Investing in Kazakhstan: Tax and Customs aspects
**Agenda**

I. Tax aspects
   - Overview of Kazakhstan tax regime
   - Improvement of the investment climate in Kazakhstan
   - Anti-offshore measures: action plan for 2014-2020

II. Customs aspects
   - Introduction of Eurasian Economic Union: general overview
   - Customs Union between Kazakhstan, Russia and Belorussia
Tax aspects
**Tax regime – overview**

- Obligatory IFRS accounting
- Tax accounting linked to IFRS since 2009
- Quite advanced civil law
- Liberal currency control rules
- Demanding anti-money laundering rules
- Kazakhstan is not an OECD member, but applies UN Model Tax Treaty and OECD Model Tax Treaty
- No 0% WHT on passive types of income (dividends, interest and royalty) in any Double Tax Treaty ratified by Kazakhstan
- 46 Double Tax Treaties are currently in force; 3 Double Tax Treaties are pending (i.e., with Saudi Arabia, Macedonia, Vietnam).
Kazakh tax environment
Form over substance, occasionally substance over form

- No binding rulings
- But binding APA for Transfer Pricing
- Statute of limitation is 5 years (for certain subsurface taxes unlimited)
- Number of tax re-audits is unlimited
- Tax authorities put focus on cameral monitoring and voluntary tax compliance through developed IT technologies
**Kazakh tax environment**

*International tax concepts broadly present*

- Branch profits tax
- Sophisticated permanent establishment rules (i.e., Services PE concept is widely applied by the tax authorities in practice)
- Thin capitalization rules
- Beneficial ownership rules
- Anti-treaty shopping rules
- Extraterritorial capital gains tax
- Transfer pricing
- Participation exemption
- CFC rules
- Place of effective management
## Tax burden

**Corporate Income Tax**

- **20%**

### Branch Profit Tax

- **15%**
- **12%**

<table>
<thead>
<tr>
<th>Tax</th>
<th>Employer</th>
<th>Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal income tax (flat rate)</td>
<td></td>
<td>10%</td>
</tr>
<tr>
<td>Social tax</td>
<td></td>
<td>11%</td>
</tr>
<tr>
<td>Pension contribution</td>
<td></td>
<td>10%</td>
</tr>
</tbody>
</table>
### WHT on different income streams

<table>
<thead>
<tr>
<th>Type of income</th>
<th>Kazakhstan WHT</th>
<th>Typical treaty WHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services</td>
<td>20%</td>
<td>Exempt from withholding tax, if there is no permanent establishment in Kazakhstan</td>
</tr>
<tr>
<td>Dividends</td>
<td>15%, but could be exempt, if certain conditions are met</td>
<td>From 5% to 15%, depending on the conditions</td>
</tr>
<tr>
<td>Interest</td>
<td>15%</td>
<td>10% under all in force double tax treaties</td>
</tr>
<tr>
<td>Royalty</td>
<td>15%</td>
<td>10% under all in force double tax treaties</td>
</tr>
<tr>
<td>Capital gains</td>
<td>15%, but could be exempt, if certain conditions are met</td>
<td>Exempt: &lt;50% immovable Taxed: &gt;50% immovable</td>
</tr>
</tbody>
</table>
**Hot Issues**

- Transfer pricing rules apply to both related and unrelated parties (i.e., OECD TP Guidelines are not binding in Kazakhstan)
- No transfer pricing differential is allowed for transactions with the legal entities registered in “black listed” jurisdictions
- Advance pricing agreements – so far, none have been concluded
- Initially, the most risk-intense types of transactions from a transfer pricing perspective involved **subsurface-use operations** (i.e., export of oil and other commodities).
- However, with the expansion of the transfer pricing practice in Kazakhstan, tax authorities tend to scrutiny services (including, management) and intangibles.

**Transfer pricing is a must**
Hot Issues

Blacklists

- Tax blacklist: creates impact on CFC, thin capitalization and transfer pricing rules
- Financial blacklist causes disclosure of entire holding structure and limits funding at Kazakh banks
**Tax blacklist**

**Blacklisted jurisdictions**

- ≤10% tax or
- confidentiality/non-disclosure laws
- list approved by the Kazakhstan Government

