues and concerns to the right institution and ultimately ensure a more favourable investment climate.
Political Background

Kazakhstan is a unitary state with a presidential system of government. The president, who is the head of state, is responsible for determining the main course of domestic and foreign policy and representing Kazakhstan domestically and internationally. The president is also the Commander-In-Chief of the armed forces and is able to veto legislation that has been passed by parliament.

The president appoints a prime minister who presides over the Government and serves as Kazakhstan’s head of government. The country is divided into 14 administrative oblasts (regions). Astana and Almaty are classified as cities of national importance and do not belong to any particular oblast. Each oblast is headed by an akim (governor), appointed by the president. Municipal akims are appointed by the oblast akims.

The current Kazakhstan President, Nursultan Nazarbayev, will continue to have a measure of control over domestic and foreign policy after retirement, as he will retain the right to head the Assembly of People of Kazakhstan and sit on the country’s Constitutional and Security Councils.

International Relations

Kazakhstan has so far established diplomatic relations with 139 sovereign nations and also the European Union, and in 2010, became the first member of the Commonwealth of Independent States (CIS) to chair the Organisation for Security and Co-Operation in Europe (OSCE).

At the 2010 World Economic Forum, the 2010-11 Global Competitiveness Report rated Kazakhstan 72nd in a list of the 139 most competitive countries in the world.

In 2010, Kazakhstan created a customs union with Russia and Belarus, which from 1 January 2012 has created a common economic space, enabling the free flow of goods, services, and financial and human capital within the three countries. In 2014, the Eurasian Economic Union was created by the same countries together with Kyrgyzstan and Armenia. World Trade Organization (WTO) membership is being negotiated by each customs union member separately. Kazakhstan negotiations were finalised recently and accession is expected soon.

Kazakhstan has signed bilateral investment treaties with 45 countries (18 of which are with OECD member countries) and one with the Eurasian Economic Community (including Russia, Belarus, Kyrgyzstan and Tajikistan), all of which guarantee most-favoured-nation treatment and stipulate party obligations, most notably in the event of expropriation.

Economic Structure

Kazakhstan is an industrial country, with mining and oil and gas operations its main prospects for economic growth. Traditionally, great attention in the country is also paid to developing agriculture.

Kazakhstan’s foreign trade turnover in 2013 reached US$ 134 billion, which is 10% higher than in 2011. In 2013 exports amounted to US$ 85 billion and imports — US$ 49 billion. Kazakhstan’s main exports come from the mining, fuel and energy, metallurgical, chemical, and grain industries, while major imports include machinery, vehicles and parts, metal products, foodstuffs, and chemicals. The country’s main trade partners are Russia, China, Turkey, the EU, US and CIS.

Kazakhstan is an upper-middle-income country with per capita GDP of nearly US$13 thousand in 2013. Kazakhstan’s real GDP growth slowed from 6 percent in 2013 to 3.9 percent during the first half of 2014, due to internal capacity constraints in the oil industry, less favourable terms of trade, and an economic slowdown in Russia. The contribution of net exports to GDP growth improved materially followed by a sharp devaluation of the Kazakhstan tenge in February 2014, leading to a strong drop in imports. As a result of the devaluation, domestic inflation, as measured by the consumer price index (CPI), increased from 4.8 percent year-on-year in December 2013 to 6.9 percent in August 2014, due to higher imported input prices.

Income growth in the country had a positive impact on poverty indicators, with prosperity shared broadly. The share of the Kazakhstan population living in poverty fell from 47 percent in 2001 to about 3 percent in 2013, as measured by the national poverty line. Similarly, at the international poverty line, as measured by the purchasing power parity (PPP)-corrected US$2.50 per capita per day, poverty in Kazakhstan fell from 41 percent in 2001 to 4 percent in 2009.
However, against a benchmark of a higher poverty line at the PPP-corrected US$5 per capita per day (which is more appropriate for countries with a higher level of income per capita), some 42 percent of Kazakhstan’s population were still living in poverty in 2009, though down from 79 percent in 2001. Kazakhstan’s performance in the World Bank's indicator of shared prosperity also shows progress, with the growth rate of consumption per capita of the bottom 40 percent of households at about 6 percent, while average consumption growth for all households was about 5 percent during 2006-2010.

Looking forward, despite the short-term vulnerabilities accentuated by the uncertain regional economic outlook, Kazakhstan’s medium-term prospects look promising, with the economy continuing to grow on the back of the expanding oil sector. However, growth in the non-oil economy will be lower due to lower domestic demand. In the longer run, Kazakhstan’s development objective of joining the ranks of the top 30 most developed countries by 2050 will depend on its ability to sustain balanced and inclusive growth. Enhancing medium- to long-term development prospects depends on Kazakhstan’s success in diversifying its endowments, namely, creating highly skilled human capital, improving the quality of physical capital, and more importantly, strengthening institutional capital — all necessary ingredients for the development and expansion of the private sector.

**Currency**

The national currency of Kazakhstan is tenge (“KZT”).

In February 2014, KZT depreciated 20% against the US$ to 185 KZT to US$ 1. This decline in value was triggered by a drop in global oil prices to below US$ 100/barrel, and strong downward pressure on the Russian rouble. The National Bank is currently adopting a policy against further sharp devaluation.

**Banking and financing**

Kazakhstan operates a two-tier banking system, with the National Bank acting as the central bank and upper (first) tier in the national banking system. All other banks form the lower (second) tier of the banking system, with the exception of the Kazakhstan Development Bank, which has a special legal status.

Due to the slowdown in the annual inflation rate and financial market trends, the National Bank set the official refinancing rate at 5.5% p.a. from 6 August 2012 that is valid up to now. This is the fourth time that it has cut interest rates so far during the year of 2012 (the first time was on 14 February from 7.5% to 7%, the second was on 2 April from 7% to 6.5%, and the third — on 4 June from 6.5% to 6%) — by 200 basis points cumulatively — in a bid to boost economic growth amid a deteriorating external environment.

**Financial Markets**

The Kazakhstan Stock Exchange was created in 1993 and is the largest multifunctional and organised financial market in Central Asia. Notionally, it can be divided into five major sectors: a foreign currency market, a government securities market, a shares and corporate bonds market, a repo operations market, and a derivatives market.

Its strategic objective is to increase popularity among both domestic and foreign investors and issuers, extending the range of services provided and ensuring their compliance with international standards.

**The directions of foreign investment and restrictions**

Due to its wealth of natural resources, foreign direct investment (FDI) plays a more significant role in the Kazakhstan economy than in most other former Soviet republics, and between 2005 and 2014, Kazakhstan attracted over US$ 208 billion of FDI — second only to Russia in the CIS. In 2014, FDI amounted to almost US$ 23 billion, the equivalent of around 11% of GDP.

Together with governmental stability and an improving legal, tax and regulatory framework, Kazakhstan’s impressive mineral reserves (mainly oil and gas, but also uranium, gold, chrome, rare earth metals and diamonds) have been the main attraction
for foreign investors, creating new jobs locally and introducing new technology for domestic suppliers and subcontractors.

Oil sector investment has also played a key role in the development of Kazakhstan’s financial sector, centred in Almaty.

Nonetheless, as the oil sector does not generate mass employment, the narrow range of FDI has not had as widespread or as beneficial an impact on living standards across the country as a more diversified FDI profile might achieve. In this regard, the government’s decision to increase the tax burden on the energy sector — as a measure to support economic diversification — has made the business environment less certain for some foreign investors. While powerful multinationals might be able to obtain exemptions from the government through lobbying and other means, the business environment will be less stable and predictable for foreign investors with fewer resources.

Foreign Ownership Restrictions

Under Kazakhstan law, all sectors of the economy are open to foreign investors, but with some restrictions in certain cases.

Restrictions in the oil and gas sector are regulated by the much-amended 2010 Subsoil Law. With each amendment, the state’s role in the sector and share in oil production revenue have grown. More specifically, the law gives the state the power to amend contracts of “strategic significance” or even terminate contracts deemed to threaten Kazakhstan’s economic security or national interests. Over 100 oil and gas fields are considered to be of strategic significance, including the major fields at Tengiz, Kashagan, and Karachaganak.

At the same time, subsoil users have been afforded a guarantee that their rights are protected by Kazakhstan law, and any changes and additions to legislation that adversely affect subsoil-related entrepreneurial activities do not apply to contracts entered into before these changes and additions were made. However, guarantees do not apply to changes in legislation regarding national security, defence, environmental safety, health, taxation, and customs regulations.

The National Security Law limits telecommunication opportunities by not allowing foreign individuals or companies to manage or operate trunk communication lines, or own more than 49% of shares in long-distance or international communications operators owning land communication lines. Furthermore, any acquisition of more than 10% of long distance or international communications operators requires approval from the Information and Communications Agency, although this also applies to domestic investors.

A number of restrictions also exist in other sectors, for instance, foreign investor equity stakes in media companies are limited to 20%, and to 49% in domestic and international air transportation services. Foreign individuals may only obtain 10-year leases for agricultural and forest service land.

Local Content

Although the Investment Law affords foreign and domestic investors the same treatment, so-called “local content” policy does exist to ensure the greatest use of local goods, services and labour in foreign investor activities in Kazakhstan, especially in the resources sector.

A law amending local content legislation was adopted at the end of 2009, requiring government and investor contracts to specify a minimum local content percentage.

Local content requirements apply to government agencies, state-owned enterprises, national holding companies, and subsoil users — both foreign and domestic.

According to local content rules, subsoil companies may develop their own local content programmes based on a market analysis of local producers. Once a programme has been approved by the authorities, companies are entitled to sign additional agreements to fix local content requirements.

Since local content requirements are not permitted under the Trade-Related Investment Measures Treaty, it is likely that they will be modified or possibly phased out as part of Kazakhstan’s accession to the WTO.
State Support of Foreign Investments

Priority Economic Sectors

The main targets for Kazakhstan’s current investment policy are defined in a programme aimed at attracting investment, developing special economic zones and promoting exports in the country. To realise key economic diversification priorities and improve competitiveness, the Programme, in particular, aims to:

- diversify production in “traditional” industries, such as oil and gas, petroleum, ore mining and smelting, chemical, and nuclear energy;
- develop sectors founded on domestic demand, such as machine engineering, pharmaceuticals, and the construction and building of material industries;
- develop sectors with export potential, such as agriculture, light industry and tourism;
- develop “economy for the future” sectors, such as information technology; biotechnology; space exploration and alternative energy forms.

