



Tax Alert

Overview of tax law changes that have the potential to affect your business

Dear friends,

In this Alert we provide an overview of recent amendments to Code No. 120-IV *On Taxes and Other Obligatory Payments to the State Budget* (hereinafter, the "Tax Code") with respect to the implementation of pilot projects on VAT administration.

Tax administration

Law No. 241-VI *On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding on Business Environment Development and Trade Regulation Issues* dated 2 April 2019 has introduced an additional provision (Article 68.1-1 of the Tax Code) allowing the tax authorities to implement pilot projects establishing different tax

administration and tax obligation execution procedures for taxpayers.

The relevant authority will determine the categories of taxpayers subject to the pilot project; the rights and obligations of taxpayers, tax and other competent authorities; as well as the organisations, territory (area) and/or region where the pilot projects will be implemented, and the rules and terms for their implementation.

* *The provision entered into force on 14 April 2019 (10 calendar days after its first official publication in "Kazakhstanskaya Pravda" dated 3 April 2019 No. 63 (28940))*

The first pilot projects for which implementation rules and terms have been approved are:

- VAT Administration based on EFS software using risk management system¹
- VAT refunds to foreign nationals under a "Tax Free" programme²

VAT Administration based on ESF software using risk management system

The **participants** in the pilot project are:

- VAT payers classified as high risk according to a risk management system
- taxpayers (counterparties) receiving goods, works and services according to ESF software issued by high-risk VAT payers
- state revenue authorities

The tax authorities will update a list of taxpayers classified as high risk on a weekly basis.

Rights of the tax authorities

Within one business day of classifying a taxpayer as high risk, the tax authorities are entitled to send:

1. a notification via Taxpayer's Cabinet indicating the issued e-invoices in question
2. an alert message to the taxpayer in ESF software of its high-risk classification, as well as a reminder that failure to execute the notification will result in ESF software access restrictions
3. an announcement (via Taxpayer's Cabinet) to the taxpayer (counterparty), the recipient of goods, works or services

While implementing the pilot project, the state revenue authorities are entitled to:

- 1) carry out an in-house review *before the tax reporting period expires*
- 2) request pilot project participants to provide documents confirming that the transaction took place

Thus, the tax authorities have the right to manage VAT payers through ESF software in real time (before receiving VAT tax reports).

Obligations of VAT payers

With respect to the above, the taxpayer must:

1. execute notifications sent within the established procedures
2. at the request of the state revenue authorities, provide copies of documents confirming that the transaction took place

Notification sent within the framework of the pilot project should be executed within five business days from the date they are delivered (received). Execution of the notifications is recognised as:

1. the recall (withdrawal) of an issued e-invoice, if the taxpayer agrees with violations referred to in the notification
2. an explanation letter, together with copies of documents confirming the transaction took place, if the taxpayer disagrees with the violations referred to in the notification

The state revenue authorities will analyse recalled/withdrawn e-invoices and explanations provided within five business days of notification execution.

Explanation letter requirements

Explanation letters prepared in response to a notification should contain:³

- a signature date
- the full name (if given in the identification document) of the person submitting the explanation, his/her place of residence (location)
- a taxpayer identification number (tax agent)
- the name of the tax authority that sent the notification
- the notification number and date
- if applicable, evidence confirming that the individual submitting an explanation disagrees with the notification

¹ Order No. 1084 of the First Deputy Prime Minister approving the Rules and Deadlines for implementing Pilot Projects to improve Value Added Tax Administration through an Electronic Invoice Reporting System using a Risk Management System dated 3 October 2019

² Order No. 871 of the Acting Minister of Finance approving Rules and Deadlines for implementing Pilot Projects to

compensate Value Added Tax to Foreign Nationals when exporting Goods to outside the Eurasian Economic Union Customs Territory, with the Exception of exporting Goods through the Territory of Eurasian Economic Union Member States (Tax Free Pilot Project), dated 13 August 2019

³ Article 96.2 of the Tax Code

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If specific documents are cited in an explanation as evidence of disagreement with notification, copies of such documents should be attached to the explanation letter (except for tax report).

Access to ESF software is restricted if:

1. the above information is missing from an explanation within one business day of the completion of an analysis of the explanation
2. a notification is not executed within one business day of the expiry of the notice period

If a notification was executed, the state revenue authorities will cancel ESF software restrictions within three business days of the execution date.

The state revenue authorities will monitor the execution of issued notifications continuously.

