

► **Anthony N. Mahon**, Director Cross Border Tax at Deloitte, provides a brief overview of the key things you need to know when approaching the Kazakhstani market.

In recent years, Kazakhstan has achieved significant results in attracting FDI, and since 2005 the figure has been in excess of \$160 billion. The energy and resources sector continues to dominate the economy; however, over the past five years significant inward investment has been seen in financial and insurance activities (\$31 billion), the mining industry (\$13.6 billion), and wholesale and retail trade (\$12.5 billion), with source countries heavily featuring the Netherlands, the US, France, the UK, and others, including China and India.

Kazakhstan has bilateral investment treaties in place with most of these countries, including OECD countries, guaranteeing national (or most-favored-nation) treatment and stipulating the responsibilities of the parties, most notably in the event of expropriation.

BUSINESS REGISTRATION

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

- General partnerships, additional liability partnerships, special partnerships, limited liability partnerships (LLP), or joint stock companies (JSC)
- Representative offices and branches
- Simple partnerships or consortia

The LLP and branch forms are the most commonly used by foreign investors when setting up legal entities in Kazakhstan.

An LLP operates much like a limited partnership, but gives each partner protection from personal liability, which is limited to the extent of their investment in the LLP. Generally, LLP partners are not responsible for another partner's debts, obligations, or liabilities resulting from negligence or misconduct.

As a legal entity, which must be registered with the judicial and tax authorities, the minimum charter capital for an LLP is approximately \$1,190. All non-resident employees of an LLP need to obtain work permits.



As part of an ongoing government strategy, Kazakhstan has set up tax breaks for companies entering certain sectors to make them more attractive to foreign investors.

A branch is not a legal entity and has no charter capital requirement, as it is a subdivision of a non-resident company, is provided with assets by the founding company, and acts on the basis of approved regulations. All non-resident branch employees are required to obtain work permits, with the exception of the branch head. The branch or LLP registration process takes approximately 10-14 business days and costs around \$80.

ACCOUNTING & AUDIT REQUIREMENTS

All large and public companies operating in Kazakhstan are required to follow International Financial Reporting Standards (IFRS). Other smaller and medium-size enterprises, certain branches, and foreign entity representatives may report according to with either national financial reporting standards or IFRS.

Entities in Kazakhstan may be subject to either a mandatory or voluntary statutory audit. The most common forms of entities subject to mandatory audit include: JSCs, insurance and reinsurance companies and insurance brokers, subsoil users, banks, natural monopolies, and Kazakhstan legal entities that have signed an investment contract with the Kazakhstan government, and others. Other types of legal entities may voluntarily elect to be audited.

TAXATION REGIME

The taxation regime in Kazakhstan is regulated by the Tax Code, which is relatively new (having been rewritten in 2009) and simple in the »

way it has been drafted, but stipulates a taxation framework that is based on a self-assessment regime, with tax inspections and taxpayer audits undertaken according to a risk-based sampling approach.

The complexity for Kazakhstan taxpayers and non-residents stems from ambiguity in the local interpretation of both the Tax Code and generally accepted international taxation principles, such as those set out in double taxation treaties. There is no extra statutory guidance available in country as to the appropriate interpretation of domestic and international tax laws, and the landscape is also characterized by the inconsistent application of provisions between various tax authorities and regions.

As such, achieving stable and predictable tax compliance in Kazakhstan remains a challenge for both local and international investors.

CORPORATE INCOME TAX

Corporate Income Tax (CIT) is applied to the income of (tax) resident Kazakhstan entities (except for state institutions) and non-resident legal entities operating via permanent establishments (PE) in Kazakhstan and/or receiving income from sources in Kazakhstan.

The basic determining factor for expense deductibility is that costs should be wholly business-related. However, prescriptive requirements also exist in relation to supporting documentation (contracts, invoices, and acts of acceptance all being required to support tax deduction). In addition to the above basic determinant of deductibility, certain explicit provisions deny deductibility of costs (including a thin capitalization rule in addition to statutorily disallowed costs).

Losses from business activities can be carried forward for 10 years (inclusive) and offset against future taxable profits. Taxpayers assess and make CIT advance payments during the current tax period, and are required to submit an annual CIT return by March 31 of the year following the reporting year.

BRANCH PROFIT TAX

A non-resident legal entity operating in Kazakhstan via a PE or branch is also subject to a 15% branch profit tax on its net (post-tax) income. The branch profit tax rate can be reduced if a double taxation treaty is in place between Kazakhstan and the country in which the branch's head office/mother company is resident.

SUBSOIL USER TAXATION

Potential Kazakhstan subsoil users (producers) require a subsoil use license to operate and enter into a subsoil use contract with the government, which, in addition to setting out all relevant geological and technical terms, defines the tax treatment of any licensed operations. The majority of current subsoil use contracts are now required to follow the current Tax Code. However, certain historical contracts such as

product sharing agreements are still in force and provide tax treatment stability for the life of the agreement in question.