Investors operating in priority sectors may be entitled to customs duty exemptions and state grants in kind based on contracts with the Ministry of Industry and New Technologies’ Investment Committee and if they commit to investing in fixed assets that create new (or expand existing) facilities through the use of modern technology.

According to recent investment legislation amendments, newly established companies developing priority investment projects are entitled to tax exemptions, investment subsidies and customs exemptions on imported goods. To qualify for these exemptions:

- the company should be newly established (in existence for less than a year since an application for exemptions was made);
- investment is made in specific priority investment projects as defined by the government;
- total planned investments should exceed 2,000,000 MCI (approximately US$ 21,312,000).

Investment promotion institutions

The government has set up KazNexInvest as the national agency to take charge of promoting and attracting investment to Kazakhstan. Its mandate is to assist foreign investors as they establish and carry out their operations in the country.

A government investment ombudsman composed of representatives from the main ministries was introduced in 2014 to coordinate and control initiatives aimed at promoting public investment; monitor investment activities; protect investor rights and interests; and, more generally, ensure a favourable investment climate. The government believes this mechanism will allow it to address foreign investor concerns at the right political level.

The main platform for direct dialogue between the Kazakhstan Government and foreign investors, mostly represented by senior executives from a range of overseas companies operating in Kazakhstan, is the Foreign Investors’ Council, chaired by the president. Its main objectives are to develop and submit recommendations to the Kazakhstan President and Government on key investment and economic development issues, including determining key areas of national investment policy; enhancing the investment climate in Kazakhstan; improving the legal and regulative framework for investing in Kazakhstan; creating favourable investment and legal conditions for diversification of the economy; developing the industrial sector, small and medium businesses; and further integrating the Kazakhstan economy into global economic processes.

The Foreign Investors’ Council lists as some of its achievements, successful lobbying to encourage economic modernisation and local development, and the simplification of tax and administrative procedures.
**Special Economic Zones**

Please see the Special Economic Zones section of the Tax Relief chapter.

**Exchange Controls**

Tenge (KZT) was introduced as the Kazakhstan national currency in 1993. Residents and non-residents may hold both hard currency and KZT accounts in authorised banks and may import and exchange currency in accordance with National Bank procedures.

Residents and non-residents are subject to different currency regulations. For example, in most cases, settlements between Kazakhstan residents may only be made in KZT. Payments between residents and non-residents may be made in any currency, although certain transactions require either a license, registration or National Bank notification.

There are no mandatory requirements to convert foreign currency earnings into KZT, but residents are obliged to comply with repatriation requirements on export-import transactions. Foreign currency exchange activities require a license from the National Bank. If one party to a currency transaction has obtained the required license, the other party is not required to obtain one.
Types of business presence

Foreign and local investors may carry out their business activities in Kazakhstan through one of the following business presences:

- general partnerships, additional liability partnerships, special partnerships, limited liability partnerships or joint stock companies;
- representative offices and branches;
- simple partnerships or consortia.

Limited liability partnerships or joint stock companies are by far the most common business presence for foreign investors.

In this chapter we discuss briefly the main characteristics of each of the above forms of business presence.

**Limited Liability Partnership (LLP)**

A great number of businesses in Kazakhstan operate as LLPs, citing the flexibility of the form and the reduced compliance and regulatory burden.

In legal terms, LLPs are deemed separate from their founders, and may have one or more founders. An LLP is accountable for its liabilities with its assets, but is not liable for those of its partners. Generally, partners are not liable for an LLP’s liabilities, but bear the risk of losses from its activities to the extent of the value of their contributions. However, there are some exceptions to this rule, for instance, in the case of bankruptcy occurring because of founder (partner) actions or the actions of asset owners, when the LLP founder (partner) or asset owner could be secondarily liable to creditors.

The main features of an LLP are:

- as a company, it is subject to state registration and taxation in its own right;
- it does not issue shares, instead participants hold participatory interests;
- participants contribute to authorised capital, either in monetary form or in kind;
- minimum authorised capital is 100 times the monthly calculation index (MCI) (approximately US$ 1,072), while for small businesses it is KZT 0;
- participants enjoy pre-emptive rights for participatory interests offered for sale by a withdrawing participant;
- the number of participants is unlimited;
- it cannot be owned by a sole business partner which itself is 100% owned by another shareholder.

**Joint Stock Companies (JSC)**

A JSC is a company that issues shares to raise funds to finance its activities. A JSC’s assets are separate from those of its shareholders, and it is not accountable for their liabilities. A shareholder bears the risk of losses up to the value of shares held by it. However, there are some exceptions to the rule, for instance, if a company is declared bankrupt as a result of founder (shareholder) or asset owner actions, if the founder (shareholder) or asset owner could be secondarily liable to creditors. By law, banks, insurance companies and pension funds should be set up as JSCs, which:

- are subject to state registration and taxation in their own right;
- may have one or more (unlimited) shareholders;
- should pay minimum authorised capital (in cash or in kind) of 50,000 times the MCI (approximately US$ 533,000) within 30 days of legal registration;
- register shares with the state registrar after completing corporate state registration;
- may issue a variety of shares, offering different rights to holders. For example, holders of common shares may vote on corporate issues; receive dividends if the company records net income or a share of assets following liquidation, and make a pre-emptive purchase of common shares. Preferred shares give holders priority to all of the above over holders of common shares and to make a pre-emptive purchase of preferred shares;

1. Law On the National Budget # 259-V dated 28 November 2014 sets the MCI for 2015 at KZT 1,982 (approximately US$ 11)
2. According to the Private Entrepreneurship Law, small businesses are companies employing no more than 100 people and whose average annual income does not exceed 300,000-times MCI (approximately US$ 3,196,700)
• are subject to stricter reporting requirements and more complex corporate governance structures than LLPs;
• are obliged to publish financial statements;
• should undergo an audit if the JSC is a subsoil user, bank, bank holding or organisation in which banks and bank holdings are considered major participants.

Representative Offices and Branches
Under the Civil Code, both branches and representative offices are treated as subdivisions at a location other than the company’s head office. For that reason, branches and representative offices are not legal entities. They are provided with assets by their founding company and act on the basis of regulations approved by it.

Branches and representative offices differ in the nature of the activities they are entitled to perform. Representative offices may only represent the interests of their founding company, normally limiting activities to those of a non-commercial nature such as gathering information and/or establishing business contacts.

A branch, in contrast, may perform all or part of its founding company’s functions, including representation.

Both representative offices and branches offer benefits from the standpoint of currency control and work permit regulations, which are discussed in more detail in the corresponding Currency Control and Employment chapters.

Corporate registration
As a rule, representative offices, branches and companies in Kazakhstan are subject to state registration.

State registration in Kazakhstan is carried out according to the “one-stop-shop” principle, i.e. all registration documents are filed at a single location — Public Service Centre (TSON). The local Ministry of Justice department then forwards the documents for statistical and tax registration. According to the State Registration Law, the procedure takes between 1 and 10 business days, depending on the type of entity being registered. However, due to its bureaucratic nature, the entire process may take up to one month.

All documents filed for registration should be signed, stamped, notarised, either legalised or apostilled, and also translated into Kazakh and Russian.

Registration documents may be filed by a representative based on a power of attorney issued by the founder or at least one of the founders or the head of the LLP or JSC being registered. Personal presence is only required if the founders in question are Kazakhstan residents. A simplified notification procedure is in place for small businesses.

In specific cases, the state authorities may require that an LLP or JSC applying for registration prove adhere to economic concentration rules in their activities. Even though the justice authorities do not actually require proof of compliance with economic concentration rules, failure to receive it prior to registration could lead to the Antimonopoly Agency invalidating registration in court.

Only large businesses are required to pay for state registration (approximately US$ 70).

Companies are entitled to apply for a corporate seal/stamp and open a corporate bank account after completing state registration.

Simple Partnerships or Consortia
A simple partnership is formed based on a joint venture agreement between individuals and companies. A consortium is an unincorporated joint venture formed by companies. In other words, joint venture agreements do not represent the formation of a company rather a pooling of assets to conduct business.

One of the partners is usually appointed as responsible for bookkeeping and managing the consortium.

How Deloitte can help you
We would be glad to offer you legal and tax advice to help you with:

• structuring your business;
• registering your business;
• negotiating the numerous post-registration processes.
Accounting environment

Overview
Accounting and financial reporting are regulated in Kazakhstan by the Accounting and Financial Reporting Law, which requires businesses to apply the following standards:

• IFRS — for public and large companies, and banks;
• IFRS for small and medium-sized entities (IFRS for SME’s) or IFRS, at their discretion — for medium-sized businesses;
• National Accounting Standards (NAS), IFRS for SME’s or IFRS — for small businesses.

Financial Statements
Financial statements should include:

• a balance sheet;
• a profit and loss statement;
• a statement of changes in equity;
• a cash flow statement;
• supplementary notes.

The accounting period for annual financial statements is the calendar year. Financial statements are prepared in Kazakh or Russian and are stated in KZT. Financial reporting in Kazakhstan is based on the accrual method.

Included in the Accounting and Financial Reporting Law is a chart of accounts that is used to classify the various elements of financial reporting.

Audit Requirements
Audits, which are either mandatory or voluntary, are performed in compliance with the Auditing Activities Law and International Standards on Auditing (ISA), to the extent they do not contradict Kazakhstan legislation.

Audits are mandatory for joint stock companies, banks and other lending agencies; insurance companies, investment funds; united pension fund; securities’ market participants and stock exchanges; subsoil users, companies deemed natural monopolies, Kazakhstan companies that have negotiated investment contracts, developers and engineering companies according to the Shared Investment in Residential Construction Law and others.

