

Deloitte.



Legal Alert

We are where your business

Tax & Legal
August 2014

Resolution of the Government of the Republic of Kazakhstan dated 5 August 2014 № 892 On Amendments and Additions to Resolution of the Government of the Republic of Kazakhstan dated 31 October 2012 № 1379 "On the Approval of Rules for categorising Solid Mineral Fields (Group of Fields, Part of a Field), Except for Commonly Occurring Minerals, as Low-Yield, and also for the Taxation of the Production of Mineral Resources"

The Resolution removes one of the grounds for refusing to treat a field (group of fields or part of a field) as low-yield as referred to in point 13 of article 2 of the Rules, in particular, "a failure of the declared production levels of a field (group of fields or part of a field) for the relevant calendar year to meet planned production levels".

A new article 19-1 has been added to the Resolution stating that if under the minimum mineral extraction tax rate set in point 19 of the Rules zero yield for a field (group of fields or part of a field) is not achieved, then the minimum mineral extraction tax rate, including for associated mineral resources, should be reduced to a value (down to 0%, inclusive) so that yield reaches 0, provided the following conditions are met:

- 1) the field (group of fields or part of a field) can be classed as single-component or multi-component, in accordance with point 16 of the Rules;
- 2) losses defined as the difference between the selling price and total cost of products from processing mineral raw materials arise. For the purposes of this point, the full cost of finished goods includes the cost of finished products sold, distribution costs and general and administrative expenses. The cost of finished goods sold is determined in accordance with International Financial Reporting Standards and the requirements of Kazakhstan accounting and financial reporting law. To calculate losses, accounting-based expenses from changes in the value of assets and (or) liabilities arising from the application of international financial reporting standards and Kazakhstan accounting and financial reporting law statements, apart from those due (paid), should be removed from the cost of finished products sold.

At the same time, if subsoil use contracts concluded before 1 January 2009 had not set royalties for associated minerals as at 31 December 2008, then the minimum rate of mineral extraction tax as set by point 19 of the Rules should be 0%, provided the subsoil user's activities are generally unprofitable.

The Resolution entered into force on 28 August 2014.

Rules for tax and other obligatory budget payment creditors to reimburse administrative costs associated with instigating bankruptcy proceedings and conducting bankruptcy proceedings have been approved by the Resolution of the Government of the Republic of Kazakhstan dated 2 July 2014 № 758

Rules have been drafted in accordance with point 3 of article 61 of the Rehabilitation and Bankruptcy Law from 7 March 2014, defining the procedure for tax and other obligatory budget payment creditors to reimburse

administrative costs associated with instigating bankruptcy proceedings and conducting bankruptcy proceedings.

Tax and other obligatory budget payment creditors are regional tax committee divisions for the oblasts and cities of Astana and Almaty.

The tax authorities will have to refund administrative costs related to the instigation of bankruptcy proceedings and conducting bankruptcy proceedings by court order by, if:

- 1) the debtor has no assets
- 2) the debtor has no transactions recognised as invalid
- 3) the debtor's officials responsible for complying with the requirements specified in subpoints 1), 2), 3) and 4) of point 2 of article 11 of the Rehabilitation and Bankruptcy Law have no assets

In this case, pursuant to point 2 of article 11 of the above law, debtors should:

- 1) declare bankruptcy with a court when the owner of its assets, authorised body or the body authorised by constituent documents, decides to liquidate it, and the value of the assets is insufficient to meet creditors' claims in full;
- 2) declare bankruptcy with a court if meeting the claims of one creditor or several creditors makes it impossible to perform monetary obligations in full before other creditors;
- 3) within six months, declare bankruptcy with a court from the moment the debtor became aware or should have been aware of insolvency;
- 4) provide a court and administrator, within three working days of the date the administrator records information on financial and economic activities, including on the debtor's current assets, including those pledged, the subject of a property lease (rental) and (or) in leased, money in bank accounts, account numbers and bank locations, and on the value of receivables.

According to the Rules the tax authorities should reimburse any administrative expenses related to initiating and conducting bankruptcy proceedings by 31 December of the current financial year in which bankruptcy proceedings were held.

The Rules entered into force on 24 August 2014.

President Nursultan Nazarbayev signed a draft *Administrative Offences Code updating and modernising administrative and tort law; improving the protection of citizens and the state's interests from illegal encroachments*

Provisions of a new Administrative Code are aimed at modernizing and humanization of administrative-tort legislation, increase of protection of citizens and government against illegal offences. The main change in new Administrative Code is that the fixed fine amount shall be established for most administrative violations (as opposed to the current edition, specifying ranged administrative sanctions).

Below we summarized some most essential changes that are provided in a new Administrative Code.

a) Liability relative to tax violations

Based on provisions of the New Administrative Code, liability in the sphere of tax violations remains unchanged for large scale legal entities. However, liability for some violations (such as evasion of accrued (calculated) amounts of taxes and other obligatory payments to the budget) has been decreased for small scale legal entities from 30 MCI (as per the current edition of the Administrative Code Article 208-1) to 15 MCI (under Article 277 of the New Administrative Code).

b) Liability for ecological violations

New Administrative Code establishes liability for repeated non-compliance of nature users with terms prescribed in ecological permit if committed within the same year after imposition of administrative fine for large scale legal entities at 500 MCI (without condition that such non-compliance entails large damage to the environment, create security threats to life and health of population, as opposed to the current edition of the Administrative Code (Article 240-2)) (under Article 326 of the New Administrative Code).

