



## Tax Alert

# Overview of major changes in tax legislation which may potentially impact your business

Dear friends,

In this Alert we provide an overview of recent legislative amendments to the Code No. 120-IV On Taxes and Other Obligatory Payments to the State Budget (hereinafter, the "Tax Code").

### Interest on CIT and PIT for individual entrepreneurs

Law No. 217-VI On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding the Protection of Property Rights, Arbitration, Judicial Costs and the Humanisation of Criminal Legislation dated 21 January 2019 has

amended article 117.2-1 of the Tax Code, which governs the procedure for calculating interest (penalty) on corporate income tax (CIT) and personal income tax (PIT) for individual entrepreneurs:

- The interest rate has been reduced to 0.65 times the National Bank refinancing rate
- *The calculation period* – for each day amounts are overdue (starting from the day following the payment due date including the payment day) with respect to CIT (calculated according to generally established rules) and PIT on an individual entrepreneur's taxable income.

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- A special condition for applying the interest rate has been introduced for tax liabilities that arise as a result of additional CIT and PIT returns for the reporting tax period filed before 1 September of the year following the reporting tax period.

\* The provision entered into force on 2 February 2019 (within ten calendar days after its first official publication - "Kazakhstanskaya Pravda" dated 23 January 2019 No. 14 (28891))

The interest rate on other overdue taxes remains at 1.25 times the official National Bank refinancing rate for each day payment remains overdue.

### Tax relief for the movie industry

Law No. 213-VI *On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning Cinematography* dated 3 January 2019 has expanded the taxpayer's activities eligible for a 100% CIT reduction on income derived from (article 293 of the Tax Code):

- screening in Kazakhstan cinemas movies that have been designated national movies in accordance with the Kazakhstan cinematography law
- box office sales by movie-rightsholders on movies recognised as national movies in accordance with Kazakhstan cinematography law

For CIT purposes, the above taxpayers are required to maintain ring-fencing rules for revenue generated by the above activities from other revenues.

Furthermore, when calculating CIT advance payments, such taxpayers may also exclude revenues generated by movie-screening and box office sales (article 305.3 of the Tax Code).

For VAT purposes, works and services performed by cinematographic organisations for investors during movie production are regarded as a sale of goods, work and services exempt from VAT. However, the list of eligible works and services is approved by a central executive body responsible for managing cinematography (the Ministry of Culture and Sport) in coordination with the Ministry of National Economy and the Ministry of Finance (article 394.44 of the Tax Code).

By law, a national movie is one:

- that has been produced to a high level, is capable of meeting the spiritual needs of the nation, serves

public interests and builds awareness of Kazakhstan through cinema

- that has been 70% produced, distributed and screened by Kazakhstan cinematographic organisations
- that has been produced by a Kazakhstan citizen and/or Kazakh legal entity
- in which 50% or more of the creators (screenwriter, director, director of photography, artistic director and soundtrack producer) are Kazakhstan citizens

A movie made in conjunction with overseas cinematographic organisations may also be recognised as a national movie in accordance with Kazakhstan-ratified international treaty.

Interested parties should apply to the Ministry of Culture and Sport for a movie to be recognised as a national movie. (Article 5 of Law No. 212-VI ZRK *On Cinematography* dated 3 January 2019, point 5 of the *Draft Rules for recognising movies as national movies and issuing national movie certificates*).

By law (article 1.6 of Law No. 212-VI ZRK *On Cinematography* dated 3 January 2019), a cinematographic organisation is a company whose main activities are to:

- produce, rent, screen, restore and store movies
- ensure the technical maintenance of cinemas
- produce movie materials
- provide movie production-related works and services
- perform educational, scientific, research, publication and promotional activities around cinematography

\* The provision entered into force on 15 January 2019

### Astana New City Special Economic Zone (SEZ) participants

According to Law No. 210-VI *On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning the Administrative and Territorial Structure of the Republic of Kazakhstan and Countering the Shadow Economy* dated 28 December 2019, the sales of goods manufactured and sold on the territory of SEZ Astana New City are **exempt from VAT**, if simultaneously (article 394.43-1 of the Tax Code):

- goods are used in their entirety during the construction and commissioning of infrastructure facilities, hospitals, clinics, schools, kindergartens, museums, theatres, undergraduate and secondary educational institutions, libraries, children's palaces, sports complexes, administrative and residential complexes in accordance with design and estimate documentation;
- goods are included in a list of goods approved by the authorities responsible for creating, operating and abolishing SEZ
- a supply agreement (contract) is in place with organisations building infrastructure facilities, hospitals, clinics, schools, kindergartens, museums, theatres, undergraduate and secondary educational institutions, libraries, schoolchildren's palaces, sports complexes, administrative and residential complexes in the SEZ
- copies of shipping documents are available confirming the shipment of goods
- copies of documents are available confirming the buyer's receipt of goods

Goods used in their entirety in the construction process are those:

- directly involved in the construction of infrastructure facilities, hospitals, clinics, schools, kindergartens, museums, theatres, higher and secondary educational institutions, libraries, schoolchildren's palaces, and sports complexes, administrative and residential complexes (except for electricity, gasoline, diesel fuel and water)
- placed by the supplier and buyer under the free customs zone procedure and remaining under customs control in accordance with Kazakhstan customs law.