Companies undergoing a mandatory audit and issuing annual financial statements (in compliance with Kazakhstan legislation) should also issue an audit report.
Taxation of non-residents

Non-residents’ Kazakhstan source income

Non-residents generate taxable income from sources in Kazakhstan by:

• selling goods in Kazakhstan;
• providing work and services in Kazakhstan;
• providing management and financial (other than insurance and/or reinsurance) services; consulting, auditing and legal (apart from court representation, the protection of rights and legitimate interests, arbitration, referee or notary services) services outside of Kazakhstan to Kazakhstan residents or non-residents with a permanent establishment in Kazakhstan or to non-residents operating in Kazakhstan through a branch or representative office without a permanent establishment in Kazakhstan;
• registering in a tax haven country as defined by the government and generating income by providing work or services, irrespective of the place where work or services are provided, to Kazakhstan residents or non-residents with a permanent establishment in Kazakhstan or non-residents operating in Kazakhstan through a branch or representative office without a permanent establishment in Kazakhstan;
• making a capital gain on the sale of a property or other non-depreciable assets located in Kazakhstan;
• assigning a debt claim from/to a resident or non-resident operating in Kazakhstan through a permanent establishment;
• receiving penalties, fines or late payment interest, except for fines returned from the budget that were incorrectly charged to a resident or non-resident operating in Kazakhstan through a permanent establishment or non-residents operating in Kazakhstan through a branch or representative office without a permanent establishment in Kazakhstan;
• receiving dividends from a resident company, and also from unit-share investment funds created in accordance with Kazakhstan legislation;
• receiving interest or royalties from Kazakhstan residents or non-residents with a permanent establishment in Kazakhstan or non-residents operating in Kazakhstan through a branch or representative office without a permanent establishment in Kazakhstan;
• leasing assets located in Kazakhstan;
• leasing real estate located in Kazakhstan;
• receiving insurance premiums from Kazakhstan residents;
• providing international transportation services to Kazakhstan residents demurrage income;
• operating pipelines, electric power transmission grids and fibre-optic communication lines in Kazakhstan;
• paying fees to management body (board of directors or other) members for a Kazakhstan resident to execute managerial duties;
• receiving payments from a resident or non-resident employer if that non-resident is an individual operating in Kazakhstan under an employment contract;
• receiving material benefits from an employer for activities performed in Kazakhstan;
• receiving material benefits for activities performed in Kazakhstan from a Kazakhstan resident or non-resident with a permanent establishment in Kazakhstan or non-resident operating in Kazakhstan through a branch or representative office without a permanent establishment in Kazakhstan and who is not a non-resident’s employer;
• receiving pension payments from Kazakhstan resident pension funds;
• receiving income from work in the arts performed in Kazakhstan;
• receiving prizes from a resident or non-resident with a permanent establishment in Kazakhstan, where the payment of the prize is associated with the business of that permanent establishment;
• providing independent personal (professional) services in Kazakhstan;
• receiving assets free of charge, except for assets received by a non-resident individual from a resident individual;
• receiving income from derivative financial instruments;
• generating income from the trust management of assets received from a resident trustee manager;
• receiving income from an investment deposit placed in an Islamic bank in Kazakhstan and other types of income.

Tax agents that are Kazakhstan residents or non-residents operating through a permanent establishment in Kazakhstan withhold income tax at the source of payment at the moment income is paid to a non-resident company, irrespective of the form and where the income payment is made.

**Withholding Tax**

Kazakhstan source income received by a non-resident company is subject to income tax withheld at source if the income is not associated with the non-resident’s permanent establishment in Kazakhstan.

If received in Kazakhstan, the following types of income are taxable in Kazakhstan:

• insurance premiums paid under risk insurance contracts (taxable at 15%);
• insurance premiums paid under risk re-insurance contracts (taxable at 5%);
• income from international transportation services (taxable at 5%);
• interest, royalties and capital gains (taxable at 15%);
• other types of income from Kazakhstan sources, such as lease income and income from the sale of goods (work or services) in Kazakhstan (taxable at 20%); and
• income generated by an entity registered in a tax haven country from work and services performed, and goods sold, regardless of where this actually occurred, and other types of income received from a resident or non-resident with a permanent establishment in Kazakhstan, where work, services or goods received are associated with the operations of that permanent establishment (taxable at 20%).

According to the Tax Code, Kazakhstan’s double tax treaties prevail over domestic law. A list of countries with which Kazakhstan has a double tax treaty in place is provided in the Appendix on page 45.

**Permanent Establishment**

A permanent establishment is the place where a non-resident performs entrepreneurial activities in Kazakhstan, irrespective of the period of operation, and also:

1. produces, processes, assembles, pre-packs, packs and/or delivers goods;
2. manages its operations;
3. carried out geological surveying, exploration and preparation work for mining operations; provides work or services to control and/or supervise exploratory and/or mining operations;
4. performs pipeline operations (including supervision or observation);
5. installs, sets up and operates gambling machines (including gaming tables), computer networks and communication channels; and performs transportation or other infrastructure operations;
6. sells goods;
7. carries out building, construction and/or installation work; and supervises the same;
8. acts as a branch or representative office location;
9. engages in agency operations in Kazakhstan on behalf of a non-resident in accordance with the Kazakhstan Insurance Law;
10. a resident party to a joint activity agreement concluded with a non-resident in accordance with foreign or Kazakhstan legislation is located, provided that the joint activities are performed in Kazakhstan.

A permanent establishment is created if a non-resident provides services in Kazakhstan for more than 183 calendar days within any consecutive twelve-month period from the date a project or related projects were started for that non-resident.
A non-resident company that operates through a permanent establishment without opening an affiliate or representative office should be registered within 30 calendar days from the date operations start in Kazakhstan through that permanent establishment. A non-resident company should file a tax registration application with the local tax authority for its permanent establishment.

If a non-resident engages in entrepreneurial activities requiring the registration of two or more permanent establishments with a single tax authority, it only need register one.

**Corporate Income Tax**

Non-resident companies are taxed on their Kazakhstan source income only. Foreign companies whose activities create a permanent establishment in Kazakhstan are taxed on income attributed to that permanent establishment.

Income attributable to a permanent establishment is taxed as for Kazakhstan residents, i.e. at 20%. Additional branch profit tax of 15% is applicable to a permanent establishment’s after-tax profit, resulting in an effective rate of 32%. Branch profit tax may be reduced to 5% under a tax treaty, giving an effective rate of 24%.

**Income Tax Returns and Payments**

Tax accounting is based on the accrual method, with income recognised in the reporting period in which it is earned. Expenses are recognised when incurred. The tax year is the calendar year. Corporate income tax returns are filed annually and advance payments made monthly during the tax year. Annual tax returns should be filed by 31 March of the following year, while any remaining tax due is payable by 10 April of the following year.
Corporate Income Tax

Taxpayers
Resident Kazakhstan companies (apart from state institutions) and non-resident companies operating in Kazakhstan through a permanent establishment or receiving income from Kazakhstan sources are payers of corporate income tax.

A Kazakhstan company should register with and then pay taxes to its local tax authority. Non-resident companies operating through a permanent establishment in Kazakhstan pay taxes according to the location of the permanent establishment. A tax liability is treated as paid once a tax agent has withheld tax from a taxpayer. Please refer to the Taxation of Non-Residents section for details about the taxation of non-resident companies and to the Tax Relief section for information on corporate income tax reductions and exemptions.

Tax Rates
Taxable income is aggregate income less deductions allowed by the Tax Code. Losses are removed and carried forward, with the resulting amount, taxable income, taxed at 20%.

The income of agricultural companies generated from producing, processing and selling own agricultural products is taxed at 10%.

Income taxable at the source of payment, except for non-residents’ income from sources in Kazakhstan, is taxed at 15%.

Income taxable at the source of payment, except for non-residents’ income from sources in Kazakhstan, is taxed at 15%.

Tax Base
Taxable income is the difference between aggregate annual income after adjustments and deductions allowed by the Tax Code. Those adjustments include dividends; deposits paid out by banks to organisations responsible for guaranteeing individuals’ deposits; deposits paid by insurance organisations to the Insurance Payment Guarantee Fund and others.

Expenses directly incurred in generating income are deductible for taxable income purposes

Recognition of Income and Expenses
Taxes are recognised using the accrual method, with income and expenses recognised in the reporting period in which they occur. The tax year is the calendar year.

Corporate income tax returns are filed annually and advance payments made monthly during the tax year. Annual tax returns should be filed by 31 March of the following year, while any remaining tax due is payable by 10 April of that same following year.

Deductions
Current business-related expenses are deductible unless otherwise stipulated by the Tax Code. The following are not deductible:

• expenses not related to the generation of aggregate annual income;
• expenses related to the generation of aggregate annual income but that exceed statutory deduction limits;
• expenses related to transactions with a liquidated or otherwise inactive taxpayer or one that is operating in breach of the law;
• fines and interest payable to the budget;
• other obligatory budget payments in excess of statutory norms and;
• the value of assets, work and services provided by a taxpayer free of charge.

Depreciation
Amounts paid to acquire, construct, install or improve capital assets for business use may not be expensed during the current period, but capitalised and depreciated.

Most capital assets are depreciable, for instance fixed and intangible assets, investments in immovable property, but not land, breeding livestock, art, roads, construction in progress, intangible assets with an undefined service life and capital assets related to social facilities.

Fixed assets are accounted for in accordance with accounting and financial reporting legislation (subject to certain limitations) and are allocated to one of the following groups at the following maximum depreciation rates:

• buildings and structures (except for oil and gas wells and transmission devices) — 10%;
• powered machines and equipment (except for those used in oil and gas extraction, computers and information processing equipment) — 25%;
• office machines, computers and software — 40%; and
• fixed assets not included in other groups, including oil, gas wells, transmission facilities, machines and oil and gas production equipment — 15%.

Losses
Losses on the sale of buildings and structures are tax deductible. Capital losses from the sale of securities may be offset against taxable capital gains on other securities of the same type. Excess losses may be carried forward and offset against taxable gains on securities for 10 years following the year in which the loss was incurred, except for losses arising at an open auction sale of securities officially listed on a Kazakhstan stock exchange.

