



REVIEW

of planned amendments in the
Rules for refunding excess VAT
in 2024



REVIEW OF PLANNED AMENDMENTS IN THE RULES FOR REFUNDING EXCESS VAT IN 2024

GRATA Law Firm presents to your attention a review of the main amendments and additions to the draft order of the Minister of Finance of the Republic of Kazakhstan dated March 19, 2018, № 391 «On Approval of the Rules for the Refund of Excess Value Added Tax and the Application of a Risk Management System to Confirm the Accuracy of the Amount of Excess Value Added Tax, as well as Criteria for the Degree of Risk» (hereinafter – «the Rules»). The draft order addresses the following issues:

Clarifying amendment regarding the establishment of the definition of the results of the «Pyramid» report formation

It's proposed to establish the definition of the results of the 'Pyramid' report formation, according to which the result of the report formation is a multilevel scheme of settlements between the service recipient and suppliers of various levels for each tax period.



Expansion of the list of restrictions on the formation of the «Pyramid» report

It's proposed to expand the list of restrictions on the formation of the «Pyramid» report. The planned addition obliges tax authorities to cease further formation of the «Pyramid» report in the following cases:



- identification of a supplier whose total VAT amount on issued invoices for the tax period does not exceed 300 times the monthly calculation rate;
- identification of suppliers at different levels of the service recipient who has claimed a refund of excess VAT.

Establishing a prohibition on further formation of the «Pyramid» report when tax authorities identify the risk of non-fulfillment (partial fulfillment) of tax obligations

It's proposed that upon the detection of risks of non-fulfillment or partial fulfillment of tax obligations by taxpayers, tax authorities should only allow the formation of the «Pyramid» report for the direct suppliers of the service recipient.

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For the purposes of this provision, a definition of direct suppliers to the service recipient is established. **Such suppliers include:**

- suppliers who directly or through intermediaries (agents, commissioners, or attorneys) supplied goods, performed works, or provided services to the audited service recipient;
- suppliers who directly or through intermediaries (agents, commissioners, or attorneys) supplied goods, performed works, or provided services through related parties.

This amendment improves the position of taxpayers and prevents tax authorities from considering violations by suppliers at the 2nd level and beyond as a basis for refusing to refund excess VAT. Refusal will be deemed justified only when violations of tax obligations are established with the direct suppliers to the service recipient.





Clarification regarding the identification of the risk of suppliers using tax evasion schemes

It's proposed to establish a definition of the risk of suppliers using tax evasion schemes and to provide a limited list of indicators indicating the presence of this risk. According to the planned amendments, the risk of suppliers using tax evasion schemes will be imputed when the following categories of suppliers are identified at different levels:

- those for whom the issuance of electronic invoices in the information system is restricted;
- whose state registration (re-registration) has been declared invalid based on a legally effective court decision;
- against whom there is a fact of registration in the Unified Register of Pre-trial Investigation of a criminal case under Article 216 of the Criminal Code of the Republic of Kazakhstan;
- for whom there are court decisions declaring transactions invalid.

Amendments in the procedure for calculating the amount of excess VAT subject to refund due to the risks of non-fulfillment of VAT obligations

It's proposed to establish that when determining the amount of VAT subject to refund, violations of VAT obligations by the following suppliers are not taken into account:

- those who have changed the deadlines for fulfilling VAT obligations;
- against whom notices of low-risk violations identified as a result of documentary control have been issued;
- for whom violations of tax legislation have not been confirmed based on the results of subsequent tax inspections;
- for whom violations of tax legislation identified in the «Pyramid» report analysis are not confirmed based on responses received regarding the measures taken by suppliers of goods, works, and services to rectify them.

IN THIS CASE, THE TAX AUTHORITY PROCESSES THE REFUND OF THE EXCESS VAT AMOUNT, TAKING INTO ACCOUNT THE VIOLATIONS IDENTIFIED IN THE «PYRAMID» REPORT.

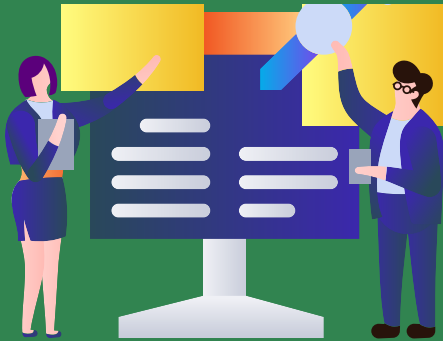
Amendments in the procedure for calculating the amount of excess VAT subject to refund due to the risks of using tax evasion schemes

It is proposed to supplement the Rules with a new section establishing the procedure for determining the amount of VAT subject to refund when the service recipient is found to be at risk of using tax evasion schemes. According to this section, when determining the amount of VAT subject to refund, the following suppliers are not considered as indicators of the use of tax evasion schemes (except for the presence of interrelation):



- those who have rectified violations in the supply chain of goods, works, and services, including the recognition of a transaction as valid based on a legally effective court decision;
- engaged in the supply of electricity and heat energy, water, and/or gas, except for electricity and heat energy, water, and/or gas subsequently exported by their buyer;
- engaged in the provision of communication services;

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- a national company included in the National Welfare Fund;
- a subsoil user conducting activities based on a production-sharing agreement (contract) concluded with the Government of the Republic of Kazakhstan or a competent authority;
- subject to tax monitoring;
- a manufacturer of goods of own production.

IN THIS CASE, THE TAX AUTHORITY PROCESSES THE REFUND OF THE EXCESS VAT AMOUNT, TAKING INTO ACCOUNT THE VIOLATIONS IDENTIFIED IN THE «PYRAMID» REPORT.

Amendments in the procedure for appointing and conducting counter tax audits

According to the proposed amendments, the list of categories of direct suppliers to the service recipient, upon the discovery of which the tax authority is obliged to appoint and conduct a counter tax audit to confirm settlements between the parties, is expanded. Thus, counter tax audits are also appointed upon the discovery of the following suppliers:



intermediaries (agents, commissioners, or attorneys);

freight forwarders;

manufacturers of goods of own production.



ABOUT US

“Grata” Law Firm is the largest independent legal firm in Kazakhstan, providing a wide range of legal services. It has been in the market for over 20 years and is one of the leading law firms in Central Asia and the Caspian region.

Throughout its entire operation, the firm has been successful in the field of tax practice, leading to the establishment of the Tax Law Department within the firm's structure in 2005. Unlike many consulting companies, the GRATA tax team consists mostly of lawyers and auditors with experience in tax authorities. This allows us to provide our clients not only with accurate but also practically applicable consultations.

OUR SERVICES



Representation and defense of interests during tax disputes;



Corporate taxation and tax planning;



VAT refund from the budget;



Taxation of individuals;



Support during tax audits;



Tax support and structuring in M&A transactions;



Taxation of subsoil users;



Legal expertise of tax accounting (tax audit);



International taxation;



Tax administration.



Taxation in financing (securities, financial instruments, loan agreements);

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