

TAX ALERT

on main changes and amendments to the Tax Code effective 2017

GRATA law firm provides you with a brief tax alert on main changes and amendments to the Code of the Republic of Kazakhstan on taxes and other obligatory payments to the budget (the Tax Code) effective 2017.

1. GENERAL PROVISIONS

Market exchange rate of currency	The definition of 'currency market exchange rate' was clarified and now defined as a rate of tenge to a foreign currency determined in the order established by the National Bank of Kazakhstan jointly with the competent state authority performing regulation of activity in accounting and financial statement area.	subpara.10 of para.1 of Art.12 of the Tax Code	effective 1 January 2017
Average market exchange rate of currency for a period	The 'average market exchange rate of currency for the period' was defined as a rate determined under the following formula: $R = \frac{R_1 + R_2 + \dots + R_n}{n}$ R - average market exchange rate of currency for the period; R ₁ , R ₂ .., R _n - daily market exchange rate of respective currency determined on the last business day preceding each day of the period within the period; n – the amount of calendar days in the period.	subpara.10-2 of para.1 of Art. 12 of the Tax Code	effective 1 January 2017
Tax audit report upon liquidation of a taxpayer	The maximum threshold of the total amount of aggregate annual income of legal entities or individual entrepreneurs under liquidation which are entitled on a tax audit instead of the documentary tax audit was increased from 60 000 MCI to 120 000 MCI.	subpara. 1 of para.1 of Art. 37-2 of the Tax Code	effective 1 January 2017

2. CORPORATE INCOME TAX

Aggregate annual income	The introduced changes extended the list of income not recognized as income for tax purposes. Now the following is not recognized as income: <ul style="list-style-type: none">• (4-1) the amount of penalties and fines written off in accordance with the tax law of Kazakhstan;• (11) for the recipient on behalf of the state – the cost (in monetary term) of minerals received from the taxpayers as performance of the tax obligation on payment of taxes in kind;• (12) income from sale of minerals received from the taxpayers as performance of the tax obligation in kind by the recipient on behalf of the state or a person entitled on behalf of the state on performance of such sale;• (13) commission fee of the recipient on behalf of the state consisting of reimbursement of expenses related to the sale of minerals received from the taxpayers as	subpara. 2 of Art. 84 of the Tax Code	subpara. 4-1 – effective 1 January 2015 subpara. 11, 12, 13 – effective 1 January 2016 subpara.14 – effective 1 January 2017
--------------------------------	---	---------------------------------------	--

performance of the tax obligation in kind;

- (14) income starting from writing off up to commercial discovery in the exploration period performed by the strategic partner in respect of obligation of a national subsoil company or a legal entity which shares (participant shares in the share capital) directly or indirectly belong to such national subsoil company, investment financing fee pursuant to the Law of Kazakhstan 'On subsoil and subsoil use' – in the amount of fee which was accrued but not paid and was subject to accounting for the purposes of formation of a separate group of fixed assets pursuant to Art. 111 of the Tax Code.

Income from reduction of created provisions (reserves)

The list of cases not giving rise to income from reduction of created provisions (reserves) was extended. Now the following cases are not giving rise to income from reduction of created provisions (reserves):

subpara. 2 of Art. 90 of the Tax Code

effective 1 January 2016

- 1) reduction of claim against the debtor due to waiver granted by the taxpayer, entitled to deduct the expenses on creation of provisions (reserves) in accordance with para. 1 of Art. 106 of the Tax Code, in respect of the bad debts on credits (loans) and interest thereto within the maximum size of ratio of the total amount of the waived bad debts on credits (loans) and interest thereto for the tax period to the principal debt on credits (loans) and interest thereto at the beginning of the tax period. The maximum size of this ratio is equal to the coefficient of 0.1;
- 2) reduction of claim against the debtor on mortgage residential loan (mortgage loan) subject to refinancing under the program of refinancing of mortgage residential loans (mortgage loans) approved by the National Bank of Kazakhstan due to waiver granted by the taxpayer, entitled to deduct the expenses on creation of provisions (reserves) in accordance with para.1-3 of Art. 106 of the Tax Code, in respect of the bad debts on credits (loans) and interest thereto within the maximum size of ratio of the total amount of the waived bad debts on credits (loans) and interest thereto for the tax period to the principal debt on credits (loans) and interest thereto at the beginning of the tax period. The maximum size of this ratio is equal to the coefficient of 0.1.