Capital Gains Taxation
Capital gains on the sale of non-depreciable assets are considered part of an entity’s aggregate income for the reporting period and are subject to 20% income tax. Capital gains on the sale of shares (interest) are treated as the difference between the sale price and initial cost of the shares. Capital gains generated at a public auction or sale of shares (interest) officially listed on a Kazakhstan stock exchange are exempt from taxation.

Non-residents making gains from the sale of shares (interest) in a Kazakhstan company are generally exempt if the Kazakhstan entity is not a subsoil user and has held the shares (interest) for more than three years, and if more than 50% of the value of the shares (interests) sold is not derived from the assets of Kazakhstan subsoil users. The capital gains tax rate for non-residents is 15%, although income paid to tax haven entities will be taxed at 20%.

Expense caps
Deductions of the following expenses are capped:

Representative Expenses
Representative expenses may be deducted up to 1% of company payroll.

Thin Capitalisation
The amount residents may deduct on interest paid to non-residents registered in tax havens, related parties and independent parties is capped.

A foreign country or an administrative unit of it is recognised as a tax haven if its effective tax rate is equal to or less than 10% or if its laws on the confidentiality of financial or corporate information allow asset or income owners to maintain secrecy. The government has issued a list of tax haven jurisdictions.

Interest
Deductible interest expenses are limited and calculated according to the following formula:

\[ (A + E) + (AC/AL) \times (LC) \times (B + C + D) \]

where:

- **A** is any interest not included in **B**, **C**, **D** or **E**;
- **B** is interest paid to a related party;
- **C** is interest paid to persons registered in a tax haven jurisdiction;
- **D** is interest paid to an independent party under secured loans;
- **E** is interest on credits (loans) issued by a credit partnership established in Kazakhstan;
- **LC** is a limiting coefficient;
- **AC** is average annual equity capital;
- **AL** is average annual obligations.

The maximum coefficient (LC) for financial organisations is 7 and 4 for other companies.

Deductions may be taken up to the value of income recognised from goods sold, work and services provided that had been treated as doubtful due to claims/ income not being paid within three years.
**Losses carried forward**

Losses from entrepreneurial activities as well as losses from the disposal of group I fixed assets can be carried forward for 10 years inclusive and offset against future taxable income.

**Tax Administration**

The tax period for the corporate income tax is the calendar year. Annual corporate income tax returns are due by 31 March of the year following the reporting tax period.

Taxpayers assess and make corporate income tax advance payments during the current tax period. Certain taxpayers are entitled not to make corporate income tax advance payments.
Corporate Income Tax

Taxpayers

Individual entrepreneurs; resident companies, except for state institutions; non-resident companies operating in Kazakhstan through a branch or representative office; trust managers generating turnover from the sale of goods, work or services under a trust management agreement; and entities importing goods into Kazakhstan in accordance with Kazakhstan and/or Eurasian Economic Union customs legislation should register for value added tax ("VAT") with their local tax authority within 10 working days from the end of the month in which cumulative turnover reaches 30,000 times the MCI for the calendar year.

An entity for which VAT registration is not yet obligatory, may apply to the tax authorities at any time for voluntary registration.

Tax rate

VAT is charged at 12% on taxable domestic transactions and imports and at 0% on exports.

To qualify for zero-rate VAT, taxpayers should provide documentary confirmation of exports, such as customs declarations.

Attorney and notary activities; land- and housing-related turnover; certain banking, insurance, reinsurance and other financial activities; and the interest element of finance lease payments, are exempt from VAT.

Tax base

For domestic taxable transactions, VAT is charged on the value of goods and services being sold, based on transaction prices. Imported goods are valued according to their customs value, as determined by customs legislation, plus applicable taxes (except VAT) and customs duties.

VAT paid for non-residents

Services provided by non-residents to resident companies may be deemed as provided in Kazakhstan under the place of supply rules, i.e. the place of supply for consulting, audit, legal and advocate, accounting, engineering, advertising and information processing services is considered to be the purchaser’s place of activity. In this situation, VAT is charged using the reverse charge mechanism, which means the purchaser should self-charge any VAT due.

The base for calculating amounts due for payment in this case is the amount paid to the service provider. VAT due is payable by the VAT return submission deadline. Purchasers are only able to take a credit on self-charged input VAT once it has been paid (payment codes for ordinary VAT and reverse charge VAT are different).

Payment and filings

VAT payable on taxable turnover is the difference between output VAT accrued on taxable turnover and input VAT paid to suppliers. Importers pay VAT on imported goods at the moment goods clear customs.

When importing goods from Eurasian Economic Union member states, taxpayers should submit a declaration on imported goods on or before the 20th of the month following the tax period.

The tax period for VAT is the calendar quarter. Taxpayers should submit VAT returns to their local tax authority for each tax period by the 15th of the second month following the reporting tax period and pay VAT for each tax period by the 25th of the second month following the reporting tax period.
**Tax Relief**

**Special Economic Zones**

Kazakhstan has set up a number of special economic zones (SEZs) to encourage the creation of efficient export-oriented manufacturing; attract investment; implement new technology; and introduce modern management techniques. The SEZ law requires a presidential decree to set up a new SEZ, abolish an existing SEZ or change the regulations governing an existing SEZ. SEZ’s, an overview of which is provided below, may be established for a maximum of 25 years.

- **The Astana-New City** (construction) SEZ was created to help develop the left bank of the Ishim River in Astana, the country’s capital. It offers a range of incentives until 2027, such as 100% corporate income tax exemptions; VAT exemptions for goods and services in the SEZ (or application of a zero rate), land tax and property tax exemptions; and a free customs zone for the construction of infrastructure, administrative facilities and residential complexes.

- **The National Industrial Petrochemical Technopark** (oil and gas engineering, petrochemicals) SEZ is in the Atyrau oblast and is due to operate until 31 December 2032. Its primary purpose is to raise construction investment and develop petrochemical production and hydrocarbon processing in Kazakhstan. The Technopark offers companies a range of tax concessions, provided at least 90% of their aggregate annual income is generated by petrochemical sales, and sales of products from related industries.

- **The Sea Port Aktau** (logistics and transport) SEZ was created to promote port areas in Aktau, a city on the Caspian Sea. Created in 2003 and due to operate until 1 January 2028, the SEZ offers exemptions from corporate tax, land tax and property tax and access to a free customs zone for companies that generate at least 90% of their income from chemicals, rubber and plastic, non-metallic mineral products, metallurgy, finished metallic items, or machines and equipment.

- **The Innovation Technology Park** (IT industry) SEZ, established in October 2003, is set to operate until 1 January 2028 and in that time will promote high-tech investment in Almaty. Companies operating from the Information Technology Park are eligible for a 100% corporate income tax exemption, exemptions from land and property tax and VAT, and will have access to a customs free zone, provided they generate 90% of their income from the design and development of software and hardware and the creation of new information technology.

- **The Ontustik** (textiles) SEZ was created in the Sayram district in southern Kazakhstan to offer a range of incentives until 1 July 2030, including corporate income tax, VAT, land tax and property tax exemptions. Primary activities in the SEZ include weaving and the production of finished textiles, clothing, carpets and leather goods.

- **The Burabay** (tourism) SEZ is located in the Shuchinsk district of the Akmola oblast, one of the most beautiful natural areas in Kazakhstan, and will operate until 1 December 2017 to create an effective and competitive tourist infrastructure, and also to act as a base for the use of environmentally friendly transport, including small aircraft; to provide access to all leisure facilities and a common information base for tourist services. Companies in the SEZ would be eligible for a 100% corporate income tax exemption, exemptions from land tax and property tax, and access to a free customs zone.

- **The Khorgos – Eastern Gates** (trade and logistics) SEZ was established in November 2011 to create a transport-logistics centre in eastern Kazakhstan, along the Chinese border, serving as a hub for transport routes between China and Western Europe. In addition, Kazakhstan and Chinese nationals crossing the border at the Khorgos SEZ will be able to do so without visas provided they return through the same border post. The SEZ is currently planned to be in operation until 2035.

- **The Pavlodar** (chemical and petrochemical) SEZ was created to help the chemical and petrochemical industry produce export-oriented products with high additional value; contribute to the development of the region in general; and integrate local products into the global production and distribution system. The SEZ will be active until 1 December 2036.
• **The Sary-Arka** (metallurgy and metalworking) SEZ was created to develop the metallurgy and metal processing industries and improve the quality and variety of production. The SEZ, which is located close to Karaganda, will concentrate on the production of vehicles, trailers, metal equipment, computers and optical equipment. It is due to remain in operation until 1 December 2036.

• **The Taraz Chemical Park** was set up in accordance with Presidential Decree in November 2012 to create favourable conditions to attract foreign direct investment in import-substituting and export-oriented, high-tech and competitive chemical production. The project should also see the development and support of the chemical industry, in particular, the production of chemical products with high added value using modern, environmentally friendly technology through the involvement of leading global companies.

**Tax Code Concessions**

Kazakhstan companies commissioning new industrial buildings and facilities, machinery and equipment in Kazakhstan are eligible for tax relief, such as accelerated depreciation within the first three years or the full deduction of the value of assets.

**Investment Law Concessions**

Investment concessions are available to companies that have entered into investment contracts with the authorised state body, and include:

• exemptions from customs duties;
• state grants in kind;
• land and property tax exemptions; and
• so-called “industrial relief” for companies implementing investment projects in slowly developing regions.

**How Deloitte can help you**

We provide:

• Corporate tax consulting:
  – ad-hoc consulting on comprehensive range of corporate tax issues;
  – tax optimisation;
  – tax planning and business structuring;
  – development of tax accounting policy and registers;
• mergers and acquisition services:
  – tax due diligence;
  – tax structuring services;
• Bookkeeping and tax compliance services:
  – bookkeeping and preparation of financial statements in accordance with Kazakhstan statutory requirements;
  – tax compliance and tax reporting services;
  – preparation of statistical reports and submission with the statistical authorities.
Property tax

Taxpayers

Companies owning or managing taxable objects; individual entrepreneurs owning taxable objects and concessionaires owning and using taxable concessionary objects in accordance with a concession agreement are all subject to property tax.