Subsoil use contracts differentiate between a subsoil user's contractual activities (for example, exploration and production of mineral resources) and non-contractual activities, such as the processing of mineral resources or other activities. With this in mind, subsoil users should keep separate tax accounting records and follow processes to account for tax obligations in relation to their contractual and non-contractual activities.

Under the current Tax Code, subsoil users are subject to specific subsoil use taxes such as mineral extraction tax, excess profit tax and rent tax, in addition to signature and commercial discovery bonuses and the reimbursement of historical costs.

PERSONAL INCOME TAX

Kazakhstani tax residence is determined based on physical residence in Kazakhstan in addition to a center of vital interests test. All Kazakhstani citizens are tax resident in Kazakhstan along with any foreign nationals (non-residents) who are present in Kazakhstan for at least 183 days in any consecutive 12-month period ending in the current tax year.

Kazakhstani tax residents are subject to personal income tax on worldwide income, while non-residents are taxed on their Kazakhstan-sourced income only. An individual's income in Kazakhstan is taxed at a flat rate of 10% (dividend income taxed at 5% unless specifically exempted).

Employers (as tax agents) are required to withhold and remit income tax and pension fund contributions (not applicable to foreign nationals) on a monthly basis. Non-resident individuals receiving Kazakhstan-source income not taxed at the source of payment are individually responsible to file tax returns and make related income tax payments in Kazakhstan.

VALUE-ADDED TAX

Value-added tax (VAT) in Kazakhstan is based on the European input-output system, where turnover is either taxed at the standard 12% rate, exempt, or zero-rated. VAT is reported and paid on a quarterly basis. VAT registration is required once a certain turnover threshold (\$360,000) for individual entrepreneurs, resident legal entities (except for state institutions), non-resident legal entities operating in Kazakhstan through a branch or representative office, trust managers, and entities importing goods into Kazakhstan is reached. Voluntary registration is possible if the above threshold is not reached.

The export of goods is zero-rated, while certain other types of activities, such as banking, insurance, and others, are exempt from VAT. Reverse-charge VAT is also payable by Kazakhstan-resident purchasers on services and work provided or performed by non-resi-

dents, if the services and works are performed in Kazakhstan. Net payable VAT is calculated on the difference between output VAT on taxable turnover and input VAT paid to suppliers. The amount of VAT paid for purchases from non-residents as well as VAT paid on imports can be offset against output VAT.

WITHHOLDING TAX

The income of non-resident legal entities (operating without a PE in Kazakhstan) is subject to withholding tax (WHT) at the source of payment. Local legislation (for example, the rates applicable before potential relief under a valid double tax treaty) applies varying WHT rates, depending on how the payments in question are classified. Dividends, interest, royalties, capital gains and insurance premiums are subject to 15% WHT, reinsurance premiums and international transportation services are subject to 5% WHT, and all other payments are taxed at 20%.

However, any payments made to recipients resident in recognized tax-haven jurisdictions (the list of which is updated annually by the authorities) are subject to 20% WHT in Kazakhstan.

Dividend WHT is not charged if all of the following conditions are met:

- Shares and participation interest (on which dividends are paid) have been held for more than three years
- 50% or more of the value of a dividend paying entity's authorized capital or shares (participation interest), on the day dividends are paid, consists of non-subsoil use assets, for example it is not derived >50% either directly or indirectly from mineral resources in Kazakhstan

Securities' interest and dividends are also exempt from WHT if securities are traded on an official exchange market listed in Kazakhstan.

CAPITAL GAINS

Generally speaking, residents' capital gains are included in taxable income, but gains on shares held for over three years (in line with the above dividend WHT exemption conditions) are exempt from tax. Insofar as PEs are created, and not registered, counterparties in Kazakhstan are responsible for deducting 20% WHT from payments made to entities having formed a PE.

Gains made by non-residents are exempt from taxation in Kazakhstan as they are not derived (directly or indirectly) from shares in subsoil user companies or immovable property in Kazakhstan.

When non-residents generate taxable gains, the purchaser of the assets or shares in question is responsible for calculating, withholding, and paying any related tax (capital gains). The tax is initially payable at 15%, but may be mitigated by applying a reduced rate under a double tax treaty.

A capital gains tax exemption is available for both residents and non-residents if any shares disposed of and gains are made are sold using the open trade method on a recognized stock exchange.

WHT ON THE INCOME OF A PE

A non-resident that has formed a PE in Kazakhstan is liable for 20% CIT on income attributable to the PE, as well as 15% branch profit tax.

TAX TREATIES

Kazakhstan has entered into double taxation treaties with more than 40 countries. Treaty relief may exempt or reduce tax rates applied to income generated in or flowing from Kazakhstan. Prescriptive conditions, including the provision of periodic or apostilled tax residency certificates, should be met in advance of Kazakhstani entities applying treaty relief. ●

OTHER TAXES

Certain other taxes exist in Kazakhstan, such as property tax, land tax, and vehicle tax, among others.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

TBY would like to thank Deloitte for compiling this analysis.

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