Adjustment of aggregate annual income

Now the taxpayer's aggregate annual income excludes income of organization performing obligatory guaranteeing of individuals' deposits received as a result of allocation of special reserve assets as well as in form of a penalty applicable to the second-tier banks for failure to perform or improper performance of obligations under the accession agreement in accordance with the Law of Kazakhstan 'On obligatory guaranteeing of deposits allocated at the second-tier banks of the Republic of Kazakhstan'.

Such income adjustment is applicable upon condition that this income is aimed at increase of the special reserve.

subpara. 1 of Art. 99 of the Tax Code

effective 1 January 2017

Deduction of contributions to reserve funds

The amendment introduced extension of the provisions of subpara. 1-1 of Art. 106 of the Tax Code providing for the right of the banks to deduct the expenses on creation of provisions (reserves) against doubtful and bad assets provided to the organization managing doubtful and bad assets.

Moreover, the introduced changes provide for the right of the banks to deduct the reserve funds contributions including the credits granted after 1 January 2012.

subpara. 1-1 of Art. 106 of the Tax Code

effective 1 January 2017 till 1 January 2027

Non-deductible expenses

The list of non-deductible expenses was extended. Now the expenses related to the sale of minerals transferred by the taxpayers as performance of the tax obligation on payment of taxes in kind cannot be deducted.

Art. 115 of the Tax Code

effective 1 January 2016

3. VALUE ADDED TAX

Sales turnover

The list of cases not recognized as sales turnover for VAT purposes is extended, namely:

- transfer of minerals to the recipient on behalf of the state performed by the taxpayers as performance of the tax obligations on payment of taxes in kind;
- sale of minerals transferred by the taxpayers as performance of the tax obligations on payment of taxes in kind, the recipient on behalf of the state or the person authorised on such sale by the recipient on behalf of the state;
- rendering of services on the sale of minerals transferred by the taxpayers as performance of the tax obligations on payment of taxes in kind, the recipient on behalf of the state or the person authorised on such sale by the recipient on behalf of the state for commission fee in form of reimbursement of expenses related to the sale of such minerals.

para. 3 of Art. 231 of the Tax Code

effective 1 January 2016

Date of sales turnover

Para. 2-3 and para. 8 of Art. 237 of the Tax Code were excluded. These paragraphs were excluded in order to simplify the determination of the sales turnover date when renting the property and accepting the advance payment for works and services.

Art. 237 of the Tax Code

effective 1 January 2017

VAT taxation of sale of petroleum, oil and lubricants performed by airports

The amendment introduced the reduction of the list of documents in support of zero-rate turnover confirming petroleum, oil and lubricants fueling of aircrafts of the foreign air companies performing international flights. In particular, exclusion of the copies of transportation (carriage), commercial and (or) documents stamped by the customs authority confirming petroleum, oil and lubricants fueling of aircrafts of the foreign air companies performing international flights.

para. 3 of Art. 244-1 of the Tax Code

effective 1 January 2017

Invoice

The following taxpayers are obliged to issue electronic invoices:

- Effective 1 January 2016:
 - authorised economic operators;
 - customs representatives;
 - customs carriers;
 - owners of the temporary storage warehouses;
 - owners of the customs warehouses.
- Effective 11 January 2016 taxpayers selling at the territory of Kazakhstan or outside Kazakhstan the goods which list is approved by the Decision of the Council of the Eurasian Economic Commission No. 59 dated 14 October 2015;
- Effective 1 January 2018 large taxpayers subject to

para. 2 of Art. 263 of the Tax Code

gradually

monitoring;

- Effective 1 January 2019 all VAT payers.

