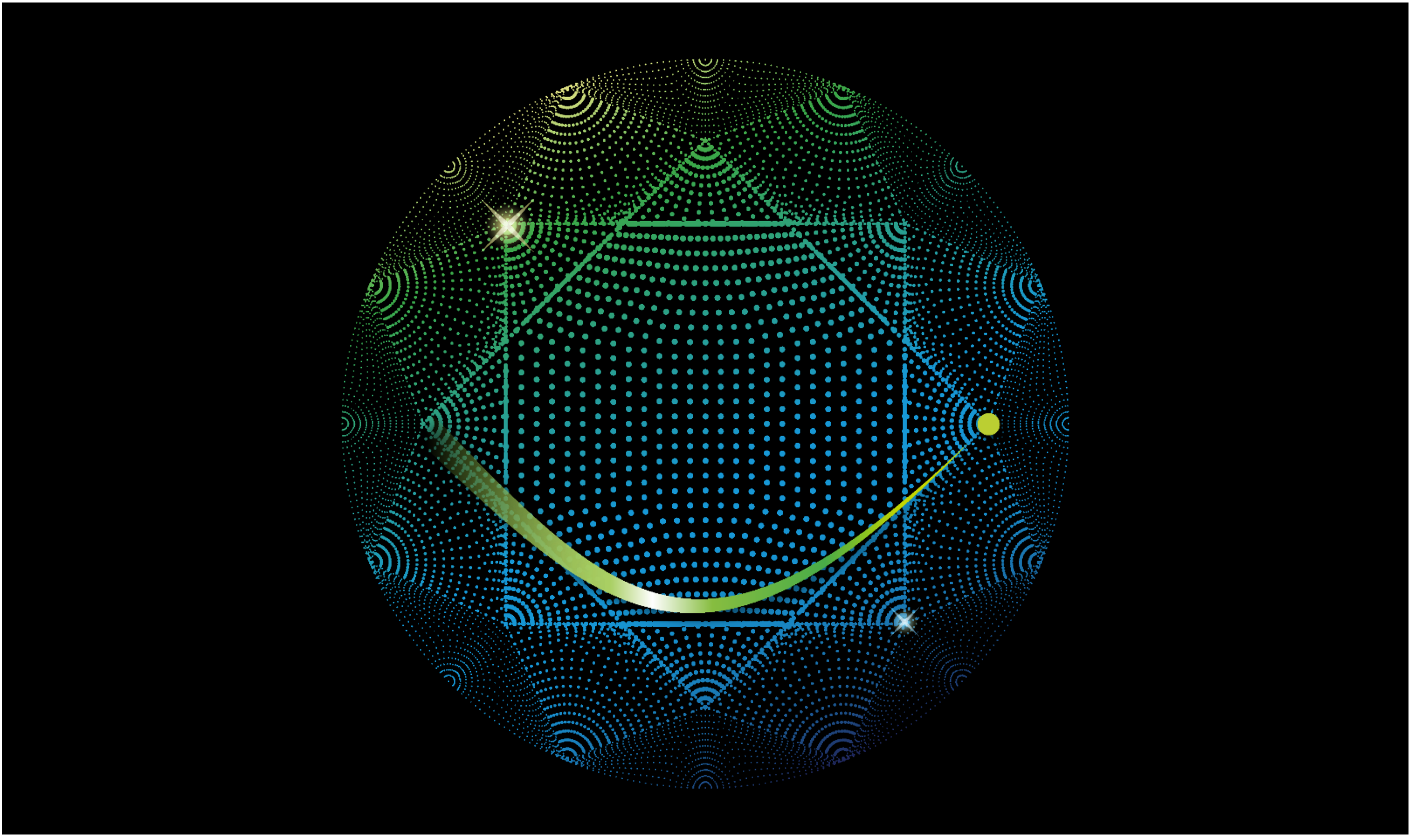

Tax Alert

New Draft Tax Code

Dear friends,

On 21 June 2024, the government published a brand new draft version of the Tax Code for discussion purposes. The document, which is due to come into effect from 1 January 2025, has been significantly reworked in terms of structure and format from the version of the Tax Code currently in force.

In this alert, we have focused on what we believe are the key changes with the potential to impact international companies operating in Kazakhstan, including corporate income tax rates, concessions, dividend repatriation, non-resident taxation and other important areas.

