

# Tax Agenda Kazakhstan

January 2024



No.	Fact	Action		
1	<p><b>On 12 December 2023, the President signed Decree No.45-VIII 3PK on introduction of amendments to the Tax Code, including Articles 264 and 288</b></p> <p>In accordance with these amendments, effective from 1 January 2023 (i.e., through retrospective enforcement), 3% CIT deductibility limitation should apply only to transactions with suppliers located in jurisdictions included into the list of states with preferential taxation.</p>	<ul style="list-style-type: none"> <li>Review if intragroup services are purchased from non-resident legal entities with jurisdictions included into the list of states with preferential taxation.</li> <li>Taxpayers should consider the changes when calculating 2023 CIT advance payments.</li> </ul>	●	●
2	<p><b>Introduction of a New Tax Code in 2025</b></p> <p>The proposed key changes to the New Tax Code are, <i>inter alia</i>, the following:</p> <ul style="list-style-type: none"> <li>Introduction of different CIT rates depending on the sector of economy (CIT rates increase for Oil &amp; Gas and banking sectors - 30% instead of current 20%)</li> <li>Value-added tax (VAT) rate increase from 12% to 16%</li> <li>Reduction from 10 to 5 years of period for tax loss carry forward</li> <li>Introduction of a progressive Personal Income Tax rates for incomes over certain threshold, i.e., standard rate 10% and increased one 15%</li> <li>Re-consideration (reduction) of tax incentives to increase their efficiency</li> <li>Reconsideration of tax base for transport, land, property taxes and introduction of a "luxury tax"</li> <li>Methodological council on interpretation of controversial tax position</li> </ul>	<ul style="list-style-type: none"> <li>Analyze potential impact on taxpayers upon proposed changes are formalized into a law.</li> </ul>	●	●

Use text boxes above the timeline to plan your actions for coming months

● Compliance    ● Risk management    ● Cash-flow and ETR impact

No.	Fact	Action		
3	<p><b>Recent practice and trends of the tax authorities:</b></p> <ul style="list-style-type: none"> <li>▶ <b>Reclassification of service fees into royalties for withholding tax (WHT) purposes</b> Management, consulting, marketing, IT support and other intragroup services are reclassified into royalties subject to 15% domestic (generally up to 10% under double tax treaty) WHT instead of 0% WHT on service fees under double tax treaty (DTT).</li> </ul>	<ul style="list-style-type: none"> <li>▶ Be ready to confirm that services were indeed provided and benefited the buyer.</li> <li>▶ To collect duly executed supporting documents related to provision of services, have available transfer pricing (TP) documentation.</li> <li>▶ To prepare a 'defense file' to support Kazakhstan taxpayers' positions. 'Defense file' usually contains the following information: i) description of taxpayers' business and services under the agreement, ii) details on provided services, iii) benefits for taxpayers and other information.</li> </ul>	●	●
	<ul style="list-style-type: none"> <li>▶ <b>CIT deductibility of intragroup charges</b> The tax authorities challenge reasonability of services and goods acquired by a taxpayer from non-resident related parties (several cases won by taxpayers with EY Kazakhstan Controversy team's support).</li> </ul>	<ul style="list-style-type: none"> <li>▶ To confirm actual provision of services, to carry out a benefit test.</li> <li>▶ To be in compliance with Kazakhstan TP legislation.</li> <li>▶ To collect duly executed supporting documents related to provision of services.</li> <li>▶ To prepare a 'defense file' to support taxpayers' positions.</li> </ul>	●	●
	<ul style="list-style-type: none"> <li>▶ <b>Permanent Establishment (PE) in Kazakhstan</b> DTT benefits are hard to apply if a non-resident has registered PE in Kazakhstan (case won by taxpayers with EY Kazakhstan Controversy team's support).</li> </ul>	<ul style="list-style-type: none"> <li>▶ To check whether recipient of the income (i.e., non-resident) has a registered PE in Kazakhstan.</li> <li>▶ In case of presence of a registered PE in Kazakhstan, to prepare a 'defense file' confirming that income is not attributed to the PE.</li> </ul>	●	●
	<ul style="list-style-type: none"> <li>▶ <b>Beneficial ownership</b> The tax authorities reject application of reduced WHT rates under DTTs on passive types of income if the recipient is not proved to be beneficial owner of that income (15% WHT instead of 5 or 10%).</li> </ul>	<ul style="list-style-type: none"> <li>▶ To check whether recipient of the income (i.e., non-resident) is a beneficial owner of such income and not an agent or intermediary. That can be proven, <i>inter alia</i>, by checking (i) bookkeeping records of the non-resident, (ii) tax reporting of the non-resident to ensure that such income was included in taxable base of such non-resident and (iii) other tests.</li> </ul>	●	●
	<ul style="list-style-type: none"> <li>▶ <b>Reliability of suppliers and fictitious transactions</b> The tax authorities often make additional assessments for CIT and VAT by deeming the supplies of goods, works, and services as fictitious and the supporting documents as fraudulent, i.e.: <ul style="list-style-type: none"> <li>▶ If supplier lacks fixed assets and employees,</li> <li>▶ If supplier did not pay taxes,</li> <li>▶ If supplier is absent at the place of registration, deregistered for VAT purposes or declared bankrupt.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▶ To improve control process on suppliers on new and current suppliers (e.g., to participate in pilot project on due diligence).</li> <li>▶ To check the reliability of suppliers through open government sources (e.g., website of the tax authorities, statistical agency, check in the court database, request letters of recommendation, etc.).</li> <li>▶ To include liability clause in contracts with suppliers.</li> </ul>	●	●



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