EY Tax and Legal update for Kazakhstan

7 October 2024

Building a better working world

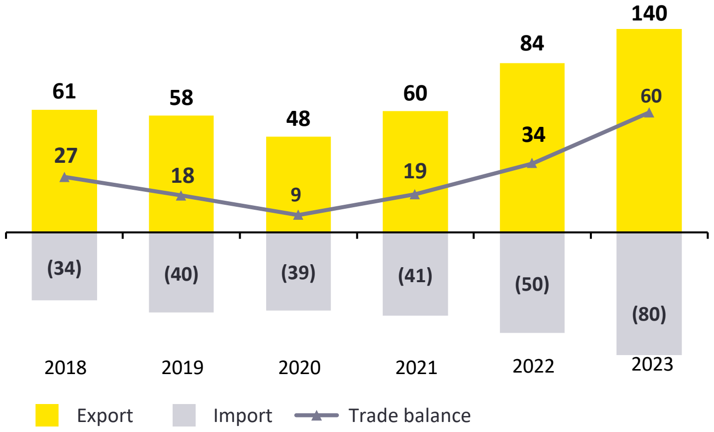
Kazakhstan market considerations

The country at a glance

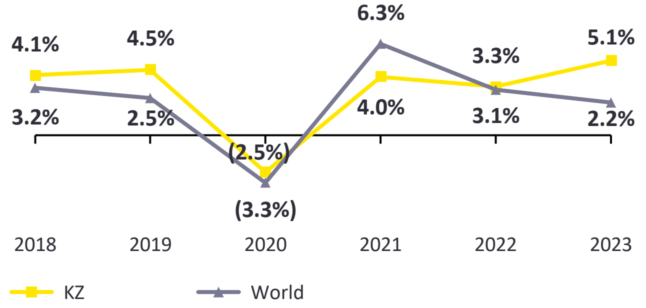
GDP

The Oil & Gas and mining industries are the main contributors to the GDP and Kazakhstan’s (“KZ”) economy that is heavily dependent on global commodity prices.

- In 2023, the sectors that showed the highest growth rates are Construction (13.3%), Manufacturing Industry (11.3%) Information and Communication (7.1%), Transportation and Logistics (7.1%) and Accommodation and food services (6.5%).
- In 2024, GDP increased by 3,7% in real terms compared to the corresponding period of the previous year. The largest growth was shown by Construction (15,9%), Information and communication (9,3%), Transport and Logistics (8,3%), Manufacturing industry (5,6%), Supply of electricity, gas, steam, hot water and air conditioning” (5,5%).



The growth rate of real GDP, %



Source: Bureau of National Statistics of the RK
National bank of the RK
UNCTAD

Foreign trade turnover

In 2022, the volume of trade in KZ reached its historical In 2023, the country’s foreign trade turnover reached $139.8 billion, marking a 3.2% increase from the previous year.

In January 2024 export of goods amounted to 697.4 million US dollars (increased on 30.1%), import – 1158.5 million US dollars (decreased on 7%).

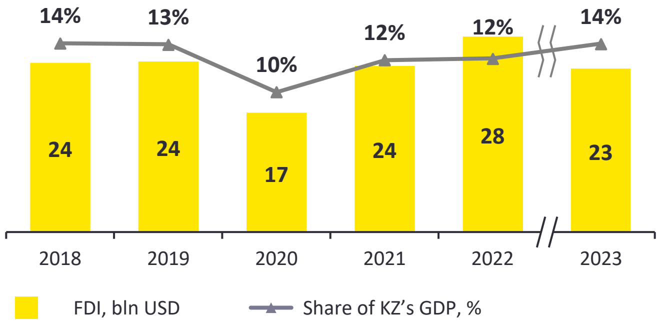
In general volume of external trade turnover of the Republic of Kazakhstan with the countries of the EAEU falls to the Russian Federation – 92.7%, then follows the Kyrgyz Republic – 4.5%, the Republic of Belarus – 2.7%, the Republic of Armenia – 0.1%.