As the document may undergo further significant changes before it is finally adopted, we recommend watching for further Deloitte alerts on the subject.

Tax administration

- measures for the enforced recovery of payable taxes;
- the suspension of debit transactions and recovery using cash on bank accounts up to tax amounts due. Tax amounts due will be determined by the state revenue committee;
- the release of e-invoices.

Concept and types of tax administration

The draft Tax Code introduces a new concept of “tax administration” as a series of measures used by the tax and other authorities to ensure compliance with tax and other areas of the law, as well as create conditions for taxes to be paid through a tax risk management system.

Tax administration is based on the principles of service procedures and making use of notifications (preventative

measures) before having to employ control (enforcement) measures.

"Service procedures" include the process of informing targets, such as taxpayers of tax form, tax payment and tax registration deadlines, as well as the need to execute other tax liabilities.

The concept of tax administration covers:

1. tax registration;
2. the use of cash registers;
3. the acceptance of tax forms;
4. the record of the performance of tax obligations, obligations to make social payments, and pay fines and interest;
5. changes in tax liability deadlines;
6. in-house reviews;
7. the monitoring of e-invoice issuance;
8. tax monitoring;
9. tax controls;

Tax controls are performed exclusively through tax reviews;

10. other forms of control;
11. the enforced recovery of taxes due.

Pilot projects to improve tax administration

To help improve tax administration, the tax authorities may introduce pilot projects detailing a different tax administration procedure, as well as establishing rules, implementation periods and taxpayer (tax agent) categories affected by them.

Pilot projects are implemented based on findings from an analysis of current law published on the tax authorities' website, and the need to improve tax administration and taxpayer performance of tax liabilities.

The tax authorities may launch up to five three-year maximum pilot projects per year.

Registration of VAT payers

Under the draft Tax Code only taxpayers taxable under the general taxation procedure will be registered as VAT payers. Registration will take place from the day:

1. legal entities are registered with the registrar based on for register numbers;
2. an individual entrepreneur is registered with the tax authorities;
3. of transition from special tax treatment to the generally established procedure.

The registration of a legal entity and/or a change in registration details or management will result in the chief executive's biometric identification in the e-invoice information system.

As such, given the above, the draft Tax Code removeы minimum turnover thresholds for the registration of VAT payers.

Acceptance of tax forms

Tax reporting will no longer have to be filed if an object of taxation and/or taxation-related object do not exist. The current Tax Code requires tax reporting be filed for certain taxes even if objects of taxation do not exist.

A taxpayer or tax agent's non-submission of regular tax reporting by the deadline is recognised as the equivalent of filing zero tax reporting for the corresponding tax period. This provision does not extend to individuals.

Monitoring of e-invoice issuance

The draft Tax Code introduces new automated or comparative tax administration processes to help the tax authorities prevent high-risk e-invoices being issued.

E-invoices will have a unique number if VAT is recorded automatically in the tax authorities' information system. An e-invoice without a unique number will be recognised as not issued.

Under the comparative process, if taxpayers violate the process for issuing e-invoices, they will receive notification to confirm the completion of turnover from the sale of goods, work or services ("Notification").

In this respect, if a taxpayer:

1. agrees with the violations in a Notification, it will withdraw the relevant e-invoices;
2. disputes violations in a Notification, it will provide its arguments on the same in documentation supporting transactions and/or the origin of goods, work performed and services in the e-invoices referred to in the Notification.

In this respect, the tax authorities, within 10 business of the day a taxpayer clarification is received, are entitled to recognise the Notification as not having been executed.

The draft Tax Code also allows the tax authorities to suspend a taxpayer's issuance of e-invoices within one business day of the day any such decision as mentioned above is taken.

Information on taxpayers whose permission to issue e-invoices has been suspended is displayed on the state revenue committee's website within one business day of the day a decision is taken to suspend that permission.

The tax authorities can also notify taxpayer contractors of any settlements with the taxpayer in question referred to in a Notification.

Desk audits

If a desk audit reveals discrepancies, then, under the draft Tax Code taxpayers, except for those taking part in horizontal monitoring, will receive notification of potential discrepancies from a desk audit. In other words, notification to take corrective actions on violations revealed by the tax authorities in a desk audit has been replaced by notification of potential discrepancies from a desk audit ("Desk Audit Notification").