The list of cases, when invoice issue is not required, is extended. Now it is not required to issue invoices when performing settlements via payment terminals.

para. 15 of Art. 263 of the Tax Code

effective 1 January 2017

4. EXSICE TAX

Excise tax rates

The excise tax rates in respect of the following goods were changed:

para. 4 of Art. 280 of the Tax Code

effective 2 January 2017

from 2207	Undenatured ethyl alcohol with an alcohol concentration of 80 percent by volume or more, sold or used for the production of alcoholic beverages	0 tenge/litre
2208	Alcoholic beverages (except for cognac, brandy, wine, wine material and beer)	2550 tenge/litre 100% alcohol
2203 00	Beer and beer beverages	57 tenge/litre
from 2402	Filter cigarette	8700 tenge/1000 pieces
from 2402	Non-filter cigarette, mouthpiece cigarettes	8700 tenge/1000 pieces

5. TAXATION OF SUBSOIL USERS

Deduction of expenses on exploration and preparation works on extraction of natural resources and other deduction of subsoil users

Upon determination of taxable income of a subsoil user within the subsoil use agreement the investment financing fees accrued and not paid in accordance with the Law of Kazakhstan 'On subsoil and subsoil use' are not accounted.

para. 2 of Art. 111 of the Tax Code

effective 1 January 2017

Rent tax object

Export sale of minerals received by the state in form of taxes paid in kind is not recognized as the rent tax object. This amendment was introduced in order to exclude accrual of the tax on tax.

Art. 301 of the Tax Code

effective 1 January 2016

Performance of tax obligation on royalty and share of Kazakhstan on production sharing

A new Art. 308-2 is added to the Tax Code which provides for procedure of performance of obligations on royalty and share of Kazakhstan on in kind production sharing. Pursuant to the introduced changes obligations on royalty and share of Kazakhstan in monetary form may be replaced on in kind form upon compliance with the following conditions:

Art. 308-2 of the Tax Code

effective 1 January 2016

- 1) the agreements on production sharing, the subsoil use agreement provide for transfer of the minerals as performance of the tax obligation in kind by the taxpayers;
- 2) the decision of the Government of Kazakhstan determined the recipient on behalf of the state of the minerals transferred by the taxpayers as performance of the tax obligation on payment of tax in kind.

Principles of conducting separate tax accounting on subsoil use agreements	A new para. 6-1 is added to Art. 310 of the Tax Code which stipulates that income from writing off of the principal obligation on investment financing is related to contractual activity.	para. 6-1 of Art. 310 of the Tax Code	effective 1 January 2017
	Para. 10 of Art. 310 of the Tax Code also stipulates that upon selling of gas to the national operator, within the framework of pre-emptive right of the state, at the prices established by the competent authority income of the subsoil user is determined in accordance with the provisions of Art. 86 of the Tax Code.	para. 10 of Art. 310 of the Tax Code	effective 1 January 2017
Payers of commercial discovery bonus	The introduced amendment clarified the definition of 'declaration of commercial discovery'. For taxation purposes declaration of commercial discovery means an approval of mineral reserves by the competent authority on the respective contractual territory.	Art. 318 of the Tax Code	effective 1 January 2017
Payments on reimbursement of historical expenses	<p>The introduced amendment clarified the order of payment on reimbursement of historical expenses. Now the amount of historical expenses incurred by the state in respect of geological study of the contractual territory and exploration is to be paid to the budget:</p> <ul style="list-style-type: none"> • in form of the payment on reimbursement of historical expenses in the amount established by non-disclosure agreement net of fee for acquisition of geological information owned by the state; • in form of the payment for acquisition of geological information owned by the state in the amount established by non-disclosure agreement. 	para. 1 of Art. 327 of the Tax Code	effective 1 January 2017
The order of mineral extraction tax payment	The amendments were introduced due to introduction of a procedure of obtaining royalty and share of Kazakhstan on in kind production sharing in accordance with the provisions of Art. 308-2 of the Tax Code.	Art. 346 of the Tax Code	effective 1 January 2016

6. TAXATION OF NON-RESIDENTS

Document confirming tax residency	<p>Now the Tax Code allows non-residents to provide the hard copies of electronic documents confirming tax residency along with the original or notarized copies.</p> <p>Non-residents are exempted from obligation to legalize the documents confirming tax residency in case these documents are placed on the web-source of the competent authority of the foreign state.</p>	para. 4 and para. 5 of Art. 219 and para. 4 and para. 5 of Art. 208, para. 3 of Art. 212, para. 5 of Art. 212-1, para. 4 of Art. 212-2, para. 1 of Art. 213, para. 1 of Art. 214, para. 1 of Art. 215 of the Tax	effective January 2017
--	--	--	------------------------

Code.