Foreign Direct Investments

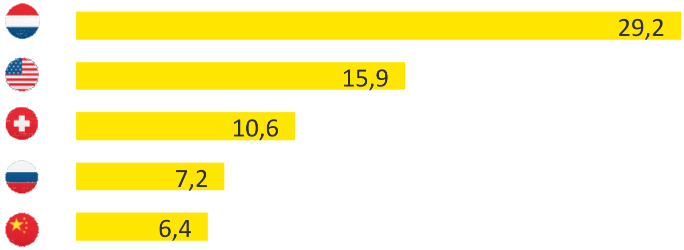
In 2022, the largest investment inflow was in the mining industry, totaling USD 12 bln, followed by the manufacturing industry with USD 6 bln.

In the first half of 2023, Kazakhstan surged $4.1 billion in net inflow of foreign direct investment (FDI), 86% more than in the previous year

Dynamics of FDI in KZ



Top 5 countries by FDI in KZ, average for 2017 – 2023



Changes in supply chain and corporate structure in practice

- The geopolitical challenges have led to the restructuring of supply chain routes.
- KZ becomes a key logistics center and the main transit Hub that can provide landlocked Central Asian countries with access to global markets.
- Many of our EY clients restructured their supply chain routes during 2022–2023.
- Supply of goods through KZ vs. without physical movement across KZ border assumes different regulatory, customs and tax compliance considerations.

Legal framework

General provisions on legal entities

Types of legal entities
In Kazakhstan, for-profit legal entities may be organized using different forms of incorporation, of which the most extensively used are limited liability partnerships (LLPs) and joint stock companies (JSCs).

Legislative regulation
The key legislative acts governing the activities of legal entities are

- Kazakhstan Civil Code
- Kazakhstan Law on Partnerships with Limited and Additional Liability of 22 April 1998
- Kazakhstan Law on Economic Partnerships of 2 May 1995
- Kazakhstan Law on Joint Stock Companies of 13 May 2003

State registration of legal entities
In order to acquire the status of a legal entity, the latter must be registered with the State Corporation "Government for Citizens"

Online registration
is currently available in Kazakhstan for small business entities, using the entity founder's electronic digital signature ("EDS").

Re-registration and liquidation (winding-up) of legal entities
The legislation establishes statutory grounds for mandatory re-registration and liquidation of legal entities. Any legal entity may be liquidated either by court judgment, or on a voluntary basis.

Liability of participants
As a general rule, the LLP participants' liability is limited by the amount of their contribution (value of shares held). The legislation may provide for the cases where a shareholder may be held vicariously or jointly and severally liable for the legal entity's debts.

Corporate documents
The main corporate documents of Kazakhstan companies are the charter and foundation agreement.

Restrictions on foreign participation
Kazakhstan companies engaging in certain types of activities, such as telecommunications, security, mass media, airline companies, etc., are subject to certain restrictions on foreign participation.

Legal tips for potential investors

1. Most investors use a Kazakh limited liability partnership ("LLP") as their investment vehicle.

2. Settlements (transactions) between residents and non-residents in Kazakhstan must adhere to specific currency regulations.

3. Licensing requirements for various business activities in Kazakhstan necessitate thorough compliance to avoid penalties.

4. Procedural formalities are rigorously enforced in Kazakhstan, often requiring detailed documentation and powers of attorney.

5. Compliance with in-country value (local content) regulations is crucial for companies operating in industries like mining and oil and gas, public procurements and quasi-governmental sector.

6. Hiring foreign employees in Kazakhstan is complex and strictly regulated, requiring adherence to immigration and labor laws.