1. American Virgin Islands
2. Andorra
3. Anguilla Islands
4. Antigua and Barbuda
5. Antilles (NL)
6. Aruba (NL)
7. Bahamas
8. Bahrain
9. Barbados
10. Belize
11. Bermudas
12. British Virgin Islands
13. Brunei Darussalam
14. Canary Isles (Spain)
15. Cayman Islands
16. Chagos Island
17. Channel Islands
18. Columbia
19. Comoros
20. Costa Rica
21. Cyprus
22. Delaware (USA)
23. Djibouti
24. Dominica
25. Dominican Republic
26. Dubai (UAE) (?)
27. Dublin (Ireland)
28. Fiji
29. French Guiana
30. French Polynesia
31. Gibraltar
32. Grenada
33. Guam Island
34. Guatemala
35. Guyana
36. Hong Kong (China)
37. Island of Cook (NZ)
38. Islands of Niue (NZ)
39. Isle of Man
40. Jamaica
41. Kerguelen Islands
42. Labuan (Malaysia)
43. Lebanon
44. Liberia
45. Liechtenstein
46. Luxembourg (?)
47. Macau (China)
48. Madeira Islands (Portugal)
49. Maldives
50. Malta
51. Marianas islands
52. Marshall Islands
53. Mauritania
54. Mauritius
55. Monaco
56. Montenegro
57. Montserrat Islands
58. Morocco (city of Tanger)
59. Myanmar
60. Nauru
61. Nigeria
62. Palau
63. Panama
64. Philippines
65. Puerto Rico
66. Samoa
67. San Marino
68. Seychelles
69. Shannon (Ireland)
70. Singapore (removed 1 January 2012)
71. South Georgia Island
72. South Sandwich Islands
73. Sri Lanka
74. St. Kitts and Nevis
75. St. Lucia
76. St. Vincent and the Grenadines
77. Surinam
78. Switzerland (removed Sep 2010)
79. Tanzania
80. Tonga
81. Trinidad and Tobago
82. Turks and Caicos
83. Vanuatu
84. Wyoming (USA)

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22 October 2014
## Financial blacklist

### Borrowing from Kazakh banks:
- if Kazakh entity is controlled from blacklisted state
- loan is subject to 100% reserve

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<tbody>
<tr>
<td>1</td>
<td>American Virgin Islands</td>
<td>27</td>
<td>Island of Cook (NZ)</td>
<td>52</td>
<td>St. Lucia</td>
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<tr>
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<td>Andorra</td>
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<td>Islands of Niue (NZ)</td>
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<td>St. Vincent and the Grenadines</td>
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<td>Isle of Man</td>
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<td>Tonga</td>
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<td>4</td>
<td>Antigua and Barbuda</td>
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<td>Labuan (Malaysia)</td>
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<td>Turks and Caicos</td>
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<td>5</td>
<td>Antilles (NL)</td>
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<td>Liberia</td>
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<td>Vanuatu</td>
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<td>6</td>
<td>Aruba (NL)</td>
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<td>Liechtenstein</td>
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<td>Bahamas</td>
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<td>Macau (China)</td>
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<td>Barbados</td>
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<td>Madeira Islands (Portugal)</td>
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<td>Mauritius</td>
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<td>Canary Isles (Spain)</td>
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<td>Monaco</td>
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<td>14</td>
<td>Cayman Islands</td>
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<td>Montserrat Islands</td>
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<td>15</td>
<td>Channel Islands</td>
<td>41</td>
<td>Myanmar</td>
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<td>16</td>
<td>Comoros</td>
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<td>Palau</td>
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<td>Panama</td>
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<td>Dominican Republic</td>
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<td>Philippines</td>
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<td>Sri Lanka</td>
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<td>Hong Kong (China)</td>
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<td>St. Kitts and Nevis</td>
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<td></td>
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<tr>
<td>26</td>
<td>Indonesia</td>
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</tbody>
</table>

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Blacklists
Example

1 CFC

2 Limitation of interest deduction

3 No deduction for trading costs under TP

4 Disclosure and blocked borrowing

Investing in Kazakhstan: tax and customs aspects
Taxation of capital gains
Natural resources and other non-exempt cases

- Extraterritorial capital gains taxation on transfers of:
  - Shares in subsurface assets
  - Shares with >50% value in Kazakh assets sold within 3-year holding period
  - Shares with >50% value in Kazakh assets sold by offshore entity

- Bullet-proof collection mechanism:
  - Buyer should act as WHT agent
  - If Buyer evades, WHT on Op Co
  - Treaty applies based on refund
**Corporate structuring**

*Swiss Hold Co*

- 5% WHT on dividends
- Exemption from capital gains taxation in Kazakhstan if underlying assets are <50% subsurface use / immovable property
- Predictable WHT relief in Switzerland
- Very successful combination with Kazakhstan NON-subsurface assets
Corporate structuring
Swiss Trade Co

Before 2017-2019

• Switzerland is almost the only tax efficient trading location for Kazakhstan
• Sustainable is important from international tax standpoint, e.g. Kazakhstan Transfer Pricing rules
• ETR between 9 – 12%
• Lower rates can be achieved using offshore branch, however Kazakh blacklists might be triggered

After 2017-2019

• Switzerland is going to implement CTR III and terminate this tax regime,

  **BUT**

• The negative effect would be fully compensated by:
  – reduced tax rates (up to 12%-14%), which is close to the ETR of Trade Co; and
  – Introduction of transition provisions.
Improvement of the investment climate in Kazakhstan

Simplification of visa regime

- Visa-free entrance for citizens of USA, Great Britain, Germany, France, Italy, Malaysia, Netherlands, UAE, South Korea, Japan from 15/07/14 - 15/07/15, if the stay does not exceed 15 days (general application);
- Introduction of “investor visas” based on the investment authorities request (single for 90 days and multiple for 3 years).

Simplification of obtaining work permits

- no work permits required for foreign labor for the duration of construction under “investment projects” and 1 year after commissioning of the investment project.