Incorporation documents of non-residents

The Tax Code extended the list of documents which could be provided as documents confirming registration of non-resident - legal entity. Now in case the foreign state legislation does not provide for incorporation or similar documents, then the non-resident may provide a document (an act) of the foreign state which served as a basis for creation of the non-resident which validity is confirmed by the competent authority of the foreign state.

Please note that the documents confirming registration of a legal entity are provided in case the income for performed works or rendered services is subject to full tax exemption in Kazakhstan on the basis of the respective double tax treaty.

para. 4 of Art. 212, para. 1 of Art. 219 of the Tax Code.

effective January 2017

7. TAX ADMINISTRATION

Obligatory VAT registration

The taxpayers are subject to obligatory VAT registration in case their minimum sales turnover amounts to:

- 30000-fold MCI. This requirement is in effect from 1 January 2017 to 1 January 2018;
- 25000-fold MCI. This requirement is in effect from 1 January 2018 to 1 January 2019;
- 20000-fold MCI. This requirement is in effect from 1 January 2019 to 1 January 2020;
- 15000-fold MCI. This requirement is in effect from 1 January 2020.

para.5 of Art.568 of the Tax Code

effective 1 January 2017

Voluntary VAT registration

The taxpayers recognized as inactive or suspended tax reporting are prohibited to voluntarily register as VAT payers.

subpara. 3-1 of para. 3 of Art. 569 of the Tax Code

effective 1 January 2017

VAT de-registration

Introduction of the additional grounds on VAT de-registration of the taxpayer without notification of the taxpayer due to recognition of re-registration of the legal entity as invalidate on the basis of the effective court decision. This amendment does not spread on the subsoil users and the operator performing activity within the production sharing agreements.

para.5-1 of Art.571 of the Tax Code

effective 1 January 2017

VAT de-registration

The provision regarding VAT de-registration due to failure to indicate sale or acquisition for 2 consecutive tax periods is excluded.

subpara.6 of para.4 of Art.571 of the Tax Code

effective 1 January 2017

Registration as taxpayer performing certain types of activity

The procedure of registration as a taxpayer performing certain types of activity in respect of excisable goods is turned into the notification procedure. The notification is provided within 3 business days prior to commencement of such activity.

para.4 of Art.574 of the Tax Code

effective 1 January 2017

Registration as individual entrepreneur (IE)	Effective 1 January 2017 registration of individual as the IE is turned into the notification procedure. Art. 37 was excluded from the Entrepreneurial Code and now IE is not required to register. The notification shall be submitted to the state revenue authorities and the State corporation 'Government for citizens' within 10 business days upon changing of the registration data. In its turn the state revenue authorities shall perform re-registration within 1 business day.	para.1 of Art.565 of the Tax Code	effective 1 January 2017
---	---	-----------------------------------	--------------------------

8. TAX CONTROL

Tax inspection	Now the witnesses must be involved in performance of tax inspection by the state revenue authorities. Earlier involvement of witnesses in tax inspection was not obligatory.	para. 1 and para. 5 of Art. 558 of the Tax Code	effective 1 January 2017
-----------------------	--	---	--------------------------

Grounds for tax inspection	Now the tax inspection may be performed also when it is necessary to confirm actual presence or absence at the place of location: <ul style="list-style-type: none"> of the taxpayer which failed to execute the notification on elimination of violations revealed by the state revenue authorities on the basis of in-house audit results; of the taxpayer recognized as inactive. 	subpara.4 of para.2 of Art.558 of the Tax Code	effective 1 January 2017
	Now in case the state revenue authorities reveal the fact of absence of the taxpayer at the place of its location, the taxpayer will be obliged to submit to the state revenue authorities within 20 business days not only the written explanation of absence at the moment of tax inspection but also the notarized copies of documents confirming the taxpayer's location.	para.5 of Art.558 of the Tax Code	effective 1 January 2017