7. Foreign law can govern commercial contracts in Kazakhstan, with exceptions for specific agreements.

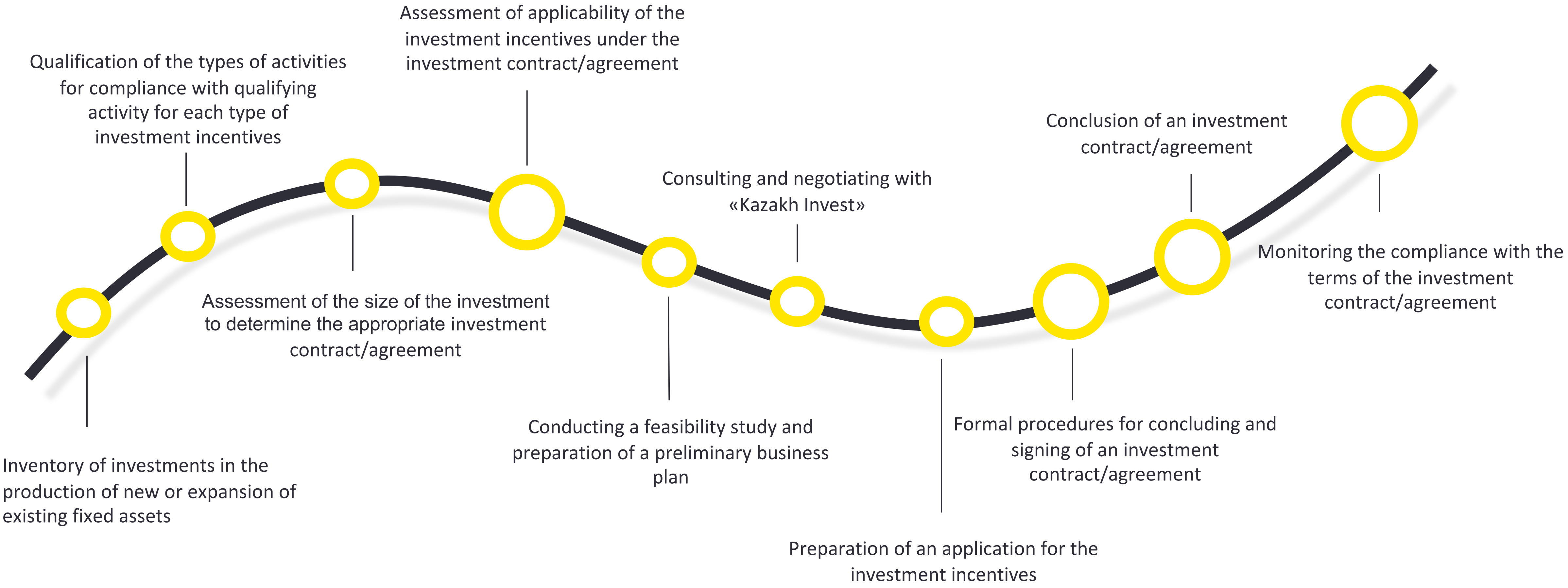
8. A special legal regime applies to companies registered as AIFC participants, offering unique regulatory frameworks.

9. Approval from government authorities may be required for certain acquisitions in regulated industries in Kazakhstan.

10. Disputes involving Kazakh legal entities can be resolved through various procedures, including local and international arbitration.

Invest in Kazakhstan

Investment journey: Key stages of investment incentives application process



Main tax developments and peculiarities for Multinational Groups

KZ is important for Multinational Groups as KZ subsidiaries becoming a main Hub for Caucasus and Central Asia (the “CCA”) region with increased functional profile. Logistic and infrastructure projects are of priority to the KZ Government.

KZ has large network of international agreements:

- World Trade Organization (“WTO”) and World Customs Organization (“WCO”) fully-fledged member
- Eurasian Economic Union (the “EAEU”) member (with Russia, Armenia, Belarus and Kyrgyzstan)
- Free Trade Agreements of Commonwealth of Independent States (the “CIS”) countries (Russia, Armenia, Belarus, Kyrgyzstan, Moldova, Tajikistan, Ukraine and Uzbekistan), direct Free Trade Agreements with Azerbaijan, Georgia
- The EAEU Trade Agreements with Vietnam, Serbia, Iran
- Double Tax Treaties (the "DTTs") with 55 jurisdictions
- Bilateral Investment Treaties with 47 jurisdictions.