With that, under the draft Tax Code, violations are no longer graded by risk level (high or medium) after a desk audit and in Desk Audit Notifications.

The draft Tax Code also allows taxpayers disputing discrepancies to submit their argument to that effect, together with documents (if available) supporting their position. It also prohibits the tax authorities from demanding documents to execute a Desk Audit Notification.

The deadline for executing notification from a desk audit will be suspended if the taxpayer files a lawsuit to confirm the actual receipt of goods, work or services from a legal entity and/or individual entrepreneur whose registration (re-registration) has been recognised as invalid based on a court ruling.

During a tax audit, taxpayers will not be sent notification from a desk audit for the review period. However, the tax authorities will be able to use desk audit findings in a tax audit.

If a taxpayer fails to execute notification from a desk audit, debit transactions on its bank account will be suspended within two business days from the day the notification execution deadline passes. The current Tax Code, however, states that if a taxpayer fails to execute notification from a desk audit, debit transactions are suspended from the day following the execution deadline.

The draft Tax Code allows the tax authorities to perform a tax audit to verify statements made in a taxpayer's arguments.

Tax audits

The draft Tax Code introduces a new term and concept of " tax control", which will be used exclusively by the tax authorities when performing tax audits.

As risk-assessed periodic (planned) tax audits have been abolished, the draft Tax Code removes articles covering the notification of the start of a periodic tax audit at least 30 calendar days before the scheduled start date and on the publication of semi-annual periodic tax audit schedules.

For this reason, tax audits will be exclusively unscheduled.

The fundamentals for conducting tax audits have been changed to include the passing of a statute of limitation and a tax authority ruling. The state revenue committee will no longer be responsible for appointing tax audits. That responsibility has been passed to the regional tax authorities.

The draft Tax Code introduces new subject matter for targeted tax audits, including:

1. confirmation of the actual completion of turnover on the sale of goods, work and services;
2. the failure to execute a conclusion on horizontal monitoring findings;
3. confirmation of the existence of violations referred to in notification from an in-house review.

Likewise, tax audits will no longer be suspended if a taxpayer disputes tax authority instructions during the audit.

The draft Tax Code introduces a procedure for presenting and executing demands to provide documents during a tax audit in a separate article. In this respect, orders to present documents will be made no more than twice during a tax audit, except for the audit of medium-sized and large taxpayers. The deadline for taxpayers to present documentation is 10 business days from the day following the date notification is served. If a taxpayer requests additional time to present documentation, the tax authorities may extend the deadline by up to 20 business days.

The draft Tax Code allows notification of the suspension or resumption of a tax audit, a tax audit act or notification of tax audit findings to be sent electronically or served personally against a signature. If notification of the suspension or resumption of a tax audit, a tax audit act or notification of tax audit findings are sent electronically, they will be recognised as served from the moment they are viewed in the user's website account.

The draft Tax Code also suspends the statute of limitation for the accrual of taxes and budget payments from the day a tax audit starts until the date notification of tax audit findings is executed. In other words, the new provision deals with the duration of tax audits (inclusive of extensions and suspensions), as the statute of limitation will not pass during a tax audit as it will be suspended.

Other forms of tax administration: notices and notification

- The tax authorities send out notices of an informative nature:
  - if an amount is due up to the maximum tax payable;
  - to recipients (buyers) on settlements with taxpayers who have issued dubious e-invoices.
- Notifications are divided into:

  - informative and preventative notifications;
  - obligatory notifications.
- The execution deadline for informative and preventative notifications is 30 business days.
- The execution deadline for notification to confirm the completion of turnover on the sale of goods, work or services is 10 business days.
- The execution deadline for obligatory notifications is 30 business days from the receipt date.
- The execution deadline for obligatory notifications to pay taxes due; confirm receivables and confirm a taxpayer's location (absence) is 10 business days.

VAT

- VAT will remain unchanged at 12%.
- Import VAT on raw materials used for processing in Kazakhstan can be deferred for one year to make it easier for the taxpayer to pay tax once finished products have been sold
- VAT concessions on Special Investment Contracts and Investment Agreements, as well as on the import-sale chain – medicines, vehicles, agricultural machinery and household goods have been retained.

