

business & finance lawflash

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Kazakhstan Amends Legislation to Improve the Investment Climate

The amendments offer an incentives package for new projects in industries of prime importance.

The Law on Amendments to Certain Legislative Acts of the Republic of Kazakhstan to Improve the Investment Climate (the Law) has been adopted in Kazakhstan. The main provisions of the Law (i.e., tax issues and investment subsidies) come into force on 1 January 2015, with the remaining provisions to take effect on 24 June 2014.

The Law introduces changes to certain legislative acts, including the Tax Code, the Land Code, the Law on Investments, and the Law on Employment of Population.

The key provisions of the Law are as follows:

- A special tax regime has been introduced for entities implementing priority investment projects. For these purposes, an entity implementing a priority investment project is defined as a legal entity that simultaneously meets the following criteria:
 - The legal entity must have been established recently. It must sign an investment contract implementing a priority investment project and the provision of tax preferences, and it must implement the project. The state or quasi-state entities cannot be shareholders of this legal entity. The amount invested by the legal entity must be at least 2,000,000 times the monthly calculation index (approximately USD20,240,000). Other requirements and restrictions also apply.
 - The activity carried out by the legal entity must fully meet the list of priority investment types of activities assigned for priority investment projects.
 - The income received (or to be received) from the priority investment project's activities must account for at least 90% of the legal entity's total aggregate annual income.
- The Law is planned to provide "stability" for investment contracts for the implementation of priority investment projects against future possible increases to rates of taxes, duties, or charges (other than VAT and excise duties). One needs to consider this initiative with caution. Kazakhstan's recent history shows that the granted stability guarantees may not be fully observed in practice. Note, for instance, that tax "stability" had once been applied in Kazakhstan in relation to subsoil use contracts, but it was unilaterally repealed in 2008.
- Similar "stability" is envisioned in the event of changes in the laws governing the attraction of a foreign workforce.
- The corporate income tax from the income related to implementing priority investment projects will be reduced by 100% (for the maximum term of 10 years from the signing of the investment contract). However, the legal entity implementing the priority investment project must apply the maximum depreciation rates.
- A "zero" rate coefficient (effectively, tax exemption) will apply to the tax base when calculating (i) land tax payable on land plots used for implementing a priority investment project (for the maximum term of 10 years)

and (ii) property tax on facilities commissioned in Kazakhstan for the first time (for the maximum term of eight years). At the same time, these benefits will be restricted (further lease, etc.).

- The statute of limitations will be extended by the term of the investment contract, i.e., it will be equal to the term of the investment contract plus the general statute of limitations (five years).
- The structure of investment preferences changes depending on whether a project is a priority investment project or not. If it is a priority investment project, the following four types of preferences will be available:
 - Exemption from customs duties
 - State in-kind grants
 - Tax preferences
 - Investment subsidies

If a project is not a priority investment project, only the first two preferences will be available. A priority investment project is defined as an investment project implemented by a newly incorporated legal entity in a priority business sector approved by the Kazakhstan government and that contemplates investments of at least 2,000,000 times the monthly calculation index (about USD20,240,000).

- The Law introduces a new type of investment preference available to priority investment projects: an investment subsidy, which is a nonrefundable, free government subsidy granted to a Kazakhstan legal entity that is a party to an investment contract for the implementation of a priority investment project. An investment subsidy may cover reimbursement up to 30% of the actual costs on construction and assembly works and equipment purchases (exclusive of VAT and excise duties), which, however, may not be greater than the costs estimated in the front-end engineering design documentation that was subject to the state expert review. An investment subsidy will be granted based on a resolution of the Kazakhstan government.
- The provisions of the Law on Employment of Population in relation to the quotas on an expatriate workforce and the issue of permits to foreign nationals for employment and to employers for hiring foreign nationals will not apply to foreign nationals or persons without nationality
 - who are employed by a Kazakhstan legal entity that is a party to an investment contract for the implementation of a priority investment project; or
 - who are employed by an entity retained by such legal entity (or a contractor thereof) as a primary contractor, contractor, subcontractor, or provider of architectural or building services (including survey, design, and engineering services) during a period of time until the end of one year after the commissioning of the project; as management or graduate professionals; or as skilled workers per the jobs and head count list in the respective investment contract for the implementation of a priority investment project.
- A number of changes to improve the investment infrastructure were also introduced in the Law, for example, the “one-stop shop” principle, assistance in securing a guaranteed order, and the investment ombudsman.

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