*\* The provision entered into force retroactively on 1 January 2018*

#### **Tax amnesty for interest (penalties) and fines**

The Law further provides a tax amnesty for accrued interest and fines (write-off) if the principal tax amount is paid between 1 October 2018 and 31 December 2019 according to the balance of the taxpayer's tax account statement (article 57-1 of the *Law on Introduction of the Code of the Republic of Kazakhstan On Taxes and Other Obligatory Budget Payments*):

1. interest as at 1 October 2018, and interest accrued for the period from 1 October 2018 until the payment date, inclusive;
2. fines as at 1 October 2018.

However, the tax amnesty does not apply to:

1. large taxpayers subject to monitoring;
2. taxpayers that as at 1 October 2018 carry out one or more of the following activities:
  - subsoil use, except for those extracting groundwater or therapeutic mud;
  - production of excisable goods.
3. individuals, except for tax debt associated with commercial activities, private notaries, private bailiffs, lawyers and professional mediators.

*\* The provision entered into force on 1 January 2019*

#### **Participants of the Astana Hub International TechPark ("Astana Hub")**

Law No. 203-VI *On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Employment* dated 26 December 2018 introduces tax benefits for Astana Hub participants.

#### **Legal requirements**

According to the Astana Hub Operating Rules approved by Order of the Minister of Information and Communications No. 415 dated 26 September 2018, taxpayers are required to submit a number of documents to register as a participant, including a project's business plan in one of the following areas:

- software development;
- information system design, development and implementation;
- software data processing activities;
- fundamental and applied informatisation research;
- design and implementation of data protection information systems;
- creation and training in neural networks and other algorithms in artificial intelligence;
- consulting, promotional and agency services using software developed by Astana Hub participants;
- robotic technology development;
- virtual reality development;
- cybersports.

A commission (Astana Hub representatives, state authorities and appropriately qualified IT specialists with and/or international experts) considers filed to decide whether to register an applicant as an Astana Hub participant or not.

Astana Hub participants may be both local and foreign companies, regardless of their location, except:

- legal entities with branches and other separate subdivisions, except for representative offices;
- entities implementing investment priority projects or investment strategic projects concluded prior to 1 January 2015;
- legal entities with a 50% shares (participation interest) or more directly or indirectly owned by the state, the Baiterek National Holding Company, national companies or their subsidiaries;
- subsoil users or SEZ participants;
- excise duty payers.

#### **Tax benefits**

Astana Hub participants are eligible for the following tax benefits:

- **taxable income reduction** on capital gains from the sale of shares and participation interest in Astana-Hub legal entity participants decreased by corresponding losses derived (Article 288.2.11 of the Tax Code)
- **100% CIT reduction** calculated according to the generally established procedure, if Astana Hub participants generate income solely from the implementation of information and communication technology priority activities, including the following income types (article 293.4-3 of the Tax Code):
  - interest income on deposits
  - net foreign exchange gain
  - property received on a gratuitous basis for the purposes of conducting activities that correspond to information and communication technology priority activities
- **an exemption from CIT advance payments** (article 305.2 (8) of the Tax Code)
- **an exemption from VAT for non-residents** on works and services acquired by Astana Hub participants for the implementation of information and communication technology priority activities (article 373.2 (3) of the Tax Code)
- **a VAT exemption** on sales of goods (produced and sold), works, services sold by Astana-Hub participants (articles 394.45 and 394.46 of the Tax Code)
- **an import VAT exemption** for goods imported by Astana Hub participants, if simultaneously (article 399.1 of the Tax Code):
  - the goods are exempt from VAT, as stipulated by the authorities in the field of informatisation;
  - import of goods is documented in accordance with EEU and/or domestic customs law
  - goods are imported exclusively for use in the implementation of information and communication technology priority activities in accordance with an approved list
- **a WHT exemption for the services** paid to non-residents registered in low tax jurisdictions (if Astana-Hub participants purchase them to implement information and communication technology priority activities) (article 644.2 (3-1) of the Tax Code):
  - consulting, marketing and engineering services
  - information security services
  - works to create data centres
- **a WHT exemption for royalties** paid by Astana Hub participants to non-residents registered in low tax jurisdictions (if royalties are paid to conduct information and communication technology priority activities) (article 644.2 (4 -1) of the Tax Code)
- **a WHT exemption on dividends** paid to a non-resident legal entity (except for payments to non-residents registered in a low tax jurisdiction) provided they comply with certain requirements, such as, a three-year holding period (article 645.9 (4) of the Tax Code)
- **a reduced WHT rate (5%)** with respect to (article 646.3 of the Tax Code):
  - **capital gains** on the sale of shares participation interest in legal entities- Astana-Hub participants;
  - **dividends** received from Astana-Hub participant legal entities if the above WHT exemption does not apply

- a **PIT exemption** for Astana Hub participant employees (article 341.1 (50) of the Tax Code)
- a **PIT exemption on dividends received by a non-resident individual** from Astana Hub participant legal entities subject to certain conditions (except for dividend payments to individuals registered in a low tax jurisdiction) (article 654.4 of the Tax Code)

The tax law **does not exempt** income of Astana Hub participant's employees **from social tax** (article 484.3 (3) of the Tax Code).