CIT

- The general CIT rate will remain at 20%;
- However, differentiated rates will be introduced for:
  - the banking sector (except on commercial bank income from real sector financing) - 25%;
  - the gaming business - 25%;
  - the processing industry, social sphere entities (education, medicine and healthcare), finance lease - 10%;
  - agricultural manufacturers (current rate with the 70% concession) - 3%.
- Any positive difference between CIT withheld at the source and CIT accrued will be carried forward to subsequent tax periods during the statute of limitation.

Economic benefits not recognised as income for CIT purposes

- Income not subject to CIT has been included in a separate draft Tax Code article "Economic Benefits not Recognised as Income for CIT Purposes"

Deductions

- The following expenses accrued and paid by taxpayers are deductible:
  - State Social Insurance Fund contributions;
  - Social Medical Insurance Fund contributions;
  - obligatory employer pension contributions paid in favour of an employee.
- A deduction is recognized as losses from the sale of an enterprise as a property complex is deductible. In this respect, under the draft Tax Code, the carrying amount of inventories transferrable under the property complex purchase agreement is not deductible.
- The refund of business trip expenses incurred by board of directors or other management body members are deductible.
- Expenses recognised as a bribe and/or other illegal material benefit by a court ruling or resolution to terminate a criminal case for reasons other than exoneration are non-deductible.
- The draft Tax Code defines income and deductions on long-term contracts, as well as the expiry date of long-term contracts, which is the later of the following dates, as:
  - the signature date of a certification of completion of the final stage of or all contractual work;
  - the signature date of an act of acceptance.
- The income of a taxpayer contractor under a long-term contract is determined, at its discretion, using the operating method or the completion method for each long-term contract.

Decrease in taxable income

- Taxpayers will be entitled to reduce taxable income by double the value of expenses:
  - for scientific research, research and technology and/or development work to create industrial property, including work for which a document of title exists;
  - to acquire exclusive rights to intellectual property from higher education and/or post-graduate organisations, academic organisations and start-up companies under license agreements or assignment agreements to commercialise the results of scientific and/or academic activities.
- This subpoint is applicable if the work and/or results of scientific and/or academic activities in question are used in Kazakhstan, confirmation of which is an act of implementation in the format determined by the authorised body for science and agreed with the authorised bodies for the relevant sectors.

- Taxpayers will be entitled to reduce taxable income by 50% of lease agreement interest (but no more than 50% of taxable income for the reporting tax period before the reduction).
- From 2030, taxpayers will not be able to reduce taxable income by interest on state emission securities; and capital gains income from the sale of emission securities, decreased by losses from the sale of state emission securities.

Personal income tax (PIT)

The draft Tax Code reduces the PIT rate on dividends, cancelling current concessions.

- Under the current Tax Code, provided the conditions are met, dividend income is exempt from PIT through the application of an adjustment:
  - if on the date of accrual, the dividends in question are officially listed with exchanges operating in Kazakhstan;
  - dividends received from a resident legal entity for the calendar year are within 30,000 times the MCI, if the conditions are met.

As such, the above adjustments have been removed, and dividend income will be subject to PIT at 5% instead of 10%.

The procedure for taxing the income of individuals on securities' operations with respect to the netting-out of positive and negative value increments has been revised.

- Under the current Tax Code, capital gains on property is determined as any positive difference between the selling and purchase price, and in the absence of a purchase price – the property selling price.
- If the draft Tax Code remains unchanged, capital gains from the sale of securities will be calculated as the sum of positive and negative differences between the sales price and initial cost of securities.

Changes will be made to the application of tax deductions for PIT purposes.

- The new version of the Tax Code simplifies and structures the system of tax deductions, focusing on basic and social deductions. The definitions and categories of entities eligible for deductions have been simplified.
- The draft Tax Code introduces tax deductions for social payments (obligatory pension contributions and obligatory social medical insurance contributions), the basic tax deduction and social tax deductions. The basic tax deduction will be 30 times the MCI per month, with a limit of 360 times the MCI per year, instead of 14 times the MCI per month.

Pension payments will be exempt from PIT.