Taxation

Buildings and structures that are treated as either fixed assets or real estate investment in accordance with IFRS or NAS are all subject to property tax.

Individual entrepreneurs and companies pay 1.5% tax on the average book value of immovable property.

Individual entrepreneurs and companies operating under the simplified tax return regime pay property tax of 0.5%. Non-profit organisations and similar companies pay property tax at 0.1%.

Companies operating in special economic zones or under investment contracts may be exempt from property tax.

The tax period for property tax is the calendar year.

Taxpayers, except for individual entrepreneurs operating under the patent tax regime, should make equal current property tax payments throughout the tax year by 25 February, 25 May, 25 August and 25 November of the tax period.

A final assessment and payment of property tax is due within 10 calendar days of the return filing date, which is 31 March of the year following the reporting year.
Other taxes

Excise duties

Payers

Excise duties are charged on items produced in or imported into Kazakhstan, and on certain types of activities.

Excisable goods

Excise duties are charged on:

• all types of spirits;
• alcohol products;
• tobacco products;
• gasoline (except for aircraft) and diesel;
• motor vehicles designed to transport 10 or more people with an engine capacity of more than 3,000 cm³, except minibuses, buses and trolley buses;
• cars and other motor vehicles designed to transport people, with an engine capacity of more than 3,000 cm³ (except for manually operated motor vehicles specially designed for handicapped individuals);
• motor vehicles on a car chassis with a cargo platform and a driver’s cab separated from the cargo by a rigid fixed barrier, with engine capacity of more than 3,000 cm³ (except for manually operated motor vehicles specially designed for handicapped individuals);
• crude oil, gas condensate; and
• products containing spirit and used for medical purposes, and which have been registered in Kazakhstan as a medicine.

Import and export of excisable goods

Excisable goods may be exported from Kazakhstan exempt from taxation provided the exporter has filed the appropriate documentation with the tax authorities.

Excisable goods imported by individuals within quotas established by Eurasian Economic Union and (or) Kazakhstan customs legislation are not subject to excise duties.

Excise duties will not be charged on excisable goods:

• that have been damaged prior to customs clearance;
• imported for official use by foreign diplomatic and equivalent representations;
• cleared into the Customs Union, and which are treated as exempt in Kazakhstan according to Eurasian Economic Union and (or) Kazakhstan customs legislation, except when they are released for domestic use;
• containing alcohol and that have been registered in accordance with Kazakhstan legislation as medical products (except for extracts).

Excise duty rates

Excises duty rates are expressed as a fixed value per unit of measurement, i.e. volume, weight or item.

The date excisable goods are shipped (transferred) to customers is the transaction date. When excisable goods are imported into Kazakhstan from another Eurasian Economic Union member country, the transaction date is the date the taxpayer registers their import.

Payments and filings

Excise duty payments and filings are due on a monthly basis.

Land Tax

Land tax is payable by companies and individuals owning land or having the right to use land. The tax amount varies depending on location and soil quality.

The base for calculating land tax is land plot area.

Current land tax payments are made in equal portions by 25 February, 25 May, 25 August and 25 November of the current year. A final assessment and payment of land tax is made within 10 calendar days of the submission of returns for the tax period. The tax period for the assessment of land tax is the calendar year.

Individual entrepreneurs (except those applying the patent tax regime) and companies should file land tax returns with their local tax authority by 31 March of the year following the tax reporting period and statements of current payments by 15 February of the current tax period.
Vehicles Tax

Payers

Individuals owning vehicles and companies owning or in charge of vehicles are all payers of vehicles tax.

Tax rates are set by the Tax Code and vary depending on engine volume, loading capacity, number of seats and other characteristics.

Tax is due by 5 July of the current year. Companies file vehicles tax returns by 31 March of the year following the reporting year.

State Duties

In Kazakhstan, state duties are collected for:

- court applications;
- notary acts and also copies (duplicates) of notarised documents;
- the registration of civil status records;
- exit/entry visas issued in Kazakhstan to foreign nationals;
- documents drafted to acquire Kazakhstan citizenship; restore and terminate Kazakhstan citizenship;
- registering a place of residence;
- issuing hunting licenses and their annual re-registration;
- permits issued to export and import rare and endangered plants, animals and sturgeon, and also their parts;
- issuing personal identification documents;
- issuing driving licenses, tractor licenses, vehicle inspection certificates, government registration plates and international technical inspection certificates;
- significant acts performed by the authorised body for intellectual property and others.

How Deloitte can help you

We provide:

- tax consulting:
  - ad-hoc consulting on various tax issues (property tax, land tax, vehicles tax, VAT and other taxes);
  - tax optimisation and tax planning;
- bookkeeping and tax compliance services:
  - Kazakhstan statutory bookkeeping and preparation of financial statements;
  - tax compliance and reporting services.
**Overview**

On 6 October 2007, Russia, Kazakhstan and Belarus signed a document to create a single customs union. On 29 May 2014, that arrangement was enhanced by the Eurasian Economic Union Treaty outlining how the Eurasian Economic Space would transition to a new, deeper level of integration, envisaging the free movement of goods, services, capital and labour, and a coordinated, coherent and unified policy with respect to economy sectors. Armenia has been a full member of the Eurasian Economic Union since 2 January 2015. On 23 December 2014, a Treaty on Kyrgyzstan’s accession to the Eurasian Economic Union was signed, due to enter into force upon completion of internal government procedures in Kyrgyzstan.

**Customs Duties**

Customs duties are charged on most goods imported into Kazakhstan from non- Eurasian Economic Union member countries.

Import duties on food products range from 0% to 80% of customs value, and other goods — from 0% to 20%.

**Free Trade Zone**

To create a favourable trading environment, Kazakhstan signed and ratified a Free Trade Zone Agreement on 18 October 2011 and a number of bilateral agreements that abolish and/or annul customs duties, taxes and fees, introduce reduced rates as well as remove quantitative restrictions in the participating countries.

The free trade area with Kazakhstan comprises Azerbaijan, Georgia, Kyrgyzstan, Moldova, Serbia, Tajikistan, Uzbekistan, and Ukraine. Also, the Eurasian Economic Union member countries have signed a Treaty on the establishment of a Free Trade Zone with Vietnam.

**Export duties**

Export duties, which are set by the government, are levied on crude oil exports and are currently charged at US$ 60 per tonne.

The Kazakhstan Government also charges export duties on petrochemical products, ferrous metal waste and scrap, remelted iron or steel scrap ingots; copper waste and scrap; unwrought aluminium; aluminium waste and scrap etc.

**Special Antidumping and Protective Duties**

Special antidumping and protective measures are applied with respect to the export of the following goods:

- commercial passenger vehicles — antidumping duties are imposed on imports from Germany, Italy and Turkey;
- polymer coated metal-roll — antidumping duties imposed on imports from China;
- cold-deformed sutureless stainless steel pipes — antidumping duties imposed on imports from China; and other goods.

**Customs Payments and Taxes**

Under Kazakhstan customs legislation, to clear goods through customs, declarants should pay:

- all relevant customs fees;
- import duties, according to the Eurasian Economic Union Unified Customs Tariff;
- export duties on certain goods, including petrochemicals. Export duty rates are set by the Kazakhstan government;
- excise duties on goods, including alcohol and tobacco products, gasoline, diesel, spirits, and certain vehicles, which are set by Kazakhstan tax legislation;
- 12% import VAT on customs value. According to the Tax Code, the taxable import value includes the customs value of imported goods calculated in accordance with Eurasian Economic Union and/or Kazakhstan customs legislation, and also taxes and customs duties payable to the Kazakhstan budget when importing goods, such as excise, customs duties and customs fees;
- special, antidumping and protective duties on certain type of goods based on Eurasian Economic Union and Kazakhstan legislation.
Eurasian Economic Union

Under the Eurasian Economic Union, Kazakhstan allows the import of goods from Russia, Belarus, Armenia and Kyrgyzstan without customs clearance and duties.

However, Kazakhstan still charges VAT and excise duties on imports from Russia, Belarus, Armenia and Kyrgyzstan.

Most exports are subject to zero VAT and are also free from export and excise duties.

How Deloitte can help you

The Deloitte Customs Group

was established to offer clients a multifaceted approach to their business needs and provide them with highly professional consulting services in the field of customs legislation.

Our Customs Group provides services that are specifically designed to help companies performing foreign economic activities to understand and successfully apply statutory rules and regulations regarding the import and export of goods.

We have a team of specialists working on these engagements, who all have the necessary theoretical and practical knowledge of customs procedures and laws to provide you with a quality and professional service.
Taxation of individuals

Personal Income Tax

Taxpayers

Both resident and non-resident individuals are subject to personal income tax in Kazakhstan. Individuals are considered Kazakhstan residents for personal income tax purposes if they reside permanently in or have their centre of vital interests in Kazakhstan (i.e. citizenship, a residence permit, family and close relatives living in Kazakhstan or if they own immovable property in Kazakhstan).

Individuals are deemed permanently residing in Kazakhstan for the current tax year if their presence in the country exceeded 183 calendar days in any consecutive 12-month period ending in the current tax year.

Income tax rates

Personal income is taxed at 10% regardless of an individual’s residence status. A resident individual’s income received in the form of dividends is taxed at 5%; interest and winnings are subject to tax of 10%.

Taxable income

Foreign nationals who are Kazakhstan tax residents are taxable on their worldwide income. Non-residents are taxable only on income received from Kazakhstan sources, regardless of whether the payment is made in or outside of Kazakhstan. Taxable income is generated from the operation of a business/profession, employment income and investment income.

The following types of income are treated as taxable at the source of payment:

• employee income;
• income of individuals from tax agents;
• pension payments from savings pension funds;
• dividends, interest and winnings;
• stipends;
• pay outs from accumulative insurance agreements.

Income is taxable regardless of whether it is received in cash or in kind. If a resident individual receives benefits in kind, taxable income is determined based on the “fair market value” of those benefits.