Astana Hub participants are legal entities that simultaneously (article 293 (3) of the Tax Code):

1. are registered in the Astana Hub international technology park as participants in accordance with Kazakhstan informatisation law
2. generate income solely from conducting information and communication technology priority activities, a list of which has been approved by the informatisation authorities

Moreover, goods sold and produced by Astana Hub participants should meet *in-house production criteria* (article 293 of the Tax Code):

- the first four digits of the goods' CN FEA code change after processing as per Rules for determining the Country of Origin of Goods, Issuing and Cancelling Certificates of Origin, approved by Minister of Investment and Development Order No. 155 dated 24 February 2015 ("Country of Origin Rules")
- the existence of a CT-KZ certificate issued according to Country of Origin Rules
- the existence of a report determining the country of origin of goods issued in accordance with domestic law

Software developed by Astana Hub participants is regarded as being produced in-house (Appendix No. 2 to a Draft Order of Minister of Information and Communications *On the Approval of a List of Information and Communication Technology Priority Activities and In-House Production Criteria*).

If they fail to comply with the above conditions, Astana Hub participants are taxed under the generally established procedures from the date of registration as a member of the Astana Hub (article 293 of the Tax Code).

\* *Effective from 1 January 2019 until 1 January 2029*

## Single Cumulative Payment

Law No. 203-VI *On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Employment* dated 26 December 2018 introduces a single cumulative payment (SCP) for self-employed individuals (Government Resolution No. 4 *On the Approval of Rules for Paying, Allocating and Transferring the Single Cumulative Payment in the Form of Personal Income Tax and Social Payments, and its Return*, dated 18 January 2019).

Individuals are regarded as *SCP payers* if they conduct business activities without registering as an individual entrepreneur, and simultaneously:

1. have paid SCP
2. do not hire employees
3. provide services and/or sell exclusively to individuals who are not tax agents, their own agricultural produce from personal farms (except for excisable goods)

The income of an SCP payer generated from the above activities during the calendar year should not exceed 1,175 MCI.

The following individuals are not regarded as SCP payers:

1. persons engaged in the above activities involving commercial real estate, as well as shopping facilities, whether they are owned, leased, used or under trust management
2. persons providing rental property (except for housing)
3. private practice
4. foreign nationals and stateless persons, with the exception of oralmans
5. individual entrepreneurs

The SCP is payable to the "Government for the People" State Corporation bank account in the following amounts (without submission of tax returns on PIT and social payments):

- 1 MCI - in national and regional cities, and Astana;
- 0.5 MCI - in other regions.

Tax law does not directly oblige self-employed individuals to make monthly SCP, however, the above Rules (a) require payers to make payments indicating

the month for which the SCP is paid in "MMYYYY" format, as well as (b) allow payers to make SCP for the current and following months.

The "Government for the People" State Corporation is responsible for:

- submitting lists of SCP payers to the tax authorities, referring to the IIN, full name, date of birth, month of payment, codes (or business identification number) of regional state revenue bodies receiving PIT, payment numbers and reference numbers;
- allocating SCP amounts to the following components without rounding:
  - 10% - PIT;
  - 20% - social security contributions;
  - 30% - obligatory pension fund contributions;
  - 40% - obligatory medical insurance contributions.

Thus, SCP payers are entitled to government social support in the form of social, pension payments and medical care within the framework of compulsory social health insurance.

*\* Effective from 1 January 2019 until 1 January 2024*

#### **WHT on advances paid to non-resident entities**

Law No. 168-VI *On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding Currency Control Regulations, Risk-Based Supervision of the Activities of Financial Organisations, the Protection of Consumer Financial Service Rights and Improvements to the Activities of the National Bank of Kazakhstan* dated 2 July 2018 expands the forms of Kazakhstan-source income of non-resident entities subject to WHT.

According to the changes, advances (prepayments) received by non-residents are regarded as income from a Kazakhstan source if the non-resident does not meet its advance (prepayment) obligations:

- upon the expiration of a two-year period from the date of receipt of the advances (prepayment); or
- before the expiration of the two-year period from the date of receipt of advances (prepayment) upon the payer of the advance submits liquidation tax reporting.

The previous edition of the Tax Code on the provision above stipulated this requirement solely for income on advances received by non-residents registered in low tax jurisdictions, while the current edition of the Tax Code had expanded the effect of this article upon all non-residents.

Further, tax law specifies that the above provision regarding the income of non-residents registered in foreign countries other than low tax jurisdictions applies to advances (prepayments) paid from 1 January 2019.

*\* The provision entered into force on 1 January 2019*

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### How Deloitte can help:

In case you would like to express your opinion on the issue or in any other way participate in the stated discussion, please reach out to our specialists whose contact information may be found below.

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