Guarantees for investors

- Introduction of “single window” principle to serve foreign investors
- Guaranteed long-term purchase plan for goods/services by national holdings, national companies and state institutions.
- Stability of tax legislation (tax rates, except for VAT and excise) and foreign workforce attraction rules for the duration of the investment priority contract.
- Protection of rights by investment ombudsman.
Investment priority projects
Conditions and preferences

• Conditions
  i. Newly established company (less than 12 months prior to application for investment preferences)
  ii. Priority types of activity (currently list focused on manufacturing)
  iii. Investments not less than USD 20 m
  iv. Investment contract
  v. Revenues from investment contract not less than 90% of the total revenues.

• Tax preferences
  – NO Corporate Tax for 10 years,

     BUT

     i. no tax loss carry forward for the period after expiration of investment contract
     ii. maximum tax depreciation rates should be used.

  – NO Property Tax for 8 years;
  – NO Land tax for 10 years.

• Investment subsidy
  – reimbursement of up to 30% of capital costs by the state on commissioning of project.
## Anti-Offshore Measures

### Action plan

<table>
<thead>
<tr>
<th>Measure</th>
<th>When</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 “Substance over form” principle in the Kazakhstan Tax Code</td>
<td>2014 - 2015</td>
</tr>
<tr>
<td>2 Amendments to CFC rules</td>
<td></td>
</tr>
<tr>
<td>3 Stronger administrative and criminal liability for taxes</td>
<td></td>
</tr>
<tr>
<td>4 Obligatory disclosure of UBOs on (re-)registration of Kazakh legal entities</td>
<td></td>
</tr>
</tbody>
</table>
| 5 Implementation of OECD BEPS Action Plan  
  • Additional anti-avoidance provisions (including, disclosure of the transactions with aggressive tax planning)  
  • Amendments to the Kazakhstan Transfer Pricing Law (i.e., disclosure of the global income and expenses allocation by MNCs to the tax authorities) | 2015 - 2018 |
| 6 Automatic exchange of information  
  • Ratification of the OECD Convention on Mutual Administrative Tax Assistance  
  • TIEAs and DTTs with “blacklisted” jurisdictions  
  • Amendments into the existing DTTs in respect of the information exchange | 2014 - 2020 |
Customs aspects
Introduction of Eurasian Economic Union
General overview

The Customs Code of EEU is currently under development (expected to come into force from 1/1/2016)*

Common Customs Tariff;
Unified rules for determination of country of origin of goods;
Unified non-tariff regulation and internal market protection measures

Preferential customs duties on the goods from developing (75%*CCT) and the least developed (0%) countries

Application of Most Favoured Nation Treatment regime stipulated by GATT 1994 between the EEU (its member states) and 3rd countries

EEU
(effective from 1/1/2015)

*During a transition period provisions of the Customs Code of the CU will be applicable
Customs Union between Kazakhstan, Russia and Belorussia
Firstlings of functioning

- Deferral of VAT settlement upon import of goods from the territory of the Customs Union member-states for 50 days;
- Unification of the rules on place of supply for VAT services within the Customs Union territory
- Eurasian Economic Commission is a single supervisory authority of the EEU and CU with respect to price adjustments on imports
- No customs duties and fees upon importation of goods from the CU member-states
## Customs Union between Kazakhstan, Russia and Belorussia

### Settlement of indirect taxes

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Trade outside the CU</th>
<th>Trade within EU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Which authorized body is responsible for collection of Import VAT?</td>
<td>customs authorities</td>
<td>tax authorities</td>
</tr>
<tr>
<td>When Import VAT should be settled?</td>
<td>at the moment of submission of customs declaration</td>
<td>not later than 20\textsuperscript{th} day of the month following the date of importation</td>
</tr>
<tr>
<td>Which document confirms import of goods?</td>
<td>customs declaration</td>
<td>application for importation of goods and payment of indirect taxes (Form 328.00)</td>
</tr>
<tr>
<td>Which document confirms application of 0% Export VAT?</td>
<td>customs declaration</td>
<td>application for importation of goods and payment of indirect taxes (Form 328.00), which should be obtained from the Buyer within 180 calendar days.</td>
</tr>
</tbody>
</table>
**Customs Union between Kazakhstan, Russia and Belorussia**

*Practical issues*

- A requirement to obtain an application (Form 328.00) from the buyer to be able to confirm 0% VAT on export to the Kazakhstan tax authorities;

- Customs regimes, which were previously applicable under the Kazakhstan Customs Code (i.e., processing on/outside of the customs territory and others) are not applicable in the transactions within the Customs Union:
  - Maintenance of equipment – should import be subject to VAT?
  - Leasing of equipment – should such transaction not be treated as export?

- Transfer of goods from one CU-member (e.g., Russia) to another (e.g., Kazakhstan) within one legal entity (transfer to the branch or representative office in Kazakhstan)

- Customs clearance of goods imported to the CU from non-member states under the agreements concluded between the residents of the CU:
  - Which party should act as a declarant?
Your PwC contacts in Switzerland

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Investing in Kazakhstan: tax and customs aspects
Moving forward together!

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