The following is not treated as income subject to personal income tax:

• social assistance, benefits and compensation paid from the state budget;
• compensation paid to individuals for harm to their health in accordance with Kazakhstan legislation;
• compensation for business trips, including for employee training, vocational training or retraining, within established limits;
• the reimbursement of travel and relocation expenses, including accommodation, for a period up to 30 calendar days, incurred to transfer an employee to another location;
• insurance payments made by employers for compulsory employee and (or) accumulative insurance and employee life and health insurance and others.

Deductions and exemptions

Every month employees are entitled to deduct the following from income taxable at the source of payment, irrespective of the frequency of payments:

• the statutory minimum wage;
• obligatory pension contributions;
• voluntary pension contributions;
• insurance premiums paid by individuals under accumulative insurance agreements;
• interest received by Kazakhstan residents on loans held in housing construction savings banks and used to improve housing conditions in Kazakhstan in accordance with local legislation;
• payments for medical services (except for cosmetic services) up to the amount and based on conditions specified in the Tax Code.

Taxpayers are only entitled to tax deductions if they present the appropriate supporting documentation.
Exemptions

The following types of income are exempt from personal income tax:

- alimony;
- bank deposit interest paid to individuals;
- interest on debt securities;
- interest on state issued securities and agency bonds;
- capital gains on the sale of state issued securities;
- capital gains on the sale of agency bonds;
- dividends and interest on debt securities officially listed on stock exchanges operating in Kazakhstan;
- unit shares in unit share investment funds, when redeemed by the fund’s managing company;
- dividends, provided that certain Tax Code conditions are met;
- income from military service, income paid to officers of special state bodies and law enforcement officers (except customs officers) in connection with the performance of their official duties;
- gifts and inheritance, except for assets received by entrepreneurs for use in their business;
- assets received in the form of charity and sponsor assistance;
- employer expenses incurred for employee training and compensation for certain business travel expenses, up to established limits;
- lottery winnings up to 50% of the statutory minimum wage and others.

Treaty relief

Double tax treaties to which Kazakhstan is a signatory apply to persons who are residents of one or both of the contracting countries.

Assessment and Collection Procedures

Tax returns

The tax period for personal income tax withheld at the source of payment is the calendar month.

The following resident taxpayers should file personal income tax returns for Kazakhstan-source income that has not been taxed at the source of payment:

- individual entrepreneurs;
- private notaries, private court bailiffs and advocates;
- individuals, after making a capital gain;
- individuals earning income treated as “sundry” according to the Tax Code, including income outside of Kazakhstan;
- individuals with bank accounts in foreign banks outside of Kazakhstan.

Filing procedures

Non-resident individuals receiving Kazakhstan-source income that is not taxed at the source of payment should file personal income tax returns with their local tax authority by 31 March of the year following the reporting tax period.

Tax agents should file quarterly personal income tax and social tax returns for foreign nationals with the tax authority at the location where tax is paid, by the 15th of the second month following the quarter.

Tax withholding

Tax agents assess and withhold personal income tax on a non-resident individual’s income taxable at source on or before the date it is paid. If the income is paid in a foreign currency, the tax is converted into KZT at the market exchange rate effective at the payment date. Tax agents should transfer the personal income tax on a non-resident individual’s income to the budget before the 25th day of the month following the month during which the income is paid and the tax is withheld.

Pension Contributions and Social Tax

Overview

The Kazakhstan pension system is funded by obligatory individual employee contributions (foreign nationals are not subject to pension fund contributions). Employers acting as tax agents are responsible for withholding employee contributions (including compulsory contributions to pension funds) from salaries and similar employee compensation. Compulsory pension fund contributions are deductible for personal income tax purposes.
Employers also are responsible for paying monthly social tax on salaries for their employees and similar compensation.

**Rates**

Employees pay 10% of their monthly salary or up to 75 times the minimum monthly salary as pension contributions.

Social tax is calculated at a flat rate of 11%, and is paid by employers on behalf of employees. Monthly social insurance contributions are paid by the employer to the State Social Insurance Fund and amount to 5% of employee salaries.

**How Deloitte can help you**

We provide:

- individual taxation advisory services;
- payroll outsourcing services using specialised payroll software;
- reviews of payroll accruals and calculate payroll-related taxes in compliance with labour and tax legislation;
- advice on the taxation of foreign nationals in Kazakhstan.
Overview

The Kazakhstan Labour Code was adopted in 2007 to collate all employment-related legislative acts in one place and regulate employment relations for both residents and non-residents in Kazakhstan.

According to the Labour Code, employment relations arise between employers and employees to realise the rights and obligations established by employment laws, individual and collective employment contracts. For this reason, employment relations are not covered by civil law. If a civil law agreement covers aspects that can be construed as an employment relationship, the mandatory provisions of Kazakhstan employment law will apply.

Employment Agreements

As a rule, employment relations are based on a contract between an employer and employee, which should contain specific provisions as set out in the Labour Code, essentially designed to protect employee rights.

Only an employer’s head officer or other persons authorised under a power of attorney may sign an employment agreement on the employer’s behalf.

Duration of Employment Agreements

Employment contracts are usually in place for a minimum of one year; the only exceptions being those in place for less than one year due to the short-term or seasonal nature of the work, or contracts concluded for a short-term replacement of temporarily absent employees. If a second employment contract is concluded with an employee who had earlier concluded a fixed-term contract and that second contract is in place for no less than one year, employment is automatically considered to be for an indefinite period.

Probation

The maximum probationary period for new employees is three months.

Probation periods may not be applied to:

- recent graduates of vocational schools, undergraduate schools and graduate schools on the grounds they are employed within one year of their graduation;
- people with disabilities;
- persons temporarily employed as a result of a selection process.

Salaries and Bonus Payments

Monthly salaries may not be less than the minimum wage, which for 2015 is KZT 21,364 (approximately US$ 115).

Working Hours and Leisure Time

The standard working week is 40 hours. Exceptions to this are made, for instance, for employees less than 18 years of age who may not work more than 36 hours per week, work overtime or perform heavy manual labour.

Kazakhstan labour legislation includes the concept of “flexi-time”, when the duration of a working day (shift) and/or working hours per week may be more or less than the normal daily and/or weekly amount. The Labour Code also allows the working day to be divided into anywhere between two and four shifts a day. Employees, under this schedule, may not work two shifts in a row. Employees may also work according to rotation schedules, which are based on a total of hours worked over a fixed period. The maximum rotation period is 15 calendar days. However, in certain cases, an employee may give written consent to extend a rotation period to up to 30 calendar days. Any rotation period extensions should be referred to in an employment contract.

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1. Article 1.1.43 of the Labour Code states that an employer is an individual or company with whom an employee has an employment relationship
2. Article 1.1.59 of the Labour Code states that an employee is an individual employed by an employer to directly perform employment duties under an employment contract
Overtime may not exceed 2 hours a day (or 1 hour a day for those working in hazardous conditions), or a total of 12 hours a month or 120 hours a year. Payment for overtime and night work should be made at least at time and a half, while payment for work on holidays or days off should be at least at double time.

Women are entitled to 70 calendar days’ paid pre-natal and 56 calendar days’ post-natal maternity leave. In certain cases, post-natal maternity leave may be extended to 70 calendar days.

In addition, women are entitled to unpaid child care leave until a child reaches the age of three years. The value of maternity leave payments is salary based.

**Procedure for terminating employment agreements**

The parties to an employment agreement may agree to terminate it at any time by notifying the other party in writing of their wish to terminate an employment contract, at least one month in advance.

If employment is terminated due to staff redundancies or the closure of the employing company, any employees affected should be entitled to at least one month’s average salary.

Employers may not terminate the employment of pregnant women; women with children under three years of age; employees who are temporarily incapacitated (unable to work) or who are on annual leave.

Generally speaking, the Labour Code entitles an employer to terminate an employee for poor performance or due to ill health, if they refuse to undergo a medical examination to confirm alcoholic, narcotic or other form of intoxication or have failed to appear at work for over two months owing to temporary disability and others.

A new Labour Code is currently in the planning stage and a draft version should be issued later this year. The thinking behind the new document is around shifting the existing employee-oriented concept to a fairer model using best available international experience.

**Categories of Work Immigrants, Work Permits and Secondment Issues**

The Migration Law establishes the following categories of work immigrants:

- **Foreign employees** — foreign nationals who have arrived or been hired to work in Kazakhstan;
- **Business immigrants** — foreign nationals who have entered Kazakhstan to perform entrepreneurial activities;
- **Seasonal foreign employees** — foreign national who have been hired for seasonal work during a specific period (season), but for no more than one year.

The Migration Law establishes specific conditions for each of the above categories of individual to enter and reside in Kazakhstan, including:

(i) confirmation of financial solvency enabling them to leave Kazakhstan for their country of residence upon expiration of their work permit;

(ii) information on previous convictions;

(iii) medical confirmation allowing them to work in Kazakhstan at a particular position.

**Work Permits**

Kazakhstan issues two types of work permits for foreign nationals:

- a permit to hire foreign nationals (“work permit”); and
- a permit issued to foreign nationals arriving in Kazakhstan on a self-employed basis (“employment permit”). The government has approved a list of professionals for which foreign nationals may receive employment permits, for example anthropologists, astronomers, ballet dancers and others.

One vital difference between the two permits is that employers are responsible for obtaining work permits for employers, whereas foreign nationals are responsible for obtaining their own employment permits.

Work permits are issued according to annual quotas set by the Ministry of Labour and Social Welfare, based on estimated local authority requirements for foreign workers for the next year, as a percentage of the local economically active population.
Each oblast has its own work permit quota, which when exceeded generally means no more work permits are issued.

Work Permit Rules establish certain categories of employees:

- category 1: heads and their deputies;
- category 2: heads of structural units;
- category 3: specialists;
- category 4: qualified workers.

To obtain a work permit for a foreign national, companies must prove that the foreign national is not taking a job that a Kazakhstan national could perform.