- Currently, pension payment from the Joint Stock Company "Unified Accumulative Pension Fund" are subject to PIT.
- To reduce social tension and preserve pension amounts, a proposal has been made to exempt the payments from PIT, except in those cases when the holder leaves Kazakhstan and in cases of inheritance.
- Changes have also been made to articles 319 "Annual Income of Individuals" and 341 "Income Adjustments". The changes are editorial in nature, creating breakdowns by category and type of income, payment and other economic benefits, which are not recognised as income for PIT purposes.

Social tax

- **New social tax rate of 6%**

The draft Tax Code also stipulates a new social tax rate of 6%, which is a reduction on the previous rate of 9.5%.

- **Social tax does not decrease by the sum of social contributions calculated.**

The draft Tax Code specifies that social tax does not take into consideration social contributions due to the State Social Insurance Fund, meaning that the difference between social tax calculated does not impact the amount of social tax due for payment.

Subsoil use

General provisions and CIT

- Subsoil user income from transferring hydrocarbons to execute tax obligations in kind, under article 230 of the draft Tax Code, will be included in aggregate annual income. Both the draft and current versions of the Tax Code allow subsoil users to deduct the cost of hydrocarbons transferred to pay taxes (article 260 of the draft Tax Code).
- Transactions not treated as income for CIT purposes are now listed in article 231 of the draft Tax Code "Economic Benefits not Recognised as Income for CIT Purposes". Income from writing off a recipient's liabilities on behalf of the State and arising in connection with the sale of hydrocarbons received from the subsoil user against taxes in kind has been removed.
- A new definition of the "production start date after a hydrocarbon discovery" has been introduced as the calendar day on which under a subsoil user contract:
  - the authorised body for subsoil study approved reserves and production operations are being carried on;

- – hydrocarbon production is caried out after the authorised body for subsoil study had approved mineral resources.

  For solid minerals, the start of production after a discovery is to be determined by subsoil users at their own (article 297 of the draft Tax Code).

- – Previously unused cost elements have been added to exploration and development expenses under the draft Tax Code.

- A number of terms and provisions have been introduced to clarify the specifics behind a transition from the exploration to production stage, as well as the carry forward and tax accounting of costs accrued by subsoil users by the moment of transition. The new terms include “transferrable expenses”, “continuing contract”, “other contract” and “approved reserves” (article 297 of the draft Tax Code). A procedure for creating a group balance and amortising it with respect to exploration and/or development expenses (articles 299-303 of the draft Tax Code) has been introduced. New provisions on the procedure for deducting expenses before the start of production after a subsoil use contract has been signed (article 304 of the draft Tax Code) and in the absence of a continuing contract (article 305 of the draft Tax Code) have been introduced. Article 306 establishes provisions for deducting geological surveying, exploration and development work for natural resource production expenses, and other deductions for taxpayers operating under a contract with exploration and/or development expenses.
- The following costs have been determined as non-deductible under article 309 of the draft Tax Code:
  - – additional payments made by subsoil users operating under a production sharing agreement;
  - – expenses incurred for the sale of mineral resources transferred by a subsoil user to execute a tax liability in kind;
  - – the cost of mineral resources transferrable by a subsoil user to execute a tax liability in kind, – from the recipient on behalf of the State;
  - – the cost of mineral resources transferrable by a subsoil user to execute a tax liability in kind.
- The list of entities exempt from making CIT advance payments has been extended by subsoil users developing onshore gas projects in accordance with subsoil and subsoil use law (article 339 of the draft Tax Code).
- The scope has been expanded and the procedure for executing capital gains tax liabilities from a sale of property in Kazakhstan has changed (article 674 of the draft Tax Code). The main criterion in this article remains the share of a resident entity’s property in the cost of the asset being sold (shares or interest), but the procedure for calculating it will now be governed by the State Revenue Committee.
- Provisions have been added detailing the specifics of taxing subsoil users with complex projects (article 729 of the draft Tax Code), along with a 100% reduction of CIT for subsoil users with complex onshore gas projects (article 730 of the draft Tax Code).
- Articles 731 and 732 govern the taxation of entities that have signed agreements to process solid mineral resources. The same entities will be eligible for concessions similar to those in investment agreements, i.e. a 100% CIT reduction, and land and property tax exemptions.
- Article 773 of the draft Tax Code treats the following expenses as contractual activities:
  - – taxpayer expenses to conclude a subsoil use contract and acquire subsoil use rights, which were incurred before the contract conclusion date, except for subscription bonuses paid
  - – expenses transferred to non-contractual tax accounting from a contract with exploration and/or development expenses.