Investment incentives for investors

Special and industrial economic zones

Investment contracts

Investment agreements

Other tax incentives (accelerated depreciation and investment tax credit)

Types of investment contracts and agreements

Investment contracts

- Investment project (**IP**)
- Investment priority project (**IPP**)
- Special economic zone
- Free warehouse
- Agreement on industrial manufacture of vehicles
- Special investment project (**SIP**)

Investment agreements

- Investment Agreement
- Investment Obligation Agreement

Tax incentives

Tax incentives for productive activities / investments under investment contracts and agreements

Type of contract	Type of project	CIT	VAT	Land tax	Property tax	Others
Investment contract (IC)	Investment project	*No incentives*	Exemption from VAT on imports of raw materials and / or materials within the framework of the IC	*No incentives*	*No incentives*	
	Investment priority project	0% CIT (vs. 20%) for income received from priority activities	*No incentives*	0% Land tax	0% PPT	Stability of tax rates for CIT, property and land taxes as agreed when signing IPP agreement
	Special investment project	*No incentives*	Exemption from VAT on imports of raw materials and / or materials within the framework of the SIP	*No incentives*	*No incentives*	
Investment Agreement (IA)		0% CIT for income received from IP activities	VAT exemption for sales under IA	0% Land tax	0% PPT	Reduction of tax liabilities, calculated from the amount of actual expenses of the taxpayer, in accordance with Article 712-3 of the Tax Code. Stability of tax rates for CIT, property and land taxes as agreed when signing IA.
Investment Obligation Agreement (IOA)		*No incentives*	*No incentives*	*No incentives*	*No incentives*	Guarantee of stability of the tax regime valid at the time of signing the IOA for 10 years for VAT, excise taxes, payment for emissions into the environment, PIT, WHT.

Tax incentives for productive activities / investments

The key tax risks to considered when plannig and monitoring execution of investment contracts & agreements

1. Separate tax accounting should be maintained for income, expenses and assets subject to incentives
2. In case of breach of the investment contract conditions (e.g., agreed investment plan) by investor, tax incentives are cancelled and taxes are due retrospectively from contract inception
3. Pillar 2 impact should be considered for the group/foreign investor
4. PE and personal tax risks related to involvement of foreign personnel for implementation of the investment project shall be carefully considered
5. Tax losses under some investment contracts cannot be carried-forward

Recent practices and trends in international taxation

Article 667 of the Tax Code in the focus of tax authorities' attention:

- From 1 January 2023, certain changes are applied in the terms of application the international agreements provisions (i.e., DTTs, MLI) for payments of **passive income to non-residents**.

- Additional conditions to apply DTT benefits to dividends, royalties, interest payments to related party (when MLI applies) starting from 1 January 2023:
  - Such income shall be subject to taxation in a foreign state; and
  - The nominal tax rate in a foreign state is at least 15 %.

- It is challenging (risky) to reduce WHT tax rate under DTTs with MLI, if passive income is not taxed at 15% rate in a country of recipient.

- This has significantly affected the current ownership structures, since most foreign tax regimes do not tax dividends (by way of exemption or adjustment of taxable income).

Recent practices and trends in international taxation

MLI application: 35 countries (out of 55 with DTTs) signed, ratified and chosen to apply MLI with Kazakhstan. There are no comments on supporting documents or factors / conditions necessary to meet the requirements of the MLI (for example, the requirements to meet principle purpose test or simplified limitation of benefits test.