The following categories of employee are exempt from work permit requirements:

- heads of representative offices or branches;
- foreign nationals permanently residing in Kazakhstan;
- employees on business trips in Kazakhstan for less than 120 calendar days per calendar year;
- citizens of Russia, Belarus and Armenia, who are entitled to work in Kazakhstan without a work permit based on the Treaty On the Legal Status of Migrant Workers and their Family Members signed on 19 November 2010 in St. Petersburg between Customs Union members.

As a rule, the Labour and Social Welfare Department also considers local content requirements when issuing work permits. From 1 January 2012, at least 70% of category 1 and 2 employees should be Kazakhstan nationals; while for category 3 and 4 employees, the number is at least 90%.

Currently, exemptions to this rule are in place for:

- small businesses1;
- representative offices of foreign companies;
- government agencies and enterprises;
- permits issued within quotas for priority projects and to foreign nationals of priority countries working in special economic zones, and self-employed foreign nationals;
- Karachaganak, North Caspian and Tengiz project subsoil users, as well as their operators, contractors and subcontractors (except for companies hired by the subcontractors themselves) until 2017, subject to the provision of documents supporting their participation in these projects.

Local content requirements will only be in force until Kazakhstan joins the World Trade Organisation.

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1. According to the Private Entrepreneurship Law, small businesses are companies employing no more than 50 people and whose assets are not valued at more than 60,000 times the MCI (approximately US$ 655,945)
Corporate Transfers and Secondment

According to the Kazakhstan Labour Code, a secondment arrangement arises when a non-resident entity with no registered legal presence in Kazakhstan sends its employees to Kazakhstan under a secondment contract with a Kazakhstan company to perform services for that company in Kazakhstan.

However, from 10 March 2012, companies in Kazakhstan have been able to hire foreign nationals under a “corporate transfer” arrangement, which means transferring them in accordance with a letter and (or) corporate transfer agreement from a foreign company to work or provide services exclusively for that foreign company’s branch, subsidiary or affiliate in Kazakhstan.

However, under both the secondment and corporate transfer structures, the local Kazakhstan company needs to acquire a work permit for the foreign national in question.

In contrast to the corporate transfer structure, under a secondment arrangement a foreign employee may be assigned to a totally unrelated Kazakhstan company.

Further, work permits can be issued for three years and extended for up to one year under the corporate transfer structure, while work permits under the secondment structure last for one year and may be extended for one year only twice, depending on the category of foreign employee.

Liability for Labour Code Violations

Administrative fines are in place for foreign nationals working illegally in Kazakhstan and companies violating the rules for hiring foreign nationals, as follows:

- KZT 59,460 (approximately US$ 320) on individuals;
- KZT 99,100 (approximately US$ 532) on officials;
- KZT 198,200 (approximately US$ 1,065) on individual entrepreneurs and non-commercial enterprises;
- KZT 396,400 (approximately US$ 2,130) on medium sized companies;
- KZT 1,982,000 (approximately US$ 10,655) on large companies.

Foreign nationals working in Kazakhstan without acquiring a work permit will be subject to an administrative fine of KZT 49,550 (approximately US$ 266) and deported from Kazakhstan.

How Deloitte can help you

Deloitte would be glad to help:

- structure and implement employment and secondment relations;
- secondees with their tax and legal compliance;
- provide advice on employment, immigration and local content issues;
- provide HR audits;
- provide full cycle HR outsourcing, legal, administrative and payroll services;
- obtain work permits and provide visa support.
Currency control

Currency regulations
Currency legislation incorporates a number of formal requirements, but is not a serious obstacle to most international business transactions.

It distinguishes between the following parties to currency transactions:

• Kazakhstan residents, i.e. (i) Kazakhstan nationals (except for those with permanent residency status abroad), (ii) foreign nationals who have permanent residency status in Kazakhstan, (iii) companies registered in Kazakhstan, their branches and representative offices in Kazakhstan and abroad, as well as Kazakhstan diplomatic, trade and other official representations abroad; and

• non-residents, i.e. (i) foreign nationals, foreign companies, their branches and representative offices, (ii) international organisations, and (iii) diplomatic and other official representations of foreign countries in Kazakhstan.

Transactions between residents and non-residents may be made in any currency. However, transactions between residents may only be made in KZT, except for a few exemptions.

Residents and non-residents may bring foreign currency up to the equivalent of US$ 10,000 in and out of Kazakhstan without having to declare it; any amount over US$ 10,000 should be declared. Residents and non-residents may take foreign currency cash up to the equivalent of US$ 10,000 across the Kazakhstan border without any documentation confirming its source.

Currency legislation stipulates three forms of currency regulation:

• licensing;

• registration; and

• currency transaction notification.

Licensing
A license is required for organisations carrying out foreign currency exchange transactions.

Registration
Contractual currency transactions need to be registered with the National Bank before either party to the contract is entitled to fulfil any contractual obligations.

Residents should register the following currency transactions with the National Bank:

• commercial loans to export/import goods for a period of over 180 days;

• the direct investments of non-residents in Kazakhstan1 and residents abroad;

• financial loans made for a period of over 180 days;

• residents’ payments to non-residents and non-residents’ payments in favour of residents to acquire full exclusive rights to intellectual assets, or payments to transfer money and other assets to execute the liability of a party to a consortium.

The above transactions are subject to registration if any related payments exceed a certain threshold determined by currency legislation.

Notification
The National Bank requires notification of certain types of currency transactions, such as:

• commercial loans to export/import work and services for a period of over 180 days;

• the opening of a bank account in a foreign bank (for resident companies only);

• the acquisition of securities;

• authorised capital contributions; and

• derivative-related currency operations.

1. For currency control purposes, authorised capital contributions are treated as direct investments and should be registered with the National Bank.
Commercial loans, financial loans and other transactions, such as to purchase immovable property, intellectual property rights, transfer money to meet obligations and transfer property into trust management, should be subject to registration/notification with the National Bank if:

1. the transaction deadline exceeds 180 calendar days, or the transaction deadline is within 180 calendar days, but the actual transaction is concluded more than 180 calendar days later;

2. the amount to be transferred to Kazakhstan exceeds the equivalent of US$ 500,000;

3. the amount to be transferred from Kazakhstan exceeds the equivalent of US$ 100,000.

**Liability for a Violation of Currency Legislation**

While currency control legislation is relatively liberal, administrative liability for any violation starts with a warning and ends in the following administrative fines:

- KZT 99,100 (approximately US$ 532) on individuals;
- KZT 158,560 (approximately US$ 852) on small businesses and non-commercial organisations;
- KZT 237,840 (approximately US$ 2,278) on medium-sized businesses;
- KZT 396,400 (approximately US$ 2,131) on large businesses.

**How Deloitte can help you**

Deloitte can provide:

- comprehensive consulting on currency control and regulation issues;
- advice on structuring transactions, including capital and foreign currency related transactions;
- assistance on registering a transaction with or notifying the National Bank of it.
Transfer pricing

Overview
The latest version of the transfer pricing law came into force on 1 January 2009 to replace that from 2001. The new law introduces the concept of “arm’s length”, although the definition is somewhat different from that in the OECD transfer pricing guidelines. In fact, Kazakhstan transfer pricing rules apply to all cross-border transactions and certain domestic transactions between related and unrelated parties.

Related Parties
"Related parties" are those that have a special relationship leading to situations where "the parties to a transaction use a transaction price deviating from the market price".

Transfer Pricing Methods
The Transfer Pricing Law stipulates the following ranked methods to determine pricing:

• comparable uncontrolled price ("CUP");
• resale-price;
• cost-plus;
• comparable profitability; and
• profit-split.

The transfer pricing methods are ranked so that the CUP method has priority over all other methods. When no comparable transactions are available for the CUP method to be used correctly, the next method down is applied, which is the resale-price method. Only one method may be used in a single transaction.

Information Sources
The following information sources are used in the order specified to determine the market price of goods (work or services):

• officially recognised sources of market price data;
• sources of stock quote information;
• data from domestic authorities and those in other countries on prices, differentials, costs and conditions affecting the discrepancy of transaction prices from market prices; and
• information programmes used for transfer pricing purposes; information provided by transaction parties; and other data sources.

However, for transactions where a participant is registered in a tax haven, only officially recognised sources of market price data and stock quote data sources are allowed.

The government has approved a list of officially recognised sources of market price data.

Market prices are determined using a list of officially recognised sources of information containing one or more sources of market price data.

Transfer Pricing Documentation
Taxpayers are required to file reports for the reporting period with the authorities providing details on transactions involving specific goods and services included in a government-issued list. For transactions involving goods and services not included in the list, taxpayers should maintain documentation justifying the consistency of transaction prices used and market prices, and be able to present the documents to the authorities when requested to do so.

Taxpayers may enter into written agreements with the authorities establishing a method for determining market prices over a specific period of time.

How Deloitte can help you
Deloitte is able to help in:

• risk analysis: identifying and evaluating potential transfer pricing related risks, advising on how to mitigate these risks;
• planning and restructuring: advising on price setting methodology and mechanisms; developing internal transfer pricing policies and procedures; preparing transaction monitoring reports according to statutory requirements;
• defence positioning: supporting transfer pricing positions prior to and during tax audits; assisting in negotiations with the tax authorities and tax dispute resolution in court.
Overview

Tax administration rules in Kazakhstan are complex, and even minor infringements can result in significant penalties, which is why it is vital that any tax administration process is managed well.

Tax Returns

Tax reports, including returns and statements, are compiled by taxpayers, tax agents or their representatives on paper or electronically, and in Kazakh or Russian.

Tax Audits

Tax audits are generally divided into two categories:

- documentary audits, which include comprehensive, thematic (targeted) and cross check tax audits;
- chronometric inspections, which are the audits conducted in order to establish the actual income of the taxpayer and the costs associated with the activities aimed at generation of income for the period during which the inspection is conducted.

and types:

- comprehensive tax audit — a taxpayer review with respect to tax liabilities on all taxes and obligatory budget payments;
- targeted tax audit — taxpayer review with respect to specific tax liabilities and obligatory budget payments;
- cross audit — review of individuals having transactions with taxpayers undergoing a comprehensive or targeted tax audit.