Among others, fixed amount of liability for the following violations has been established (instead of the ranged amount of fine as per the current edition of the Administrative Code) (with regards to large scale legal entities):

- violation of rules of usage as well as non-usage of equipment for cleaning of emissions and discharges of wastewater entails administrative fine of 250 MCI (under the article 331 of the new Administrative Code);
- violation of legislation on compulsory ecological expertise entails administrative fine of 500 MCI (under the article 332 of the new Administrative Code);
- land damage entails administrative fine of 200 MCI (under the article 337 of the new Administrative Code),
- violation of rules of conduction of subsoil use operations entails administrative fine of 150 MCI (under the article 356 of the new Administrative Code)

New liability for irrational use of subsoil at 150 MCI, has been introduced (under the Article 345 of the new Administrative Code).

c) Liability in the sphere of labor legislation

New Administrative Code toughens liability for violations in the labor sphere. For instance, among others, the following new liability has been introduced in the form of administrative fine of 100 MCI for each of the below specified violations (with regards to large scale legal entities):

- Admission by an employer of the person without having concluded employment agreement (under the Article 86.1 of the new Administrative Code);
- Non-payment of salary fully and in time established by legislation, as well as nonaccrual and non-payment of late salary payment by an employer (under the Article 87.1 of the new Administrative Code);
- Violation of legislation on payment of overtime work, work on holidays and non-working days, as well as payment for night work (under the Article 87.3 of the new Administrative Code);
- Discrimination in the salary amount for the equal work (under the Article 90.1 of the new Administrative Code).

d) Liability in the sphere of immigration regulations

New Administrative Code expands liability for violation of immigration regulations. Among others, the following liability of foreign individual has been introduced (under the Article 517 of the New Administrative Code):

- Failure to register with competent authority within 3 days after expiration of 5 calendar days for registration established by the law entails notification to foreign individual;
- Failure to register with competent authority upon expiration of the above mentioned term for registration or residing at address non-complying with the registration address entails administrative fine of 15 MCI or administrative arrest for the period of up to 10 days or administrative departure from Kazakhstan;
- Failure to exit from Kazakhstan within 3 days term upon expiration of term for exit prescribed in visa or migration card entails notification to the foreign individual;
- Failure to exit from Kazakhstan upon expiration of 3 days term after expiration of the above mentioned term entails administrative fine in the amount of 15 MCI or administrative arrest for up to 10 days or administrative departure from Kazakhstan.

e) Liability for violations in the sphere of architecture and construction

To increase liability of construction companies performing construction and installation works, new edition of Administrative Code toughens liability if relevant works are performed with violations of construction norms with imposition of administrative fine from 40 to 700 MCI, depending on the size of legal entity with suspension of the license's validity (under the Article 313 of the New Administrative Code) (as opposed to the 20 -500 MCI fine under the current edition of the Administrative Code).

f) Consideration of administrative cases

Administrative Code provides the following novelties:

- shortened administrative case procedure, when fact of violation is defined by the officer at the place of its commitment and an individual admits guilt and agrees with the amount of imposed fine (under the article 810 of the new Administrative Code);
- right to appeal actions/inactions of the authorized body/officer to the superior authorized body/officer and/or to the specialized regional administrative court (under the article 827 of the Administrative Code);
- introduction of cassation order of appeal of the court's rulings on administrative offences that entered to the legal force within 6 (six) month period (as opposed to the exclusive revise of the rulings that entered to the legal force within 1 (one) year period under the current edition of the Administrative Code) (under the paragraph 46 of the new Administrative Code);
- right to revise rulings on administrative offences that entered to the legal force due to the newly appeared circumstances (under the paragraph 47 of the new Administrative Code).

The project shall become effective starting from 1 January 2015.

Contacts

Almaty / Astana

Vladimir Kononenko

Tel: +7 (727) 258 13 40

Fax: +7 (727) 258 13 41

Email: vkononenko@deloitte.kz

Agaysha Ibrasheva

Tel: +7 (727) 258 13 40

Fax: +7 (727) 258 13 41

Email: aibrasheva@deloitte.kz

Atyrau / Aktau

Anthony Mahon

Tel: +7 (727) 258 13 40

Fax: +7 (727) 258 13 41

Email: anmahon@deloitte.kz

Наименование «Делойт» относится к одному либо любому количеству юридических лиц, входящих в «Делойт Туш Томацу Лимитед», частную компанию с ответственностью участников в гарантированных ими пределах, зарегистрированную в соответствии с законодательством Великобритании; каждое такое юридическое лицо является самостоятельным и независимым юридическим лицом. Подробная информация о юридической структуре «Делойт Туш Томацу Лимитед» и входящих в нее юридических лиц представлена на сайте www.deloitte.com/about. Подробная информация о юридической структуре «Делойта» в СНГ представлена на сайте www.deloitte.com/ru/about.

«Делойт» предоставляет услуги в области аудита, налогообложения, управленческого и финансового консультирования государственным и частным компаниям, работающим в различных отраслях промышленности. «Делойт» – международная сеть компаний, которые используют свои обширные отраслевые знания и многолетний опыт практической работы при обслуживании клиентов в любых сферах деятельности более чем в 150 странах мира. Около 200 000 специалистов «Делойта» по всему миру привержены идеям достижения совершенства в предоставлении профессиональных услуг своим клиентам.

Сотрудники «Делойта» объединены особой культурой сотрудничества, которая в сочетании с преимуществами культурного разнообразия направлена на развитие высоких моральных качеств и командного духа и повышает ценность наших услуг для клиентов и рынков. Большое внимание «Делойт» уделяет постоянному обучению своих сотрудников, получению ими опыта практической работы и предоставлению возможностей карьерного роста. Специалисты «Делойта» способствуют укреплению корпоративной ответственности, повышению общественного доверия к компаниям объединения и созданию благоприятной атмосферы в обществе.