** The order will enter into force on 18 October 2019 (10 calendar days after its first official publication date) and is valid until 1 July 2021*

VAT refund to foreign nationals under a "tax free" programme

According to the new "tax free" pilot project, foreign nationals are entitled to receive VAT refund on goods purchased and exported to countries outside the Eurasian Economic Union ("EEU") (except for exports through EEU member states).

Products eligible for the "tax free" system should be:

1. purchased from "tax free" retail locations in Essentai Mall, 77/8 Al-Farabi Avenue, Almaty 050040 or Almaty International Airport
2. not edible
3. non-excisable goods in accordance with tax law
4. worth more than 20 MCI⁴ (approximately 260 USD)

The **participants** in the pilot project are:

1. businesses entities trading in Essentai Mall and registered as VAT payers (the "Business Entity")
2. the "tax free" system operator - Global Blue (the "Operator")
3. the state revenue authorities

The purchase procedure

The Business Entity uses cash register receipts issued during one calendar day to complete a "tax free" document to the buyer. The Business Entity may request identification (passport) from the buyer to issue a "tax free" document.

The "tax free" document is filled out on the form determined by the Operator and should include the following information:

1. the issue number and date
2. the Business Entity's name, identification number, its address or the address of a subdivision (if it operates through a subdivision)
3. the number and date of the cash register receipt issued by the Business Entity to the buyer
4. the cost of goods sold, including VAT
5. the VAT calculated by the Business Entity on the goods sold
6. the VAT amount for refund, net of Operator commission
7. the buyer's passport series, number and issue date
8. the buyer's full name in Latin script (as per the identification document (passport))
9. the name of the country issuing the individual's identification document (passport), in Latin script (as per the identification document (passport))
10. a bar code to identify the "tax free" document in the Operator's data system

Two copies of the "tax free" document are issued automatically by Operator software:

- 1) one copy remains with and is archived by the Business Entity
- 2) the buyer sends the second copy to the Operator, once the goods have been inspected by the state revenue authorities and passport control officials at Almaty International Airport

Customs inspection of goods for export

Before passing the Kazakhstan state border checkpoint in Almaty International Airport, the buyer should present the following for customs inspection:

- purchased goods
- "tax free" documents
- cash register receipts issued to the buyer;
- an identification document (passport) and
- a boarding pass

The state revenue authority representative visually inspects the goods and, if the information in the "tax free" documents reconciles with the goods, he/she

⁴ Monthly Calculation Index - KZT 2,525 for 2019

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stamps the "tax free" documents with inspection mark (personal number seal).

After the inspection procedure, the buyer sends the stamped "tax free" document to the Operator using the "tax free" special mailbox located in the air side (landing) area of Almaty International Airport, or by any other delivery method specified by the Operator (mail, etc.).

VAT refund procedure and terms

The Operator will refund VAT to the buyer (on its bank account, credit card or mobile wallet account) if:

- 1) the foreign country is not an EEU member state
- 2) the buyer has provided a duly documented "tax free" document with inspection mark (personal number seal) of the state revenue authority;
- 3) the total value of the goods purchased and recorded in the "tax free" document exceeds 20 MCI
- 4) the buyer is exporting the goods outside of the EEU (except for goods exported through an EEU member state) across the Kazakhstan state border checkpoint in Almaty International Airport
- 5) less than three months will have passed from the month after the "tax free" document execution date

The buyer's **VAT refund amount** is calculated as VAT paid to the Business Entity for purchases, less the Operator's service fee.

Operator obligations

The Operator on a monthly basis:

- reconciles and issues invoices separately for each Business Entity, indicating VAT for refund based on "tax free" documents that have passed a customs inspection
- submits to the state revenue authorities details of VAT refunds paid by the 15th of the month following the reporting period

Local tax implications

The Business Entity reimburses the Operator for VAT paid to buyers, and from a tax standpoint:

- VAT refunds are not recognised as the Business Entity's turnover on the sale of goods, works or services subject to VAT
- the Operator's service fee (commission) is recognised as the sale of goods, works or services exempt from VAT in Kazakhstan

- Based on the register in the "tax free" system, the Business Entity may claim a credit for VAT paid to the Operator (in the tax period in which the VAT is paid)
- the Business Entity maintains ring-fencing rules for sales for which VAT is to be compensated under the "tax free" system from its other sales

** The order entered into force on 25 August 2019 (10 calendar days after the day of its first official publication) and applies to legal relations arising from 15 August 2019, and is valid until 1 July 2022*

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How Deloitte can help:

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

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