

Kazakhstan Introduces Investment Incentives to Increase Capital Inflow

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On 12 June 2014, the Kazakhstan President ratified a new Law aimed at bringing about significant improvements in relation to Kazakhstan's overall investment climate (the new "Incentives Law").

The Law, which will be implemented from 1 January 2015, introduces investment preferences for investors involved in "priority investment projects" to be determined by the Law.

To qualify for these investment preferences, a newly-established company needs to be engaged in specific "priority" activities and commit to investing a minimum of approximately US\$ 20 million.

According to the Law, newly established legal entities are those that:

- were registered within 12 calendar months of an application to receive investment incentives being filed
- carry out one of the activities included in the above list of priority activities and
- carry out priority investment projects within the framework of a single investment agreement

Details of the list of priority activities are due to be published and made available by the end of August 2014.

The scope of priority activities is likely to be wide, but at the same time the Incentives Law is likely to exclude areas such as gambling, subsoil use and the production of excisable goods from the list.

For investment project participants to qualify for incentives, the project in question needs to be governed by an investment contract concluded by the investor and the Kazakhstan Government.

According to the new Law, the following investment incentives will be provided to eligible investors:

I. CUSTOMS DUTY EXEMPTIONS

This exemption applies to imported manufacturing equipment, components and spare parts for it, raw and other materials in accordance with the Customs Law.

Imported manufacturing equipment may be exempt from customs duties while the related investment contract is valid, up to a period of five years from the date the contract was registered.

Customs duty exemptions also apply to imported spare parts for equipment, raw and other materials for the period of validity of an investment contract, up to a period of five years from the date fixed assets are commissioned.

II. STATE MATERIAL GRANTS

The State may provide assets for temporary use or land for use free of charge.

However, the maximum market price of the assets provided should not exceed 30% of the total value of the fixed assets of legal entity applying for grants.

III. TAX INCENTIVES

The following tax incentives are available to eligible investors who realise at least 90% of their annual income from a priority investment project:

- a) profit tax exemption for up to 10 years
- b) 0% land tax on land used in the relevant investment project for up to 10 years
- c) 0% property tax for up to 8 years with respect to taxable fixed assets placed into operation for the first time in relation to an investment project

The tax incentives will ultimately be detailed in an investment contract and made available to the legal entity in question as of 1 January 2015, when the related amendments to the Tax Code come into effect.

IV. INVESTMENT SUBSIDIES

Subsidies will be provided based on Government Resolution by way of the reimbursement of up to 30% of actual expenses incurred from construction and assembly work and equipment purchases, excluding VAT and excise duties supported by documentation, such as primary accounting records, invoices and customs declarations, but capped at the amount of expenses stipulated by pre-design documentation.

Investors involved in priority investment projects will also be eligible for:

- stability protection in the event of changes to tax law and legislation regarding the employment of foreign nationals in Kazakhstan
- quota and work permit exemptions for foreign nationals:
 - o working for legal entities that have concluded priority investment project agreements with the Kazakhstan Government
 - o working for contractors/subcontractors as general contractors, architecture, city planning and construction (including survey, design and engineering) contractors or service providers for an entire project period and up to one year from the moment an object of investment activity is commissioned, and hired as highly-qualified specialists as per a list of jobs and in the number determined in the related investment contract
- to apply according to the “one-stop-shop” principle, which means the majority of services, such as issuing licenses and permits, may be provided to investors by the investment authorities, i.e. limiting investor contact with other state authorities and minimising the volume of documents to be submitted

The rules for the provision of this incentive are still subject to government approval, and it is still unclear when they will be implemented

- protection of their rights and legal interests by the investment ombudsman, who will cooperate with the state authorities on issues raised by investors

To receive investment incentives, legal entities should apply to the relevant authorities with a set of documents that meet all legal requirements and support their financial, technical and organisational resources in relation to the project in question. The information to be provided to the authorities may include a business plan, the scope of estimated costs and documents confirming expenses incurred.

Upon receipt of a full and correct set of documents, the authorities will proceed with an application and either issue a

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letter of acceptance or refusal, depending on the outcome of its deliberations.

On the face of it, it seems that the provisions of the Law are relatively straightforward; but there do remain certain key issues that need further clarification.

For instance, the US\$ 20 million requirement with respect to investment commitments is currently unclear, in terms of whether this is meant as a minimum investment commitment as at the application date, or whether there is also a “post-application commitment” of an additional US\$ 20 million.

Also, the list of preferred investment projects has not yet been drafted, making it one of the most critical concerns for potential investors considering the applicability of investment preferences.

Although several key areas of legislation remain unclear, clarification and supporting legislation are expected to be finalised in the coming months and should fill the remaining gaps in the laws. And with that in mind, these newly-available incentives should be viewed as an overwhelmingly positive initiative in relation to stimulating new investment in Kazakhstan.

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