Subscription bonus

- The provision establishing a minimum subscription bonus when expanding a contract territory with unvalidated reserves for mineral raw material, common mineral resource, underground water and therapeutic mud contracts has been withdrawn (article 748 of the draft Tax Code).
- Subscription bonus payment deadlines have been amended (article 751 of the draft Tax Code).

MET on hydrocarbons

- The volume of sour gas flared in those cases stipulated by subsoil and subsoil use law has been highlighted separately for MET purposes. Sour gas will be treated as flared up to the amounts permitted for flaring, while its value will be determined based on the production cost per unit, increased by 20% (articles 761 and 763 of the draft Tax Code).
- The procedure for determining the global oil price has been changed to using the actual selling price for each batch of oil, as per transfer pricing law. The procedure contains instructions on how to apply the average market currency exchange rate for the tax period and convert metric tonnes into barrels (article 763 of the draft Tax Code).
- The MET rate on oil for each level has been increased by 0.5% and now varies depending on production levels

between 5.5% and 18.5% (article 765 of the draft Tax Code).

- Provisions dealing with MET rates for oil maintain a reference to government decisions regarding low-return fields, but no longer mention high-viscosity, flooded, marginal and depleted fields (article 765 of the draft Tax Code).

MET on mineral resources, except for common mineral resources

- Subsoil users will now submit quarterly information on the physical volume of mineral resources or solid mineral resources produced for the previous (reporting) quarter to the authorised body for subsoil study and use by the 15th of the second month following the reporting quarter, in the established format. (The current Tax Code requires information be provided annually by 30 April of the year following the reporting year.)
- MET will be charged on uranium based on a progressive scale (article 768 of the draft Tax Code):

No.	Annual production level	Rate, %
1.	up to 500 tonnes inclusive	4%
2.	up to 1,000 tonnes inclusive	6%
3.	up to 2,000 tonnes inclusive	9%
4.	up to 3,000 tonnes inclusive	12%
5.	up to 4,000 tonnes inclusive	15%
6.	over 4,000 tonnes	18%

At the same time, if the weighted average price of natural uranium concentrate (U3O8) exceeds prices in the table below, the MET rate shown above will be increased as follows:

No.	Weighted average price of natural uranium concentrate (U_3O_8)	Rate, %
1.	over 70 USD/pound	0.5%
2.	over 80 USD/pound	1.0%
3.	over 90 USD/pound	1.5%
4.	over 100 USD/pound	2.0%
5.	over 110 USD/pound	2.5%

- Point 3 of article 768 of the draft Tax Code introduces the term “commercial production” to mean the production stage of solid mineral resources. Subsoils users should notify the authorised body when transitioning to commercial production, indicating the month and year it started, by the 15th business day after transition. At the same time, 0% MET, as stipulated by point 3 of article 768 of the draft Tax Code, does not apply to fields (group of fields under one subsoil use contract, or field section) that have been split off from a production contract (production license) or a joint exploration and production contract (during the production period).
- Article 769 determines the specifics for applying 0% MET on fields, a group of fields under a single subsoil use contract and field sections included in a government list.
- Article 770 sets out the procedure for applying a 0.1 reduction factor to MET on solid mineral resources extracted from manmade mineral formations.
- Furthermore, article 771 allows taxpayers to apply the MET rate for metamorphic rock on manmade mineral formations used by subsoil users for own production needs or for sale without extracting mineral resources from them. The proposed rate is 0.02 MCI per tonne (article 775 of the draft Tax Code).

MET on common mineral resources, underground water and therapeutic mud

- The draft Tax Code also establishes that if mineral raw materials and/or mineral resources produced from off-balance reserves are sold, MET is paid at the taxpayer’s location by the 25th of the month following the tax period in which the mineral raw materials and/or mineral resources produced from off-balance reserves were sold.

Alternative tax

- Subsoil users who have signed hydrocarbon production or exploration and production contracts at fields recognised as depleted according to subsoil and subsoil use law will be entitled to apply the alternative tax instead of making historical cost compensation payments and paying MET and excess profits tax (point 1 of article 793 of the draft Tax Code).