8.1. Tax audit

Preliminary tax audit act	Now the officials of the state revenue authorities prior to issue of the tax audit act shall deliver the preliminary tax audit act to the taxpayer. The taxpayer is entitled to submit a written objection to the preliminary tax audit act. The categories of taxpayers to which the preliminary tax audit act will be delivered, as well as the procedure and timescale of delivery of the preliminary tax audit act, the written objection to the preliminary tax audit act and consideration of such objection will be approved by the competent authority.	Art.636-1, subpara. 9-1 of para. 1 of Art. 13, subpara. 26-2 of para. 1 of Art. 20 of the Tax Code	effective 1 July 2017
Suspension of tax audit	The tax audit period is suspended on the period between the date of delivery of the preliminary tax audit act to the taxpayer (tax agent) and the date of submission of the written objection by the taxpayer (tax agent) to the preliminary tax audit act to the state revenue authorities as well as between the date of receipt by the state revenue authorities of the written objection of the taxpayer (tax agent) to the preliminary tax audit act and the date of the decision issued in respect of such objection.	Art.629 of the Tax Code	effective 1 July 2017
Limitation period	The limitation period in part of accrual or revision of calculated, accrued amount of taxes and other obligatory payments to the budget is suspended on the period of submission of the written objection by the taxpayer (tax agent) to the preliminary tax audit	para.7-1 of Art.46 of the Tax	effective 1 July 2017

act as well as the period of consideration of such objection by the state revenue authorities.

Code

8.2. Procedure of appeal of notification on tax audit results

Suspension of appeal consideration	<p>The period of appeal consideration shall be suspended in the following cases:</p> <p>performance of thematic or repeated thematic tax audits - on 15 business days from receipt of act of the ended tax audit by the competent authority;</p> <p>submission of a request to the state authorities, the respective state authorities of the foreign states and other organizations on issues of their competency – on 15 business days from the date of receipt of the reply on each submitted request.</p> <p>Prior to 1 July 2017 the period of appeal consideration is suspended: upon performance of thematic and repeated thematic tax audits – upon their end; upon submission of a request to the state authorities and legal entities with 100% participation of the state as well as the competent authorities of the foreign states – upon receipt of the reply.</p>	para.1 of Art.672 of the Tax Code	effective 1 July 2017
Procedure of revision of decision on basis of taxpayer's (tax agent's) appeal consideration results	<p>Effective 1 July 2017 the provisions on revision of decision on the basis of appeal consideration results will be excluded from the Tax Code. This is due to the fact that the tax audits are performed on the level of the regional state revenue authorities, cities of Astana and Almaty and the district state revenue authorities do not perform tax audits.</p>	Art..676-685 of the Tax Code	effective 1 July 2017

About GRATA Law Firm

GRATA Law Firm is the largest independent Kazakhstani law firm, and one of the leading law firms in Central Asia and the Caspian Region. GRATA has provided a wide range of legal services in these regions for over 20 years.

Since its inception in 1991 the Firm has developed a very experienced Tax Practice. In 2005, the structure of the firm was fully established, featuring a specific department dealing with Tax Law. Unlike many consulting companies, GRATA's tax team consists mainly of lawyers and auditors, who have experience working with the tax authorities. This distinct perspective enables us to provide our clients with correct and practical advice.

Services

- Representation and Protection of Client's Interests in Tax Disputes;
- VAT Refund from the Budget;
- Support in Tax Audits;
- Taxation of Subsoil Users;
- International Taxation;
- Finance Taxation (securities, financial instruments, loan agreements);
- Corporate Taxation and Tax Planning;
- Individual Taxation;
- Tax Support and Structuring in M&A Transactions;
- Due Diligence of Tax Accounting (Tax Audit);
- Tax Administration.

For additional information, please visit www.gratanet.com, or contact:

Assel Ilyassova

Partner

Head of Tax Department

+7 (727) 2445-777

+7 (701) 763-07-14

ailyassova@gratanet.com

This alert for informational purposes only and shall not be recognized as legal advice. GRATA Law Firm LLP is not responsible for any consequences arising from the use of the aforementioned information without its consent.