Kazakhstan law permits the re-audit of taxes and other obligatory budget payments for a tax period that has already been audited. However, if, during an unscheduled documentary tax audit (apart from a re-audit) covering the same tax period and issue, the tax authorities discover tax violations that had not been highlighted during any previous tax audit, no administrative sanctions will be imposed.

Tax audits can cover any period within the statute of limitations, which is five years. Tax audits are generally fairly intrusive and time-consuming and sometimes even result in the seizure of documents and finance police investigations.

Having said that, tax audits should not interrupt a taxpayer’s course of business.

Assessments

Upon completing a tax audit, the tax authorities will issue a tax audit act referring to specific violations or the absence thereof. If violations have been discovered, within five business days of a tax audit act, the tax authorities will issue the taxpayer (tax agent) with notification of tax and other obligatory budget payments assessed, as well as any related fines and interest.

Appeals

Taxpayers are entitled to dispute tax audit findings with a superior tax authority within up to 30 business days of receiving notification or with a court within up to 3 months from the same date.

A superior tax authority should respond to a taxpayer’s appeal within 30 business days from the date a regular taxpayer files an appeal and within 45 business days from the date a major taxpayer subject to monitoring files an appeal.

Taxpayers may then appeal a superior tax authority decision with the relevant government authority such as the Tax Committee within up to 30 business days of receiving a decision, or upon expiration of the period set by the Tax Code if no decision has been received, or with a court within up to 3 months from the date a taxpayer becomes aware that an appeal has been rejected by a superior tax authority in full or in part.

Whenever a taxpayer files an appeal with a superior tax authority, the competent government authority or in court, enforcement of the disputed tax notice is suspended until a written decision is received.

Liability for Tax Violations

Kazakhstan legislation prescribes administrative accountability for the most common tax violations listed below:

- failure to file tax returns within the deadline;
- concealing taxable items;
- errors in tax records;
- the understatement of taxes and other obligatory payments in tax returns;
cases where actual CIT for the tax period exceeds advance payments during the tax period by over 20%;

the failure by tax agents and other authorised bodies (organisations) to withhold or partially withhold and pay taxes and other obligatory payments;

failures to use the correct excise duty stamps; and

breaches of the procedure for using cash registers.

If, following an audit, the tax authorities assess additional taxes and other obligatory budget payments of in excess of 2,000 times the MCI (approximately US$ 21,573), the tax authorities are obliged to refer case materials to the finance police to determine whether employee actions constitute a crime and whether they should be charged with criminal liability.

**Tax Rulings**

The tax authorities may provide non-binding tax clarifications in the form of letters, which are of an advisory nature and do not have full legal force. It is not uncommon for letters to be revoked or recalled.

**How Deloitte can help you**

Deloitte uses its market knowledge, experience and understanding of the regulatory frameworks in Kazakhstan to help clients develop and manage their business effectively. We provide the following services that help reduce the administrative burden on clients and reduce risks associated with failing to comply with statutory obligations:

- full tax compliance and accounting services and tax reviews to assess in-house tax compliance risks;
- onsite tax audit support;
- a full range of tax appeal services, including legal assistance during litigation.
Subsoil activities

Kazakhstan legislation refers to exploration and production operations collectively as subsoil use, and companies performing subsoil use operations are subsoil users. Companies are entitled to perform subsoil use operations after entering into a subsoil use contract with the relevant state authority, which is the Ministry of Energy of the Republic of Kazakhstan. Subsoil use contracts for other types of minerals, such as metal ores, are granted by the Ministry for Industry and New Technologies.

Mining companies operate in Kazakhstan exclusively on the basis of a Regular Subsoil Use Contract. Production sharing agreements (“PSA”) are still in place for oil and gas companies in certain cases explained below.

Subsoil use contracts differentiate between a subsoil user’s “contractual” activities, i.e. exploration and production of mineral resources, and their “non-contractual” activities such as the processing of mineral resources or other activities.

Taxation Overview

The Tax Code provides specialised tax treatment for mineral extraction activities to enable Kazakhstan to generate a suitable return on domestic mining and hydrocarbon production.

Prior to 2009, most subsoil users enjoyed tax regime stability and investors were able to choose between either (i) a PSA, where revenue is shared between state and operator or (ii) a concession agreement or Regular Subsoil Use Contract, where the state generates its share of revenue via tax on excess profits.

However, the introduction of the new Tax Code on 1 January 2009 had the effect of eliminating tax regime stability for subsoil use contracts already in place (with certain exceptions) and curtailing any future access to the PSA regime for new investors.

Those PSAs signed before 1 January 2009 and still in effect at that date retained their tax stability provisions provided they passed an obligatory tax review.

All other subsoil users are taxed according to tax law in effect at the date a tax liability arises.

Subsoil users who are party to a PSA are obliged to share production with the state in accordance with formulae set out in the PSA itself, and are also subject to the majority of taxes stipulated in the Tax Code with the exception of excess profit tax, rent tax on the export of crude oil and gas condensate, mineral extraction tax, excise duties on crude oil (including gas condensate), land tax and property tax.

Under a Regular Subsoil Use Contract, subsoil users are liable for all taxes stipulated in the Tax Code that apply to non-subsoil users. However, in addition (in their capacity as subsoil users) they are also liable for specific taxes applicable to mineral extraction activities, including excess profit tax, rent tax on the export of crude oil and gas condensate, mineral extraction tax and bonuses.

Subsoil use contracts are ring-fenced, which means that in most respects the contract is taxed separately from other contracts held by the same entity and from other activities.

The Tax Code ring fences mineral resources initially processed (enriched) and transferred by a subsoil user for subsequent processing to another company (without the transfer of ownership rights) and/or to a structural or other technological division of the subsoil user, as well as those resources used for the subsoil user’s own production needs.

In determining contractual tax liabilities (mainly, corporate income tax and excess profit tax), the value of mineral resources is determined as actual extraction and initial processing/enrichment costs (as determined under IFRS and the financial accounting and reporting law), grossed up by 20%.

The following sets out the details of taxes and other obligatory payments that apply specifically to subsoil users in Kazakhstan.
Special Subsoil Use Taxes

Excess Profit tax (“EPT”)

EPT is payable by the majority of subsoil users, with only a few exceptions (essentially those operating under PSAs) and is calculated based on income and expenses generated from operations under a specific subsoil use contract.

An EPT liability arises when net profit for EPT purposes exceeds 25% of EPT deductions for the reporting tax period (i.e. the calendar year). The Tax Code provides for an incremental sliding scale of EPT rates ranging from 10% to 60%, depending on the ratio of net income to deductions during the tax year.

Bonuses

The Tax Code stipulates two types of bonuses:

- Signature Bonus — a one-time bonus paid when a contract is signed. A special formula is used to calculate signature bonuses. Payment schedules depend on contract type and the category of mineral reserves to be extracted under the contract in question; and
- Commercial Discovery Bonus — if a commercial discovery is made in a contract area, a further bonus is stipulated by the Tax Code of 0.1% of the value of confirmed recoverable reserves based on global prices, or LME prices or budgeted production costs depending on the type of mineral.

Rent Tax on the Export of Crude Oil and Gas Condensate

Companies and individuals exporting crude oil, gas condensate and coal (not exclusively subsoil users) are subject to rent tax on their export. Companies operating under PSAs that still have tax stability clauses do not pay rent tax.

The rent tax base for crude oil and gas condensate is the value of exported commodities, which is derived by multiplying export amounts by quoted global prices for Urals Med/Brent brands in Platts and Petroleum Argus publications.

Tax is charged on a progressive scale which varies depending on global oil and gas condensate prices from 0% (global price of US$ 40 per barrel or less) to 32% (US$ 190 per barrel or more).

Payment for reimbursement of historical costs

The Tax Code also provides for a procedure for subsoil users to reimburse the state’s geological study/field development costs (“historical costs”) incurred prior to the signature date of a subsoil use contract.
Mineral Extraction Tax (“MET”)

MET is a relatively new tax, introduced to replace the previous royalty regime (in the pre-2009 Tax Code). Sales are not required for the tax to trigger as it is generally levied against the value of extracted mineral resources.

In general terms, the MET base is determined:

• as the product of actual extraction volumes and global prices or actual sale prices (with certain exceptions); or

• production costs of extracted minerals, multiplied by 1.2.

A special quotation based formula is used to calculate global prices.

MET rates depend on annual production volumes (with a gradual increase in tax rates) and range between 5% and 18% for crude oil and gas condensate. Rates are reduced by 50% for crude oil and gas condensate

(i) sold or transferred for processing to a refinery in Kazakhstan;

(ii) transferred to the government as payment of taxes in kind; or

(iii) used for own production needs. The MET rate for natural gas is 10%, although natural gas sold domestically is taxed between 0.5% and 1.5%.

MET rates on minerals currently range from 0% to 18.5%, depending on the type of mineral.

For commonly occurring minerals, MET is also charged on the value of extracted commodities based on average selling prices or production cost, multiplied by 1.2. Depending on the type of mineral, rates range between 2.5% and 10.6%.

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<th>#</th>
<th>Annual extraction volumes of oil</th>
<th>Rate, %</th>
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<td>1</td>
<td>up to 250 000 tonnes inclusive</td>
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<td>over 10 000 000 tonnes</td>
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How Deloitte can help you

We can:

• Assist in the preparation/review of economic/financial models relative to taxes applicable to your company.

• Assist in the preparation of a separate tax accounting methodology as part of your overall tax accounting policy or review any methodology prepared by you.

• Provide ad-hoc consulting on how the Tax Code applies to your company’s operations.

• Provide training on how the Tax Code affects your staff.

• Advise on mergers and acquisitions:
  – Tax due diligence;
  – Tax structuring services.

• Provide bookkeeping and tax compliance services:
  – Bookkeeping and the preparation of financial statements in accordance with statutory requirements;
  – Tax compliance and tax reporting services.
## Kazakhstan Double Tax Treaties

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<th>Kazakhstan Tax Treaty Network</th>
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<tr>
<td>Austria</td>
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<td>Finland</td>
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