International taxation

- The term “royalties” has been expanded to cover:
  - the use of or right to use software, including services to update software versions;
  - the use of or right to use trade, scientific research and/or industrial equipment, including sea vessels, aircraft, server equipment, including space for equipment (hosting).

- The term “related projects” has been expanded to cover a non-resident’s creation of a permanent establishment when providing services or performing work in Kazakhstan. “Related projects” include “similar” contracts (agreements), which are those whereby a non-resident or a related party provide services and/or perform work:
  - with a similar nature or purpose;
  - with similar content;
  - using the same technology;
  - linked to the same infrastructure;
  - using the same resources (equipment, employees or infrastructure);
  - that are identical or homogenous.
- The draft Tax Code also contains the terms “identical work or services”, “similar work or services” to determine the interrelatedness of contracts (agreements) within the framework of a non-resident’s creation of a permanent establishment.
- Furthermore, if a buyer of goods, work or services is located in Kazakhstan, a non-resident operating in Kazakhstan under a joint venture agreement will create a permanent establishment.
- Provisions have been added governing the procedure for interacting with the competent bodies of those foreign countries with which Kazakhstan has signed international treaties.
- Provisions have been added around the application of international treaties, whereby concessions do not apply to income or equity received from operations performed under a treaty or a transaction, for which, factoring in all facts and circumstances, a conclusion has been reached that the receipt of international treaty concessions was one of the main goals (which directly or indirectly led to the concessions) for concluding the treat or transaction, and the concessions do not comply with the objectives and aims of the international treaty.
- The requirement to tax the income of non-residents from services and work performed, dividend income, interest, royalties at the nominal rate of at least 15% to apply international treaty concessions has been withdrawn. At the same time, the receipt of international treaty concessions cannot be one of the main goals for concluding a treaty or transaction.
- The following concessions around the taxation of non-resident income have been withdrawn:
  - the exemption from capital gains tax on the sale of shares or a participation interest after a three-year ownership period, provided certain conditions are met;
  - the reduced 10% WHT rate on dividends if shares or a participation interest have been held for over three years, provided certain conditions are met;
- The following concessions have been included:
  - 5% WHT on dividends payable to non-residents, directly or indirectly holding at least 25% of the equity of a resident legal entity paying dividends;
  - 10% WHT on loan and debt security interest.

Special tax treatment

The number of special tax treatment cases has been reduced, while the procedure for applying them has been simplified.

- The special tax treatment for self-employed individuals, including:
  - the “platform employment” special tax treatment;
  - the patent special tax treatment;
  - the special tax treatment using a special mobile application;

    Eligible individual entrepreneurs do not have to be registered, file reports or suspend activities. The draft Tax Code PIT rate is 0% instead of the current 1%. Social payments are calculated in accordance with the Social Code and Obligatory Social Medical Insurance Law. The maximum income level is 340 MCI.
- The special tax treatment for small businesses;

  The procedure for calculating and paying CIT or PIT, except for taxes withheld at the source, has been simplified, combining the current simplified return rate which is 3%, and the 4% retail tax rate with an opportunity to reduce it to 50% in line with a Maslikhat decision. Income for the tax period should not exceed 135,000 times the MCI, while employee headcount is unlimited. Previously, permission was required to apply the retail tax special tax treatment. This has been replaced by a list of entities not entitled to apply the retail tax. The rate is 2% for B2C and 8% for B2B.
- Special tax treatment for household farms or farms.

  The current taxation treatment remains unchanged. PIT will be paid instead of the single land tax.

Tax concessions

- The draft Tax Code introduces the term “concessions” as a tax exemption for specific categories of taxpayers, giving them the right to a full or partial tax exemption, reducing their tax burden.
- To track the performance of concessions, at the end of the year, the authorised body will submit an analytical report to Parliament analysing how tax concessions have been used, their impact on budget revenue, the national economy, social development and investment activity. A decision will be taken after analysis on the further use of tax concessions or whether they should be adjusted.
- Concessions will be reflected in tax reporting forms.
- For “Astana HUB” participants, concessions take the form of at least 90% of aggregate annual income from the sale and performance of priority telecommunications activities.

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