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Draft Amendments to the Kazakhstan Tax Code

The proposed amendments will affect dividends, capital gains, and VAT.

A draft law amending the Kazakhstan Tax Code was introduced in July 2014 (the Draft Law). Currently, the Draft Law is being considered by business and professional organizations. If adopted, the main provisions of the law will take effect starting 1 January 2015.

Overview

In general, the Draft Law does not dramatically change the Tax Code. Many provisions of the Draft Law are aimed at clarifying the current wording, eliminating contradictions, and enhancing tax administration.

Certain provisions of the Draft Law are designed to align the Tax Code with the Eurasian Economic Union Treaty or to address specific areas (e.g., taxation of tourist organizations or professional mediators).

Below are some of the key provisions of the Draft Law.

Dividends

Currently, dividends are tax free at the level of legal entities. In other words, when a Kazakh legal entity distributes dividends, it does not make a tax withholding. In addition, a Kazakh legal entity that receives dividends adjusts its aggregate annual income for the amount of received dividends.

The Draft Law states that, if the entity that distributes dividends "reduces its calculated corporate income tax", i.e., if such entity is subject to tax preferences, then the dividend tax exemption will be lost.

This means that the dividends will be taxed both at the "payer" (i.e., tax withholding) and "recipient" levels as follows:

- If the recipient is a legal entity, there will be no adjustment of the aggregate annual income for the amount of received dividends.
- If the recipient is an individual, the dividends will be taxed at the hands of the individual. Note that currently there is a tax exemption if the individual has held the shares or interest in the respective legal entity for more than three years (with few exceptions).

In addition, the Draft Law proposes to repeal the individuals' tax exemption relating to income from investment funds units (паи инвестиционных фондов) when an investment fund's management company redeems such units. The Draft Law's developers argue that this type of income is, in substance, a dividend and should be subject to tax.

Capital Gain

Currently, if an individual has held shares/interest in a legal entity that pays dividends for more than three years, then the capital gain derived from the sale of such shares/interest is tax exempt (with few exceptions).

The Draft Law stipulates that this tax exemption will no longer apply. It is declared that the reason for this amendment is to develop the stock market in Kazakhstan (capital gain received as a result of open-trade sales of shares on the Kazakhstan stock exchange is tax free). This reasoning is problematic, however, because not all legal entities are members of the stock exchange, and, moreover, the tax exemption for the stock exchange only applies to open-trade sales, i.e., private/direct deals are not covered.

Special Economic Zones: VAT

Currently, zero-rate value-added tax (VAT) applies to the sale of goods to a Special Economic Zone (SEZ) if the goods are fully consumed when undertaking activity that fits the purposes of the SEZ's creation per the list of goods established by the Kazakhstan government.

The Draft Law proposes to repeal this tax exemption because, allegedly, it does not reach the necessary economic effect.

Contacts

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