1. Armenia*	~~12. Iran~~	~~23. Moldova~~	34. Serbia	45. UAE
2. Austria*	13. Ireland	24. Mongolia	35. Singapore	~~46. USA~~
~~3. Azerbaijan~~	14. Italy	25. North Macedonia	36. Slovakia	~~47. Uzbekistan~~
~~4. Belarus~~	15. Canada	26. Netherlands	37. Slovenia	48. Vietnam
5. Belgium	16. China	~~27. Norway~~	38. Spain	49. Finland
6. Bulgaria	~~17. Cyprus~~	28. Pakistan	39. Sweden	50. France
7. United Kingdom	~~18. Kyrgyzstan~~	29. Poland	~~40. Switzerland~~	51. Croatia
8. Hungary	19. Latvia	~~30. Qatar~~	~~41. Tajikistan~~	~~52. Czech~~
~~9. Georgia~~	20. Lithuania	31. Romania	42. Turkey	53. Estonia
~~10. Germany~~	21. Luxembourg	32. Russia	~~43. Turkmenistan~~	54. South Korea
11. India	22. Malaysia	33. Saudi Arabia	44. Ukraine	55. Japan

* From 1 January 2024

(red)	countries that have not signed the MLI
(yellow)	countries that signed MLI, but have not ratified
(green)	countries that have signed and ratified the MLI
~~country~~	countries that have not joined MLI and did not choose to apply MLI on the DTT with Kazakhstan

Upcoming tax reforms

Preliminary directions: Key changes in 2025 New Tax Code

CIT rates revision for:
- ✓ banking sector and gambling business to 30% from current 20% rate;
- ✓ standard rate for other legal entities to 25% from current 20% rate.

Re-consideration of current list of tax incentives to increase their efficiency. Some envisaged tax incentives could apply for:
- ✓ Value-adding manufacturing,
- ✓ 100% costs uplift for export-oriented manufacturing,
- ✓ Profits destinated to technological modernization and R&D,
- ✓ Certain types of activities within FEZ,
- ✓ Extension of import VAT payment deadlines for imported raw materials to be processed in KZ up to 1 year.

Keeping 12% historic VAT rate instead of 16% that was considered by the Government. Changes in VAT administration via fully digital mechanisms. Reform in VAT refund mechanism.

Re-consideration of Oil & Gas tax regimes.

Changes in dividends taxation and in applicability of international taxation.

Introduction of a new “luxury tax”. Gradual increase of excise rates on tobacco and alcohol products.

Reform of the Special Tax Regimes applicable for Small and Medium size Enterprises.

Methodological Council on interpretation of controversial tax positions.

Tax tips for potential investors

1. Kazakh tax laws undergo frequent changes, necessitating robust tax planning to adapt to legal shifts and implement structural changes efficiently.

2. Kazakhstan offers low corporate and personal income tax rates but imposes high penalties for non-compliance, emphasizing the importance of accurate tax reporting and documentation.

3. WHT regulations on cross-border payments are extensive in Kazakhstan, often requiring meticulous documentation to reduce or avoid taxes.

4. Dealing with tax havens in cross-border transactions in Kazakhstan is generally discouraged due to associated risks.

5. Determining taxable presence for CIT in Kazakhstan requires careful consideration, especially for multinational entities.

6. Deductibility of interest on investor loans in Kazakhstan is subject to specific debt-to-equity ratios and WHT rates.

7. A safe harbor provision allows entities seconding staff to Kazakhstan to avoid taxable presence, offering tax-efficient solutions.

8. Branch profit tax (the “**BPT**”) and dividend tax rates apply to foreign establishments in Kazakhstan, often reduced by tax treaties.

9. Exemptions from capital gains tax may apply to certain investments in Kazakhstan, contingent upon proper structuring.

10. Income earned by foreign individuals working in Kazakhstan is subject to Kazakh personal income tax (the “PIT”), with reporting obligations typically placed on local tax agents.

EY

Closing remarks
Q&A

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ED None

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